ELLEN F. ROSENBLUM
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

April 13, 2023

VIA E-MAIL ONLY: hanson@spencelawyers.com

Lydia Hanson
15 S. Jackson St.
P.O. Box 548
Jackson, WY 83001

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No.: 257001-GA0033-23

Dear Ms. Hanson:

This letter is the Attorney General's response to your petition, on behalf of a client, 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 the body camera recordings associated with a traffic accident between an SUV and a motorcycle that resulted in the death of your client's father. 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).

We contacted Holly Bolton, OSP Legal Compliance Specialist, regarding your petition. She identified two body camera recordings responsive to your request and explained OSP's position that both are exempt from public disclosure under ORS 192.345(40). That provision conditionally exempts from public disclosure "[a]udio or video recordings * * * resulting from a law enforcement officer's operation of a video camera worn upon the officer's person that records the officer's interactions with members of the public while the officer is on duty," unless the public interest requires disclosure in the particular instance. *Id*.

The body camera recordings you seek clearly fit within this provision and are therefore exempt from disclosure unless the public interest requires disclosure in this instance. Your original request to OSP did not explain why you believe the public interest requires disclosure in this instance. Your petition explains that your client is the appointed representative of his father's estate and that you need these recordings for purposes of civil litigation. You assert that access to this information serves the public's general interest in ensuring that parties can fairly litigate claims.

Regarding your interest in private litigation, we have consistently held that the public interest in the disclosure of public records typically does not depend upon private interests, including interests in private litigation. *See Attorney General's Public Records and Meetings Manual* at 33 (2019) ("*Manual*"); *see also* Public Records Order, Apr 8, 2022, Blankfort; and Public Records Order, Dec 7, 2021, Engweiler. We have also consistently found that the ordinary tools of discovery generally negate any need to use the Public Records Law to gain access to records for purposes of private litigation. *See Manual* at 53.

Other than your stated interest in private litigation, your petition does not identify any broad or heightened public interest in the underlying accident that would require the disclosure of the body camera recordings. And our review of the recordings did not disclose any public interests that would be meaningfully informed by their disclosure in this instance. The first recording shows a brief roadside conversation with the driver of the SUV shortly after the accident. All of the material statements made by the driver in that recording are accurately summarized in the OSP incident report that was provided to you. We therefore find that the public's interest in this recording is adequately addressed by the information that has already been disclosed to you. The second recording shows the wife of the deceased arriving at the scene and attending to his body several hours after the accident. We cannot discern any public interest in the second recording that would be meaningfully informed by its disclosure to the general public.

Under the circumstances, we conclude that the public interest does not require the disclosure of the body camera recordings in this instance and that OSP was permitted to withhold them from you. We therefore respectfully deny your petition. We also emphasize that this order only addresses your rights to disclosure under Oregon's Public Records Law. It does not address what rights you and your client may have to access these recordings under the rules of discovery insofar as you seek them for purposes of private litigation.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Holly Bolton (OSP)