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June 10, 2022

Ricardo Constantino
SID #22700113
Two Rivers Correctional Institution
82911 Beach Access Rd
Umatilla, OR 97882

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA045-22

Dear Mr. Constantino:

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 asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose security camera recordings from the Two Rivers Correctional Institution (TRCI) that covers cell 27 from March 9, 2022, between 5:00 and 5:30 p.m. 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).

According to your petition, you believe these recordings will show that you sustained an injury when a door closed on you without warning. You state that you need the recordings for use in filing a tort claim against TRCI and you suggest that failure to disclose the video will prevent you from filing a tort claim.

We contacted Michelle Dodson, ODOC Records Officer, regarding your petition. She explained ODOC's position that the recording 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 indicated that ODOC has a long-standing policy not to disclose security camera recordings for safety and

security reasons. Finally, she expressed ODOC's position that the public interest in disclosure in this instance is clearly outweighed by the public's interest in maintaining the confidentiality of ODOC security measures.

We begin by considering ODOC's claim that the recording 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*. In past orders considering the application of ORS 192.355(5) to video recordings within ODOC facilities, we have 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, pursuant to ORS 192.422(2), we have reviewed the recording at issue find that it does reveal certain security measures and limitations, the disclosure of which could permit inmates to avoid surveillance in a TRCI housing unit. 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 have previously concluded that the public interest in confidentiality will, in most instances, 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) ("*Manual*"). After reviewing the video you requested, we conclude that its disclosure would threaten or impair the interests identified above. Although your petition indicates that you seek this recording for purposes of private litigation, we have long observed that the "availability of ordinary tools of discovery would generally negate any need for an individual to use the Public Records Law to gain access to records for purposes of pursuing private litigation." *Manual* at 53 (citation omitted). Moreover, we are not aware of any reason why withholding the recording in response to a public record request would impair your ability to file a tort claim against ODOC. Because your petition does not identify any public interest in the video that would overcome the strong public interest in maintaining the confidentiality of ODOC security measures, we conclude that ODOC was permitted to withhold the recording under ORS 192.355(5).

ODOC also relies upon ORS 192.345(23) as a separate basis for withholding the recording. 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, e.g.,* Public Records Order, Sep 20, 2020, Thompson (ODOC security camera recordings); Public Records Order, Jul 13, 2020, Burgess (ODOC security camera recordings); and Public Records Order, May 15, 2017, Davidson (courthouse security video recordings).

For the reasons discussed above, we find that disclosure in this instance would reveal ODOC security measures and potential weaknesses in those measures, thereby potentially compromising ODOC's ability to protect persons in custody, as well as ODOC personnel and facilities. Your petition does not explain why you believe the public interest requires disclosure in this instance and we are unable to discern any public interest that would be meaningfully advanced by disclosing the video. We therefore conclude that the public interest does not require disclosure in this instance and that ODOC was also permitted to withhold the recording under ORS 192.345(23).

For the foregoing reasons, we conclude the security recording is exempt from disclosure under ORS 192.355(5) and ORS 192.345(23) and therefore respectfully deny your petition.[1]

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via email only: Michelle Dodson, ODOC

[1] We reiterate that this order only addresses your rights to the security video under the Public Records Law. It does not address what rights you may have to access the video recording under rules of civil discovery insofar as you may be seeking this information for purposes of private litigation.