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April 3, 2025

VIA E-MAIL ONLY: ginger.f@youthrightsjustice.org

Ginger Fitch
1785 NE Sandy Boulevard, Ste 300
Portland, OR 97232

Re: Petition for Public Records Disclosure Order
Department of Public Safety Standards and Training
DOJ File No.: 259001-GA0030-25

Dear Ms. Fitch:

This letter is the Attorney General's response to your petition seeking disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Department of Public Safety Standards and Training (DPSST) to disclose records related to an ongoing professional standards investigation into a police officer. For the reasons discussed below, we deny the 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. *Id*.

Your petition stems from a request made to DPSST for "any and all documents related to the review opened on October 6, 2024, regarding Officer Bryan Cutright." Relying on ORS 192.345(35), DPSST denied your request indicating that the records you seek are conditionally exempt until DPSST completes its investigation and issues its reports. Your petition followed.

Your petition argues that public interest requires immediate disclosure of DPSST's investigation. Your petition explains that the Columbia County District Attorney (CCDA) made a *Brady v. Maryland* finding against Officer Bryan Cutright of the St. Helens Police Department. Specifically, the CCDA provided notice to the Columbia County defense bar that Officer Cutright would not be called as a witness based on a finding of untruthfulness. Your petition indicates that Officer Cutright was terminated from employment, and he is appealing that determination. As a result, DPSST has told you that its investigation is on hold pending the appeal and will likely take one-to-two years to complete.

Your petition argues for immediate disclosure of the records because you contend Officer Cutright's work as a police officer may have impacted juveniles and adults in dependency, delinquency, and criminal matters. You argue that release of the DPSST investigation information is needed so that remedies can be pursued by those parties potentially affected by Officer Cutright's testimony.

We contacted Kathy McAlpine, DPSST's Deputy Director in charge of the Professional Standards Division. She indicated that DPPST believes that the public interest does not require disclosure in this instance because release of the records while the investigation is ongoing would affect the integrity of its investigation. DPSST argues that disclosure of investigative documents could impact witness statements, witness cooperation, and the due process rights of the officer. DPSST also expressed a concern that the release of this material at such an early stage could have a chilling effect on cooperation of police agencies in future professional standards investigations.

DPSST certifies police officers and investigates alleged violations of professional standards. ORS 192.345(35) conditionally exempts records of DPSST relating to professional standards investigations conducted under ORS 181A.640. ORS 181A.640(2) authorizes DPSST to suspend or revoke the certification of a police officer based upon a finding that an officer has engaged in statutorily specified misconduct. Prior to making that finding, DPSST must provide the affected officer with an opportunity for a hearing. ORS 181A.640(1). Upon completion of its investigation, DPSST must issue a report. ORS 181A.640(9). After this report issues, the public records exemption provided by ORS 192.345(35) expires.

After reviewing the records at issue, we are satisfied that DPSST has an ongoing professional standards investigation into the conduct of Officer Cutright. Applied to your request, that means DPSST is permitted to withhold the records, unless the public interest requires disclosure in this instance. ORS 192.345(35).

In evaluating whether the public interest requires disclosure, we must determine whether the public 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 we have stated that there is a strong public interest in monitoring DPSST's certification of police officers and the transparency of police operations. *Attorney General's Public Records and Meetings Manual* at 67 (2024) (quoting *City of Portland v. Rice,* 308 Or 118, 24 n 5 (1989)) (*Manual*).

We have not previously examined the public's interest in maintaining the confidentiality of DPSST investigation records while an investigation is ongoing. To answer that question, we examine the text of ORS 192.345(35) while considering pertinent legislative history. See *State v. Gaines*, 346 Or 160, 171, 176-77, (2009) (setting out and applying statutory construction methodology); *see also Oregonian Publishing v. Portland School Dist. No. IJ*, 329 Or 393, 399, 987 P2d 480 (1999) (when the legislature has adopted an exemption to disclosure of public records, courts determine and declare the legislature's meaning using usual methodology of statutory construction). ORS 192.345(35) exempts DPSST records "relating to investigations" until DPPST completes its investigation and issues a report. ORS 192.345(35). Testifying in favor of the bill that became ORS 192.345(35), Marilyn Lorance, then manager of DPSST's professional standards division, explained that the proposed exemption was designed to protect the integrity of a DPSST investigation until completed.[1] Ms. Lorance testified that the premature release of investigative materials would compromise DPSST's ability to conduct a fair and impartial investigation and also impinge upon the officer's right to receive due process. She indicated that the final bill was the result of a consensus reached among DPSST, the Oregon Newspaper Association, and the ACLU. In the interests of transparency, the agreed-upon bill terminated the exemption upon completion of the investigation and required DPSST to issue a public report with its investigation findings.

Having reviewed ORS 192.345(35) and its legislative history, we conclude that the public interest in confidentiality served by the exemption is the protection of the integrity of DPSST professional standards investigations during their pendency. Applied to your public records petition, we find that this public interest in confidentiality outweighs the public interest in disclosure at this time. The public interest in disclosure and monitoring of DPSST's disciplinary process is less significant in this instance because DPSST has not yet made its disciplinary decision with respect to Officer Cutright. Although the public also has an interest in monitoring police operations, there is no allegation of criminal conduct or that Officer Cutright is a high-ranking official.[2] Moreover, because the exemption expires upon the completion of DPSST's investigation, the public will have the opportunity to review DPSST's disciplinary decision and this officer's conduct when DPSST issues its report.[3]

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[1] Audio Recording, Senate Committee on Judiciary, HB 2315, May 6, 2009, (testimony of Marilyn Lorance), available at https://olis.oregonlegislature.gov.

[2] "The significance of the public interest in disclosure typically depends on the seriousness of the employee's position." *Manual* at 53 (2024).

[3] Pursuant to ORS 181A.684, DPSST publishes a searchable online database of suspensions and revocations of the certifications of police officers, which includes links to reports and other documents pertaining to completed investigations.

In your petition, you focus on the interests of potential individual litigants who may have been impacted by Officer Cutright's testimony. But the public interest in disclosure does not depend upon the requester's private interest in disclosure. *Manual* at 27 (2024) (citations omitted).[4] We therefore conclude that the public interest does not require DPSST to disclose the investigation records at this time, and we respectfully deny the petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

DEP:pjn

[4] This order only addresses your rights to obtain these records under the Public Records Law. It does not address what rights you may have to access them under the rules of civil or criminal discovery insofar as they may be relevant to private litigation. We note, however, that in the September 5, 2024, letter sent to the defense bar by Columbia County District Attorney Josh Pond, DA Pond encourages attorneys with a pending matter involving Officer Cutright to contact him if they wish to view the materials relevant to his *Brady* determination.