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April 5, 2023

VIA E-MAIL ONLY: john@richlawpc.com

John Rich
455 SW Madison Ave
Corvallis, OR 97333

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No.: 257001-GA0028-23

Dear Mr. Rich:

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, which we received on March 23, 2023,[1] asks the Attorney General to order the Oregon State Police (OSP) to disclose all dashboard and body camera footage relating to State Trooper Thomas Beck's investigation of a traffic accident between a cyclist and a pickup truck that resulted in the cyclist's death. We understand that OSP has provided you with reports and photographs relating to its accident investigation but that it withheld all body camera recordings claiming they are exempt from public disclosure.[2] For the reasons discussed below, we respectfully dismiss your petition in part and deny it in part.

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. If a responsive record contains both exempt and nonexempt material, the agency shall separate and disclose the nonexempt material. ORS 192.338. 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).

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[1] We thank you for granting an extension of time in which to respond.

[2] As a preliminary matter, after receiving your petition, OSP determined that it had inadvertently failed to disclose the dashboard camera recording responsive to your request. We understand that OSP has now provided that recording to you and therefore respectfully dismiss that aspect of your petition as moot.

In response to your petition, we contacted Holly Bolton in OSP's Central Records Section. She indicated that OSP possesses three body camera recordings responsive to your request. She explained OSP's initial position that, because each recording captured officer interactions with the public, all three are exempt in their entirety under ORS 192.345(40). That provision conditionally exempts from public disclosure any "[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.

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. To determine whether the public interest requires disclosure, we must balance the public's interest in disclosure against the public's interest in nondisclosure, with the presumption in favor of disclosure. *See American Civil Liberties Union v. City of Eugene*, 271 Or App 276 (2015). The Oregon Court of Appeals has described the public interest in disclosure as the right of the public at large to monitor how public business is conducted and how public officials are performing their jobs. *See Guard Publishing Co. v. Lane County School Dist.*, 96 Or App 463, 469 (1989); and *Jensen v. Schiffman*, 24 Or App 11, 17 (1976). We have also concluded that "the analysis of whether the public interest requires disclosure of a record is not necessarily all or none. The public interest might be served by disclosing some, but not all, of a particular record." *Attorney General's Public Records and Meetings Manual* at 34 (2019) (citation omitted).

In support of your claim that the public interest requires disclosure in this instance, you indicate that you represent the estate of the deceased cyclist and that the investigative information you have received to date does not fully explain what happened. You believe the body camera footage will answer any outstanding questions the family has about the accident, such as whether alcohol consumption was a factor, whether the driver of the truck was distracted by his phone, and why the driver was not cited or prosecuted. You also note that the accident occurred on the Oregon Coast Bike Route, a route traveled by thousands of cyclists each year, and argue that the outstanding safety concerns among the cycling community are best addressed by transparency in this instance.

After reviewing the recordings at issue, we observe the following. The first recording is from Trooper Beck's body camera. It is more than an hour long and shows his initial response to the accident scene, including medical assistance he rendered to the cyclist. It also shows his initial accident investigation, which consisted of identifying, marking, and documenting accident debris, as well as some interaction with the driver and other first responders. The second recording, also from Trooper Beck's body camera, is less than seven minutes long and shows his interaction with the driver as well as some investigative activities. The third recording shows an interview with the driver conducted at the police department by a different officer.

After reviewing the body camera footage, we conclude that the public interest requires the disclosure of approximately 45 minutes of the first recording, consisting of a 19-minute segment and a 26-minute segment. Those segments, which do not include any interaction with members of the public, show how OSP conducted certain aspects of the accident investigation and include information that is not separately documented in the materials already disclosed to

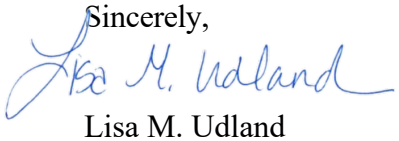
you. Although we are not aware of any heightened public interest in this particular accident, we do recognize that the public has an interest in the circumstances surrounding traffic fatalities generally. And in this instance, we find that those modest interests, as well as the interests you have identified, will be served by the disclosure of this additional information. In contrast, OSP has not identified, and we are unable to discern, any meaningful public interest in the nondisclosure of this material. On balance, and given the presumption favoring disclosure, we conclude that the public interest requires the disclosure of those portions of the first body camera recording.

After discussing those portions of the first recording with Ms. Bolton, she indicated that OSP has agreed to disclose them to you, subject to the receipt of any processing fees associated with making that material available. *See* ORS 192.324(5). Because OSP no longer asserts that those portions of the first recording are exempt from disclosure, we respectfully dismiss your petition as moot with respect to that material.

We conclude that the public interest does not require the disclosure of the remaining portions of the first recording, or of any portion of the second and third recordings. We find that the public's interest in the remaining footage is adequately addressed by the information that OSP has already disclosed to you and by the additional footage that OSP has agreed to provide to you. For example, all of the material statements made by the driver about the accident that were captured in the recordings are accurately summarized or transcribed in OSP's incident report. We could not identify any new information in the remaining footage that, if disclosed to the public, would meaningfully serve any of the interests identified in your petition. We also observe that nearly all of the remaining footage captures interactions with members of the public, including the cyclist and the driver. Because we interpret ORS 192.345(40) to afford greater protection for the recordings of such interactions, we find that the public interest in nondisclosure outweighs the public interest in disclosure in this instance.

In conclusion, we dismiss your petition with respect to those portions of the body camera recordings that OSP has agreed to disclose to you. We respectfully deny your petition with respect to the remaining body camera footage because we cannot conclude that the public interest requires its disclosure in this instance.

Sincerely,



Lisa M. Udland
Deputy Attorney General

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