CHARLES S. CROOKHA
ATTORNEY GENERAL

JACK L. LANDAU
DEPUTY ATTORNEY GENERAL

personnel discipline

DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

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Robert Moody, Publisher
David A. Stave, Editor
Ted H. Nelson, Reporter
The Observer
1406 Fifth Street
La Grande, Oregon 97850

Re: Petition for Public Records Disclosure Order: Discipline of Lt. Hays and Lt. Windsor, Oregon State Police

Gentlemen:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on January 14, 1992, asks the Attorney General to direct the Oregon State Police (OSP) to make available for inspection and copying the specific disciplinary actions taken by the OSP against Lt. Gerald Hays and Lt. Randy Windsor for the violation of the Lacy Act, a federal game law.[1] For the reasons that follow, we grant your petition.[2]

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[1] We appreciate David Stave's courtesy in permitting us to exceed the seven-day statutory deadline for issuance of this order.

[2] The petition request was clarified by phone conversation with David Stave on January 24, 1992. The petition is limited to the specific disciplinary sanctions imposed.

The Public Records Law confers a right to inspect any public records of a public body in Oregon subject to certain exemptions and limitations. See ORS 192.420.

Disciplinary Actions - ORS 192.501:

The records you wish to inspect are specifically addressed by a conditional exemption to the general rule of public accessibility to government records.

ORS 192.501 provides:

> "The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:
>
> " . . . .
>
> "(13) A personnel discipline action, or materials or documents supporting that action."

The exemption set out above requires the balancing of public and private interests in confidentiality against the public interest in disclosure. The term "public interest" in disclosure is not defined in the Public Records Law. However, the Oregon Court of Appeals has stated, "The Public Records Law expresses the legislature's view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted." Guard Publishing Co. v. Lane County School Dist., 96 Or App 463, 468-69, 774 P2d 494 (1989); reversed on other grounds, 310 Or 32, 791 P2d 854 (1990). The Court of Appeals also characterized the public interest in disclosure as "the right of the citizens to monitor what elected and appointed officials are doing on the job." Jensen v. Shiffman, 24 Or App 11, 17, 544 P2d 1048 (1976).

The conditional exemption contained in ORS 192.501(13) covers completed disciplinary actions where a sanction was imposed. Our review of the records discloses both Lt. Hays and Lt. Windsor received a disciplinary sanction. In City of Portland v. Rice, 308 Or 118, 775 P2d

1371 (1989), the court noted: "The policy intended by the legislature, which we enforce, protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes." 308 Or at 124 n 5 (citation omitted).

Ordinarily a disciplinary sanction and the documents supporting that action are matters of primary significance to the employer and employee with little relevance to the public interest. In particular instances, the balance may favor disclosure.

Our review of the information you provided and the records of the OSP lead us to conclude that the public interest requires disclosure of the disciplinary actions imposed against Lt. Hays and Lt. Windsor.

In the particular circumstances of this request, we view the following factors to both increase the public interest in disclosure and to also reduce the privacy expectations of the employees:

1. The employees are law enforcement officers with supervisory responsibilities;

2. The basis for the discipline of both employees is virtually identical to allegations which resulted in criminal prosecution and criminal sanction;

3. The criminal proceedings have been concluded; and

4. The criminal allegations and disposition have been made public.

Therefore, the confidentiality an employee and employer would ordinarily expect when discipline is imposed is largely absent in this case. This diminished expectation is outweighed by the public interest in knowing how the OSP deals with criminal offenses committed by its supervisory law enforcement officers.

Personal Privacy Exemption - ORS 192.502(2):

ORS 192.502(2) exempts:

> "Information of a personal nature such as but not limited to that kept in a personal, medical or similar file if the public disclosure thereof would constitute an unreasonable invasion of privacy;y, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy."

Based on our reasoning above, we conclude that release of information concerning disciplinary actions taken against Lt. Hays and Lt. Windsor in this case would not be an unreasonable invasion of privacy.

For the reasons stated above, we grant your petition and order the OSP to disclose Lt. Hays' and Lt. Windsor's disciplinary sanctions. The OSP has seven days from the date of this order in which to comply. See ORS 192.450(2).

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:GMC:cm
c: L.R. Howland, Deputy Superintendent
Oregon State Police
107 Public Service Building
Salem, Oregon 97310