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April 25, 2025

VIA E-MAIL ONLY: mbernstein@oregonian.com

Maxine Bernstein
The Oregonian
1500 SW First Ave., Ste 500
Portland, OR 97201

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No.: 257001-GA0043-25

Dear Ms. Bernstein:

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 State Police (OSP) to disclose an unredacted version of an email. For the reasons discussed below, we grant 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. Bernstein for agreeing to an extension of time in which to respond to her petition.

Your petition, on behalf of *The Oregonian*, stems from a request made to OSP for a copy of a February 17, 2025, recruitment email for the OSP SWAT team sent by OSP Sergeant Jamin Van Meter to all sworn officers. In its records response, OSP partially denied your request by redacting significant portions of the email and some of the photographs attached to the email. In support of these redactions, OSP cited ORS 192.345(18) (operational plans), ORS 192.345(23) (security measures), and ORS 181A.674(2) (officer photos). Your petition followed.

Your petition argues that "OSP is trying to keep secret how it characterized deadly uses of force to its members." You note that OSP originally distributed the email to approximately 800 employees and did not mark it as "confidential" or "not for distribution." You also state that many of the events redacted from the email have already been widely covered by the media, and you contend that it is unlikely a redacted "word or phrase would give away any strategies" that are not already spelled out in other publicly available documents. Finally, you ask the Attorney General to review these redactions under the exemptions cited to see if OSP has met its burden under the public records law.

We discussed your petition with Matthew McCauley, the Department of Justice (DOJ)-assigned contact counsel for OSP on this petition. OSP argues that the email was intended to be confidential, which is why it was sent only to sworn officers. OSP believes that the redactions it applied to the email were necessary to protect from disclosure certain operational tactics and equipment used by the OSP SWAT team. OSP contends that release of this information could jeopardize future missions and the safety of its officers.

ORS 192.345(18) conditionally exempts "[s]pecific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment" if certain additional criteria are met. [2] We have previously applied this exemption to protect an operational plan for crowd management and criminal enforcement at a specific future event.[3] The material redacted by OSP contains references to past SWAT team operations. It contains information about SWAT team equipment and general tactics. But it does not contain any "specific operational plans." For this reason, we conclude that ORS 192.345(18) does not exempt the redacted material from disclosure under the Public Records Law.

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[2] ORS 192.345(18) states:

> Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

[3] Public Records Order, Jan 27, 2006, Laws (exemption applicable to operation plan for OSP's Mobile Response Team's enforcement of criminal laws and crowd management procedures at future Memorial Day event)

ORS 192.345(23) conditionally exempts records "that would reveal or otherwise identify security measures" taken to protect an individual, property, or information. [4] We are not persuaded that disclosure of the redacted information would "reveal or otherwise identify" any security measures because the equipment and tactics discussed in the email are commonplace and widely known. In fact, most of the redacted information has been publicly disseminated by OSP and other law enforcement agencies operating SWAT teams. OSP's Facebook page, for example, describes equipment and tactics like those redacted from the email. And the social media pages of other local law enforcement agencies contain photos and videos of their SWAT teams using equipment and employing tactics that OSP has redacted as "security measures." Additionally, reports previously released by OSP and other agencies to *The Oregonian* disclose many of these same tactics, including tactics employed in some of the specific instances redacted from the email. For these reasons, we conclude that OSP has failed to sustain its burden to demonstrate that release of the redacted information would "reveal or otherwise identify" any security measures taken by OSP.

ORS 181A.674(2) states that a "public body may not disclose a photograph of a public safety employee of the public body without the written consent of the employee." To the extent OSP's redactions were made to shield photographs of non-consenting officers, we find that OSP has sustained its burden specifically as to those portions of the photographs capturing the officers.

For the foregoing reasons, we grant Ms. Bernstein's petition in part and order OSP to disclose an unredacted version of the February 17, 2025, SWAT recruitment email sent by OSP Sergeant Jamin Van Meter. We also order OSP to disclose unredacted versions of the photographs attached to the email, except that OSP may redact portions of any photographs containing the face or body of any non-consenting public safety employee. OSP has seven days within which to comply with this order or announce its intention to seek judicial review. ORS 192.411(2).

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

DEP:pjn
c via e-mail only: Laura Heathcock (Oregon State Police)

[4] ORS 192.345(23) states:

> Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect: (a) an individual; (b) buildings or property; (c) information processing, communication or telecommunication systems, including the information contained in the systems; or (d) those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.160(6).