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September 2, 2020

VIA EMAIL ONLY: lesliet@argusobserver.com

Leslie Thompson
Argus Observer
1160 SW Fourth St
Ontario, OR 97914

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA079-20

Dear Ms. Thompson:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received August 17, 2020,[1] asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose certain security video footage from the Snake River Correctional Institution (SRCI). For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Your petition stems from a July 21, 2020 request to SRCI for 10 hours of security video footage from the previous two weeks that covers both the minimum and maximum security facilities, broken into one-hour time slots selected by you. In light of the ongoing Coronavirus (COVID-19) outbreak, you informed ODOC that you seek this information to determine whether staff members were wearing face masks when in close proximity to adults in custody (AICs). ODOC denied your request on August 7, 2020, asserting the security footage is exempt from disclosure under ORS 192.345(23) and 192.355(5), and noting ODOC's long-standing policy of

[1] Thank you for granting an extension to the deadline to respond to your petition.

withholding security video footage in order to maintain safety and security. ODOC's response also addressed the public interest in these recordings, noting:

> [W]e acknowledge the public's interest in seeking information about staff compliance with wearing face masks when six feet of physical distancing is not possible during the current COVID-19 pandemic. We have taken this into consideration in reviewing your public records request. During our review of requested institution video footage, we acknowledge that there is video footage that depicts some instances in which correctional staff who were not able to maintain six feet of physical distancing are not wearing face masks as required by the Department's policy.

You assert the security video should be disclosed because of the high public interest in knowing whether noncompliance with mask policies may be contributing to the spread of COVID-19 within SRCI. You explain that the number of infections among SRCI staff and AICs is rising and note that an AIC at SRCI recently died from COVID-19. You indicate that you received numerous reports from AICs, their family members, and an anonymous ODOC employee that SRCI staff are not complying with current mask policies. You also argue that, for the limited purpose of determining whether SRCI staff is in compliance, ODOC can mitigate any privacy and security concerns by using technology to obscure any sensitive information.

We contacted Michelle Dodson, ODOC Records Officer, regarding your petition. She explained ODOC's position that the video is exempt from disclosure under both ORS 192.355(5) and ORS 192.345(23) because disclosure would reveal security measures and potential weaknesses in those measures, e.g., camera coverage and resolution. She also reiterated ODOC's long-standing policy not to disclose fixed-camera video footage due to safety and security considerations. Finally, she expressed ODOC's position that the public interest does not require disclosure in this instance because ODOC has already acknowledged that the recordings depict what you suspect; i.e., instances where SRCI staff were not wearing masks when within six feet of AICs and other staff. Under the circumstances, ODOC asserts that the marginal public interest in the video itself is outweighed by the long-standing public interest in the confidentiality of ODOC security footage.

We begin by considering ODOC's claim that the video is exempt under ORS 192.355(5). That provision exempts ODOC information or records to the extent that "disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure." *Id*. Regarding security video footage within ODOC facilities, we have long concluded that such surveillance:

> [S]erves a vital role in ODOC's ability to supervise those in ODOC custody and to maintain the safety of all persons in ODOC custody. If the video were released, it could ultimately be used to allow inmates to avoid surveillance, thus prejudicing ODOC's ability to carry out its functions of providing supervision for and safety of those in its custody.

Public Records Order, Jul 27, 2015, Donohue; *see also* Public Records Order, Jul 13, 2020, Burgess; and Public Records Order, Jul 15, 2015, Walsh. In this instance, after discussing SRCI's video capabilities and surveillance policies with Ms. Dodson, we conclude that disclosing 10 hours of video footage would reveal certain security measures and limitations and thereby permit AICs to avoid surveillance. And ODOC informs us that there is no meaningful way to obscure those security measures and limitations from the recordings. We therefore conclude that disclosure would "substantially prejudice ODOC from carrying out the functions of the department." ORS 192.355(5).

Next, we assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure" in this instance. ORS 192.355(5). In making this determination, we observe that, in most instances, the public interest in confidentiality will clearly outweigh the public interest in disclosure "[i]f disclosure would threaten or impair Corrections' ability to preserve internal order and discipline in its correctional facilities, to maintain facility security against escape or unauthorized entry, or to protect the public's safety …." *Attorney General's Public Records and Meeting Manual* at 107 (2019). In this instance, we assess the public interest in confidentiality to be high because disclosing 10 hours of security footage, from various locations around SRCI, would threaten or impair ODOC's ability to maintain safety and security.

In contrast, we perceive only moderate public interest in the video footage. You indicate that you wish to review the video to determine whether SRCI staff members are complying with mask policies, but ODOC has already acknowledged that the recordings depict instances of noncompliance. As a result, we think that the public interest in the recordings themselves is diminished and does not justify the potential threats to institutional safety and security associated with their disclosure. We thus conclude that the public interest in confidentiality clearly outweighs the public disclosure in this instance.

ODOC also relies upon ORS 192.345(23) as a separate basis for withholding the security footage. That provision permits agencies to withhold "records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures taken … to protect: (a) An individual; [or] (b) Buildings or other property …" unless the public interest requires disclosure in the particular interest. *Id*. In prior orders considering this exemption, we have concluded that it may apply to security camera footage in public buildings. *See* Public Records Order, Jul 13, 2020, Burgess (*citing* Public Records Order, May 15, 2017, Davidson). As discussed above, we find that disclosure in this instance would reveal SRCI security measures and potential weaknesses in those measures, thereby potentially compromising the safety of SRCI's AICs, staff, and facilities. And because ODOC has already acknowledged that the footage depicts instances of noncompliance with mask policies, we conclude the public interest does not require disclosure in this instance.

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For the foregoing reasons, we conclude the security footage you seek is exempt from disclosure under ORS 192.355(5) and ORS 192.345(23) and therefore respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/DM10411034
c via email only: Michelle Dodson, ODOC