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February 21, 2025

VIA E-MAIL ONLY: ncrombie@oregonian.com

Noelle Crombie
The Oregonian
1500 SW First Ave., Ste 500
Portland, OR 97201

Re: Petition for Public Records Disclosure Order
Oregon Liquor and Cannabis Commission
DOJ File No.: 845200-GA0017-25

Dear Ms. Crombie:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431.[1] Your petition asks the Attorney General to order the Oregon Liquor and Cannabis Commission (OLCC) to disclose copies of a letter sent to the OLCC Chairman by a former employee regarding his employment at OLCC, as well as any emails from commission members referring to or including the letter. 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. 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. *Id*.

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[1] We thank Ms. Crombie for agreeing to an extension of time in which to respond to her petition.

Your petition, on behalf of *The Oregonian*, stems from requests for the following records:

a. Email / letter / message to Chair Doherty from Jeff Lamont regarding his employment at OLCC; and

b. Emails from commission members that refer to Mr. Jeff Lamont's letter or include Mr. Lamont's letter as an attachment.

Initially, OLCC withheld a resignation letter from Mr. Lamont and four emails that were responsive to your request. OLCC asserted that the letter and emails are exempt from disclosure under ORS 192.345(12), a provision that conditionally exempts from disclosure "[a] personnel discipline action, or materials or documents supporting that action," unless the public interest requires disclosure in the particular instance. In response to your petition, OLCC continues to assert that Mr. Lamont's letter is exempt under this provision. However, OLCC has now concluded that the bodies of the responsive emails are not exempt and will be disclosing them to you shortly (with the redaction of Mr. Lamont's attached letter). We therefore respectfully dismiss your petition with respect to the bodies of the emails as moot.

Your petition argues that ORS 192.345(12) does not apply to Mr. Lamont's letter because no disciplinary action was taken against him. You further argue that any interest OLCC has in protecting Mr. Lamont's privacy is diminished because he is no longer an employee. And, you argue, the public has a serious and legitimate interest in the performance of the agency directors who were supervising Mr. Lamont.

We reviewed Mr. Lamont's letter and discussed your petition with Kevin Gleim, the DOJ-assigned contact counsel for OLCC on this petition. He acknowledged that OLCC did not discipline Mr. Lamont. But, he explained, Mr. Lamont's letter included allegations that are currently the subject of a personnel investigation that could lead to disciplinary action against other OLCC employees. Therefore, OLCC asserts that Mr. Lamont's letter is currently exempt under ORS 192.345(12).

After discussing your petition with Mr. Gleim, we are satisfied that Mr. Lamont's letter is relevant to an ongoing personnel investigation that may result in discipline against other OLCC employees. And as we have previously observed, "[w]hen a records request is received during the course of a personnel investigation, and unless the public interest requires disclosure, the records can be withheld until the investigation concludes so that the public body can determine whether this exemption applies or not." *Attorney General's Public Records and Meetings Manual* at 53 (2024) (citation omitted) ("*Manual*"). Applied to your request, that means OLCC is permitted to withhold Mr. Lamont's letter at this time, unless the public interest requires disclosure in this instance.

OLCC asserts that the interests in withholding the letter at this time outweigh the public interests in its disclosure. OLCC is concerned that disclosing the letter could undermine the integrity of the ongoing investigation. OLCC also argues that disclosure prior to the completion

of the investigation could result in unwarranted embarrassment for the subject(s) of the investigation. Finally, OLCC also notes that if the investigation does not result in disciplinary action, Mr. Lamont's letter will become subject to public disclosure after the completion of the investigation.

In evaluating whether the public interest requires disclosure in this instance, we must determine whether the public's interest in disclosure outweighs the competing interests in confidentiality, with the presumption favoring disclosure when the parties' interests are of equal value. *See ACLU v. City of Eugene,* 360 Or 269, 280 (2016). 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). And in making this determination with respect to disciplinary records, the "typical interest in confidentiality is to 'protect[] the public employee from ridicule for having been disciplined.'" *Manual* at 53 (quoting *City of Portland v. Rice,* 308 Or 118, 24 n 5 (1989)).

On balance, after reviewing Mr. Lamont's letter, we find that the public interests in nondisclosure – which include the need to ensure a thorough investigation and to protect the subjects of the investigation from potentially unwarranted embarrassment – outweigh the public's interest in disclosure at this time. We are not aware of any prior public knowledge of the contents of the letter. Thus, the privacy interests of any employees identified in the letter remain significant, particularly while the investigation is ongoing and any allegations remain unsubstantiated. We therefore conclude that the public interest does not require OLCC to disclose the letter at this time.

For the foregoing reasons, we respectfully dismiss your petition in part and deny it in part.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

DEP:pjn
c via e-mail only: John Brady, Communications Director, Oregon Liquor and Cannabis Commission
Kevin Gleim, Assistant Attorney General, Department of Justice