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May 13, 2021

VIA EMAIL ONLY: mmattinglylaw@comcast.net

J. Michael Mattingly
811 SW Naito parkway, Ste 420
Portland, OR 97204

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No.: 257001-GA0051-21

Dear Mr. Mattingly:

This letter is the Attorney General's order responding to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon State Police (OSP) to disclose all records – including reports, notes, witness statements, recommendations, photographs, recordings, use of force policies, and procedures for investigating complaints against officers – relating to an officer involved shooting that occurred in Umapine on the night of February 24, 2020. For the reasons that follow, we respectfully deny your request.

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 explains that OSP denied your request citing ORS 192.345(3). That provision conditionally exempts "investigatory information compiled for criminal law purposes" unless the public interest requires disclosure in the particular instance. You assert that ORS 192.345(3) does not apply in this instance because you do not believe these records are relevant to any active criminal investigations.

In response to your petition, we contacted Laura Heathcock, OSP Central Records Section Administrative Specialist. She informed us that OSP overlooked the parts of your request seeking OSP use of force policies and procedures for investigating complaints against officers. Because those records are not exempt under ORS 192.345(3), she explained, OSP has

agreed to process those parts of your request. We therefore dismiss those aspects of your petition as moot.

Regarding the remaining investigative records, Ms. Heathcock explained OSP's position that they relate to ongoing criminal investigation and are therefore exempt from disclosure under ORS 192.345(3). She also indicated that in response to your records request, the Umatilla County District Attorney's Office ("DA's Office") requested that OSP not disclose any investigative information to you because disclosure could materially interfere with ongoing criminal proceedings.

When applying ORS 192.345(3), we have long followed guidance from the Court of Appeals that records gathered for "pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings." *Jensen v. Schiffman*, 24 Or App 11, 16 (1976) (internal quotations omitted); *see also* Public Records Order, Jul 8, 2016, Iboshi (investigatory information compiled for pending criminal cases is exempt because the public has a strong interest in protecting the integrity of investigations and prosecutions). However, such records are generally not exempt once the criminal process concludes, unless disclosure would result in a particular harm. *Id.*

According to Ms. Heathcock, the DA's Office has represented that disclosure at this time could materially interfere with an ongoing criminal investigation and we find that OSP is entitled to rely upon that representation. *See* Public Records Order, Jan 27, 2020, Bial (it is appropriate for agencies to rely on the guidance of the law enforcement agencies actually responsible for the relevant criminal matter). We therefore conclude that the records are exempt from disclosure unless the public interest requires disclosure in this instance. *See* ORS 192.345(3). We acknowledge the public's significant interest in officer-involved shootings generally, but we think the ordinary rule described above ultimately respects that interest by making criminal investigatory information generally available for disclosure once criminal proceedings have concluded. In this instance, your petition does not explain why the public interest requires OSP to disclose the investigative records at this time and we are not aware of any heightened interest in this particular incident that would require us to depart from the ordinary rule. We therefore conclude that the public interest does not require disclosure at this time and respectfully deny your petition.[1]

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn
c via email only: Laura Heathcock (OSP)

[1] This order only addresses access to these records under the Public Records Law. It does not address what rights you or other parties may have to access them under rules of civil discovery insofar as they may be relevant to private litigation.