DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

140

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

criminal investigation

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

April 4, 1986

Michael J. Martinis
Webb & Martinis
Attorneys at Law
1112 Twelfth Street SE
Salem, Oregon 97302-2897

Re: Public Records Request, Weiner/Oregon State Police

Dear Mr. Martinis:

This letter constitutes an order of the Attorney General in response to your public records petition dated March 27, 1986. Your petition requested that the Attorney General order the Oregon State Police "to divulge the identity of the informant" who provided information to the State Police concerning a possible violation of the law by your client, Mr. Richard Weiner. Your petition states that Mr. Weiner pleaded guilty to the charge of raising game birds without a propagation permit following a State Police investigation which apparently was initiated based on information received from the informant in question.

We have reviewed the State Police information report relating to the citation of Mr. Weiner for not obtaining a propagation permit. The information report does not identify the informant who provided the information to the State Police which led to initiation of the investigation. The informant's identify is disclosed in a notebook maintained by one of the officers involved in the investigation.

We decline to order the State Police to disclose the identify of the informant for the following reasons.

ORS 40.275(2) provides that:

> "(2) A unit of government has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a

> possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation."

This provision clearly applies to the name of the informant in question here, and the privilege has been invoked by the State Police. None of the exceptions to the privilege apply in this case. This privilege is incorporated in the Public Records Law by ORS 192.500(2)(h).

We conclude that the name of the informant would also be confidential under ORS 192.500(1)(c) (criminal law investigation information) and 192.500(2)(c) (information submitted in confidence to a public body). The identity of the informant in this case was provided to the State Police in confidence. In Jensen v. Schiffman, 24 Or App 11, 544 P2d 1048 (1976), the Court of Appeals outlined five considerations which justify preserving the confidentiality of criminal law investigating information. One of those considerations was whether disclosure of the information would "disclose the identity of *a* confidential source." 24 Or App at 15. Because the information which you seek is the identity of the confidential source, this consideration clearly applies here. We see no public interest in this case which would overcome the interest in protecting the identity of police informants so as to require disclosure of the name of the informant involved here.

With regard to the ORS 192.500(2)(c) exception from disclosure, the informant provided his identity to the State Police in confidence. He was under no legal obligation to provide that information to the State Police, and the State Police in good faith obliged itself to protect the informant's identity. There is an obvious public interest in encouraging citizens to report suspected crimes to the police, and in providing confidentiality to persons who provide such information. The policy of confidentiality in the case of police informants is statutorily recognized by ORS 40.275. The public interest would suffer if police could not offer confidentiality to such individuals.

For all of the reasons cited above, we decline to order the State Police to disclose the identity of this informant.

You may appeal this order pursuant to ORS 192.450.

Very truly yours,

DONALD C. ARNOLD
Special Counsel to the
Attorney General

DCA:cm
cc: Craig Brenton, Oregon State Police