ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

August 16, 2021

VIA E-MAIL ONLY: dsupham58@gmail.com

Donald Scott Upham
3906 SW Altadena Ave
Portland, OR 97239

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No.: 257001-GA0124-21

Dear Mr. Upham:

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 relating to its investigation of an assault upon one of your clients. 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).

In response to your petition, we contacted Laura Heathcock, OSP Central Records Section Administrative Specialist. She explained OSP's position that the records you requested were compiled as part of an ongoing criminal investigation and are therefore exempt from disclosure under ORS 192.345(3) – a provision exempts "investigatory information compiled for criminal law purposes" unless the public interest requires disclosure in the particular instance.

When considering the application of ORS 192.345(3), we have long followed guidance from the Court of Appeals that records compiled 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 records you seek were compiled as part of a still ongoing criminal investigation. OSP is therefore permitted to withhold them at this time unless the public interest requires disclosure in this particular 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 public interest in this matter that would require us to depart from the "ordinary rule" that such information will remain secret until the conclusion of any pending criminal proceedings. 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 your access to the investigative records under the Public Records Law. It does not address what rights you or other parties may have to access them under rules of discovery insofar as they may be relevant to private litigation.