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November 8, 2023

Frank Osborne
SID #22559896
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-GA0161-23

Dear Mr. Osborne:

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 or to permit you to view eleven days of footage from two security cameras in a housing unit at the Two Rivers Correctional Institution (TRCI), and two days of footage from a security camera in the TRCI infirmary. Your petition also asks us to order ODOC to disclose the Unusual Incident Report associated with a particular misconduct report. 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 Michelle Dodson, ODOC Records Officer, regarding your petition. She explained ODOC's position that the requested security camera footage 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, such as camera coverage, camera resolution, and staff movements. She also indicated that ODOC has a long-standing policy of not permitting persons in ODOC custody to review security camera footage to for institutional 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 security camera footage 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 security footage 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, Jun 10, 2022, Constantino; Public Records Order, Jul 13, 2020, Burgess; and Public Records Order, Jul 15, 2015, Walsh. In this instance, we understand that the security footage at issue reveals certain security measures and limitations, the disclosure of which could permit persons in ODOC custody to avoid surveillance in TRCI facilities. We therefore conclude that disclosing the footage to you or permitting you to review it 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*"). On this record, we conclude that disclosing the requested footage to you in this instance would threaten or impair the interests identified above. Because your petition does not identify any public interest in the security camera footage that would overcome the strong public interest in maintaining the confidentiality of ODOC security measures and limitations, we conclude that ODOC was permitted to withhold the footage under ORS 192.355(5).

ODOC also relies upon ORS 192.345(23) as a separate basis for withholding the security camera footage. 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, Dec 23, 2022, Davidson (courthouse security camera footage); Public Records Order, Jun 10, 2022, Constantino (ODOC security camera footage);

Public Records Order, Sep 20, 2020, Thompson (ODOC security camera footage); Public Records Order, Jul 13, 2020, Burgess (ODOC security camera footage); and Public Records Order, May 15, 2017, Davidson (courthouse security camera footage).

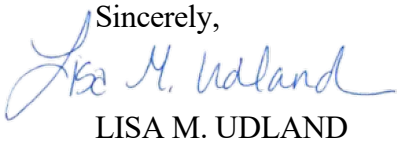
For the reasons discussed above, we find that disclosure in this instance would reveal ODOC security measures and potential weaknesses in those measures, thereby potentially compromising ODOC's ability to protect persons in custody, as well as ODOC personnel and facilities. Your petition does not explain 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 footage. We therefore conclude that the public interest does not require disclosure in this instance and that ODOC was also permitted to withhold the security camera footage under ORS 192.345(23).

Your petition suggests that the security footage may be relevant to unspecified litigation, but it does not identify a public interest that would be advanced by disclosing the footage to you. As we have long observed, 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). Because your petition does not identify any public interest in the footage that would overcome the strong public interest in maintaining the confidentiality of ODOC security measures and potential weakness, we conclude that ODOC was permitted to withhold the footage from you under both ORS 192.355(5) and ORS 192.345(23).

Finally, we address your request that we order ODOC to disclose the Unusual Incident Report associated with a particular misconduct report. According to Ms. Dodson, ODOC does not possess a responsive record because no Unusual Incident Report was prepared in response to the misconduct report you specified. As we have no reason to second-guess Ms. Dodson's representation, we respectfully deny this aspect of your petition because we cannot order ODOC to disclose a record that does not exist.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

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