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Laura Heathcock
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Re: Petition for Public Records Disclosure Order
Department of Public Safety Standards and Training
DOJ File No.: 257001-GA0192-26

Dear Mr. Kessler and Ms. Heathcock:

This letter is the Attorney General's response to EWU Media LLC's (EWU Media) petition seeking disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. The petition asks the Attorney General to order the Oregon State Police (OSP) to disclose body-camera video. 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*.

The petition stems from EWU Media's request to OSP for body-worn camera video related to OSP's participation in an investigation that led to convictions for manslaughter and sexual abuse of an animal. OSP denied the request, citing the exemption for body-worn camera video found in 192.345(40). EWU Media seeks review arguing that public interest compels disclosure.

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ORS 192.345(40) conditionally exempts body-worn camera recordings that display "the officer's interactions with members of the public while the officer is on duty." We reviewed the recordings at issue, which show OSP troopers interacting with a witness to the crimes under investigation. Because the records fit within the exemption provided by ORS 192.345(40), they are exempt unless the public interest requires disclosure in this instance. To determine whether the public interest requires disclosure, we must balance the public's interest in disclosure against the public's interest in nondisclosure, with the presumption in favor of disclosure. *See American Civil Liberties Union v. City of Eugene*, 271 Or App 276 (2015). 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); *Jensen v. Schiffman*, 24 Or App 11, 17 (1976).

EWU Media states that it is a news organization and "seeks the video to report to the public on how OSP handled this case." Specifically, EWU Media argues that the "public has a substantial interest in how OSP's officers responded to and investigated a homicide." EWU Media notes that the criminal prosecution is complete and "disclosure cannot affect any investigation or prosecution." Finally, EWU Media contends that ORS 192.345(40) already protects citizen privacy by requiring the blurring of all faces in the video prior to release.

In response to EWU Media's petition, OSP's Central Records Section Director, Laura Heathcock explained that OSP weighed the public interest in disclosure and nondisclosure and concluded that the video should be withheld:

> In reviewing the request, OSP evaluated both the public interest and the confidentiality considerations associated with disclosure. While the video may [be] interesting to the public, OSP determined that its release would not meaningfully advance public understanding of the matter or the investigation. Information relevant to the case is already publicly available online and in the written report, and much of the video's content is unrelated to the investigation. Additionally, OSP has concluded that disclosure could negatively affect public interest. The footage depicts a vulnerable individual exhibiting behavior consistent with drug use or mental illness and releasing it would not provide any added value to the public given that the pertinent investigative details are already available through other sources.

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We first address EWU Media's contention that the public interest in nondisclosure is diminished because the criminal case has concluded. We are not persuaded. That argument assumes that ORS 192.345(40) was enacted primarily to protect the integrity of criminal investigations. But criminal investigatory interests were already protected by a separate exemption, ORS 192.345(3), which exempts "investigatory information compiled for criminal law purposes." The body camera exemption serves a different purpose. We have previously recognized that ORS 192.345(40) affords privacy protection to members of the public who interact with law enforcement,[1] but we have not specifically addressed the legislative intent of the provision. To answer that question, we examine the text of ORS 192.345(40) in light of the 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).

The text and legislative history of ORS 192.345(40) confirm that the exemption was intended principally to protect the privacy interests of members of the public captured on body-camera recordings. The statute exempts recordings depicting "the officer's interactions with members of the public * * *." Consistent with that focus, Representative Williamson, the sponsor of the bill that became ORS 192.345(40), testified that "it is critical that the privacy of all involved including victims and bystanders is protected * * *."[2] Other proponents of the legislation expressed the same concern.[3] Having considered both the statutory text and the legislative history, we conclude that the public interest in confidentiality served by ORS 192.345(40) is the protection of citizens' privacy in their interactions with law enforcement. That interest does not disappear merely because the related criminal prosecution has concluded.[4]

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[1] Public Records Order, Apr 5, 2023, Rich.
[2] Audio Recording, House Committee on Judiciary, HB 2571, Mar 24, 2015, (testimony of Representative Jennifer Williamson), available at https://olis.oregonlegislature.gov.
[3] Kimberly McCullough, testifying on behalf of the ACLU, emphasized that the exemption was designed to "protect privacy, in particular, [of] people who have encounters with law enforcement." Audio Recording, Senate Committee on Judiciary, HB 2571, May 21, 2015, available at https://olis.oregonlegislature.gov.
[4] EWU Media also argues that any privacy concerns can be addressed through the statutorily mandated blurring of citizen faces. We disagree. If redaction alone were sufficient to protect the privacy interests implicated by body-camera recordings, ORS 192.345(40) would serve little purpose. The statute instead contemplates that facial blurring and the exemption perform distinct functions: the former provides baseline privacy protection upon disclosure, while the latter requires consideration of whether disclosure should occur in the first instance.

Applied to EWU Media's petition, we conclude that the public interest in confidentiality outweighs the public interest in disclosure. Having reviewed the recordings, we find that they depict OSP troopers interacting with a witness who is visibly distressed and emotional following a traumatic event. The troopers conduct themselves professionally throughout the interaction. The recordings do not depict the use of force. Although EWU Media states that it seeks the recordings "to report to the public on how OSP handled this case," it has not explained what aspect of OSP's conduct requires public scrutiny or how disclosure would materially advance public understanding of governmental operations. EWU Media's asserted public interest appears directed largely toward recounting the circumstances of the underlying crime rather than facilitating evaluation of the conduct of public officials.[5] In summary, we conclude that the incremental public benefit of disclosure is limited, while the privacy intrusion to the witness depicted in the recordings is substantial. The public interest in confidentiality therefore outweighs the public interest in disclosure, and we respectfully deny the petition.

Sincerely,

BENJAMIN GUTMAN
Deputy Attorney General

DEP:pjn

[5] EWU Media's published coverage utilizing law-enforcement recordings focuses on high-profile criminal cases. The videos generate millions of views on YouTube and include titles such as "Dad Executes 3 Kids in Front of Mom," "She Asked Her Online Friend to Kill Her. He Did," "Only Fans Mom Realizes Cops Found Her Mummified 7-Month-Old," "Cops Discover Sick Recordings While Searching for Missing Baby," and "6-Year-Old Leads Cops to Her Secret Prison."