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December 23, 2022

SENT VIA EMAIL: csdavidson@swlaw.com

Clifford Davidson
Snell & Wilmer
1455 SW Broadway, Ste 1750
Portland, OR 97201

Re: Petition for Public Records Disclosure Order
Oregon Judicial Department
DOJ File No.: 198040-GA0114-22

Dear Mr. Davidson:

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 Judicial Department (OJD) to furnish a copy of security camera footage from September 20, 2022, that documents an argument between a trial court judge and one of your clients at the Columbia County Circuit Courthouse. For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless they are exempt from disclosure 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. Agencies are also required to provide a copy of nonexempt records if they are of a nature that permits copying. *See* ORS 192.324(1)(a); and *Attorney General's Public Records and Meetings Manual* at 18. 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, OJD denied your request to obtain a copy of the footage by asserting that it is exempt from public disclosure under ORS 192.345(22) and 192.345(23). Those provisions generally permit public bodies to withhold information that would reveal certain security measures or vulnerabilities, unless the public interest requires disclosure in the particular instance. Your petition asserts your belief that neither exemption applies to the footage you have

requested, but that if they do apply, you believe the public interest requires disclosure in this instance. In support of your public interest argument, you indicate that you seek this footage because it is directly relevant to a complaint filed with the Commission on Judicial Fitness and Disability (the "Commission") by your client against the judge, as well as a letter sent to the Oregon State Bar (the "Bar") by the judge that the Bar is treating as a complaint against your client. Your petition indicates that both the Commission and the Bar have requested your client provide any video documenting the conduct alleged in those complaints. Your petition also indicates that OJD offered to let you view the footage, but not record it or obtain a copy.

We contacted Tim Lewis, an OJD Senior Assistant General Counsel, regarding your petition. After conferring with OJD's Chief Marshal, he explained OJD's position that the requested footage is exempt from disclosure under ORS 192.345(23) because disclosure would reveal security measures and potential weaknesses in those measures, such as camera coverage and resolution, as well as security response times. He also indicated that OJD has a long-standing policy not to disclose security camera recordings for safety and security reasons, and noted that court rules prohibit the electronic recording of any area under the control and supervision of the court without the express prior permission of the court. *See* Uniform Trial Court Rule 1.380. Additionally, Mr. Lewis informed us that OJD has provided a copy of the footage to the Commission based on OJD's understanding that it will not be subject to public disclosure. *See* ORS 1.440. OJD has also agreed to permit the Bar or any attorney to view the footage upon request. Finally, he indicated that the counsel who originally requested the footage accepted OJD's invitation to view it and has already done so.

ORS 192.345(23) 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. In prior orders considering this exemption, we have concluded that it may apply to security camera footage in public facilities, including courts. *See* Public Records Order, May 15, 2017, Davidson (court security camera footage); and Public Records Order, Oct 23, 2007, Martin (same); *see also* Public Records Order, Nov 2, 2022, Marie (penitentiary security camera footage); Public Records Order, Jun 13, 2022, Friar (same); and Public Records Order, Sep 20, 2020, Thompson (same).

We have reviewed the footage at issue and find that it does reveal certain security measures and vulnerabilities and that public disclosure could potentially compromise OJD's ability to protect persons and property. We therefore conclude that OJD is permitted to withhold the footage unless the public interest requires disclosure in this instance.

On balance, we conclude that the public interest does not require OJD to furnish a copy of footage to you in this instance. According to your petition, the primary purpose for seeking the footage relates to your client's ability to support her judicial fitness complaint and to defend herself against the Bar complaint. We understand that those concerns were effectively addressed subsequent to your appeal; i.e., the Commission now has a copy of the footage, counsel who requested the footage has now viewed it, and the Bar and any attorney, including your client, can also view the footage upon request. Under the circumstances, we cannot conclude that your client's private interests will be impaired if she is unable to obtain an actual copy of the footage.

We are also unaware of any heightened interest in this matter among the general public. The footage corroborates that there was a tense, but brief, verbal exchange between your client and the judge in a courthouse hallway and that there were several witnesses to the exchange. But our review of the underlying complaints in this matter indicates that those facts are not in dispute. And our review of the footage did not disclose any other bases for concluding that the public interest, when balanced against OJD's security concerns, requires OJD to publicly disclose copies of the footage.

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

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:nog/676031548
c via email only: Tim Lewis, Oregon Judicial Department