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February 14, 1994

Rance Preston
#58447-065
PO Box 5000 1-B
Sheridan, OR 97378

Re: **Petition for Public Records Disclosure Order:**
Oregon State Police Records

Dear Mr. Preston:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on February 1, 1994,[1/] asks the Attorney General to direct the Oregon State Police (OSP) and the Multnomah County District Attorney's Office[2/] to make available the following documents:

(1) The complete investigative file of the cover-up probe involving the OSP.

(2) The August 31, 1992 letter written by Multnomah County District Attorney Michael Schrunk that described the cover-up.

(3) The complete arbitration hearing and outcome of the decision concerning William Gourley's participation in the cover-up along with the following Employment Relations Board exhibits, listed in the arbitrators opinion dated and received by the hearing committee August 24, 1993: ER. EX 4, pg 93; ER. EX. 4, pg 94; ER. EX. 4, pp 32-59; ER. EX. 4, 64; ER. EX. 4, pp 65-92; ER. EX. 4, pp 1-99; ER. EX 5, pg 3; ER. EX. 5, 13.

(4) Past and present rules and training manuals that govern OSP regulations and policies when performing their duties, and handling informants and CRIs.

(5) The report or file that list the name of the informant or CRI that was given the cocaine to sell by officer Gary Lynn.

Your requests numbered (1) through (4) above are denied as moot, because the Oregon State Police has either provided the requested record or now has agreed to do so. We understand that you have already purchased a copy of the OSP Informant Policy Manual, which has been identified as the record requested in request number (4), and that the manual is being mailed to you. Sgt. Douthit of the Oregon State Police has informed us that the agency will voluntarily disclose the records the Oregon State Police have which respond to your requests numbered (1) through (3), and he will be informing you of the costs associated with providing copies of those records.

As to request number (5), we respectfully deny your petition for the reason discussed below.

Criminal Investigatory Information

ORS 192.501(3) conditionally exempts from disclosure, unless the public interest requires disclosure in the particular instance,

Investigatory information compiled for criminal law purposes[.]

The name of the informant requested in paragraph (5) above exists in record compiled for criminal law purposes. Despite the public interest that may exist in reviewing all of the OSP files concerning the activities of the Youth Gang Strike Force (as acknowledged by the agency in their release of other criminal investigatory records), the name of the informant or CRI ordinarily would remain exempt from disclosure even after the resolution of the criminal investigation. Jensen v. Schiffman, 24 Or App 11, 16, 544 P2d 1048 (1976).

Accordingly we conclude that the records requested in item (5) are exempt from disclosure under ORS 192.501(3).[3/]

We deny your petition for an order requiring disclosure of the records described in items (1), (2), (3) and (4) as moot because the agency has agreed voluntarily to provide those records to you. For the reason discussed above, we deny your petition with respect to item (5) because it is exempt from disclosure under the public records law.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:LRR:AV:lrr:av:cfs/JGG08DF2
c: Sgt. Fred Douthit
Professional Standards Unit
Department of the Oregon State Police
400 Public Service Building
Salem, OR 97310

[1/] This petition is nearly identical to an earlier petition that we received from you on November 26, 2993. We denied that petition by a Public Records Disclosure Order dated December 2, 1993, on the grounds that the OSP had not denied your records request. Lt. Hart of the OSP subsequently responded to your records request by letter dated December 22, 1993. It is that response upon which your petition and this order are based.

We appreciate your courtesy in permitting us to extend the seven-day statutory deadline for issuance of this order.

[2/] This order does not address your request to the District Attorney for Multnomah County. When a request to inspect or copy a public record is denied by an elected official, the Attorney General has no authority to review the denial; the person requesting the record must institute proceedings in the appropriate circuit court to seek relief from that claim of right to withhold disclosure. ORS 192.480. By advising you of this procedure, we do not express any opinion on whether the District Attorney has in fact denied a public records request in this matter. This Public Records Disclosure Order addresses only the request for records made to the Oregon State Police.

[3/] If the criminal investigatory file or other records provided voluntarily by the agency contain identifying information of the informant, the agency may separate the exempt information concerning the informant's identity from the records it has voluntarily chosen to disclose. ORS 192.505.