THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

August 26, 1994

Paul Meadowbrook
Attorney at Law
388 State Street, Suite 555
PO Box 884
Salem, Oregon 97308

Re: **Petition for Public Records Disclosure Order**
Oregon Department of State Police Records
Your Client: Gary Burnett

Dear Mr. Meadowbrook:

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 August 19, 1994, asks the Attorney General to direct the Oregon Department of State Police ("department") to make available to you copies of the following records regarding your client Gary Burnett:

1. All records regarding access of [LEDS] records regarding Gary Burnett.

2. All records regarding access to Department records regarding Mr. Burnett, including without limitation index cards, returned envelopes and the like.

For the reasons that follow, we deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if its "reasonably possible" to do while preserving the confidentiality of the exempt material. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

Criminal Investigatory Material

ORS 192.501(3) conditionally exempts criminal investigatory material from the disclosure requirements of the Public Records Law. This provision exempts "[i]nvestigatory information compiled for criminal law purposes."

One purpose of this exemption is prevent interference with ongoing law enforcement proceedings. Jensen v. Schiffman, 224 Or App 11, 16, 544 P2d 1048 (1976). Information compiled in investigations not connected with a pending or contemplated prosecution are subject to the exemption if disclosure would:

(a) deprive a person of a right to a fair trial;

(b) constitute an unwarranted invasion of privacy;

(c) disclose the identity of a confidential source or confidential information furnished only by a confidential source;

(d) disclose investigative techniques and procedures; or

(e) endanger the life or physical safety of law enforcement personnel.

Id.

ORS 192.501(3) requires that the record of an arrest or the report of a crime be disclosed "unless and only so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim." "Record of an arrest or report of a crime" includes but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

ORS 192.501(3).

We are advised by Lloyd A. Smith, Manager of the department's Law Enforcement Data System, that the records you requested may contain information about ongoing criminal investigations. Records requiring access to LEDS or department records are themselves part of the investigative information compiled for criminal law purposes if that access was for purposes of a criminal investigation. For the reasons discussed above, any such information is exempt from disclosure, unless the department determines that the public interest requires disclosure, so long as the investigation is pending or prosecution is contemplated. ORS 192.501. To the extent that a requested record contains both exempt and non-exempt information, the record must be redacted, and the non-exempt portions made available, as described above. See ORS 192.505.

We are further advised by Mr. Smith that the department will provide you the records you requested, except for those records or portions thereof that are exempt from disclosure because the information is investigatory information compiled for criminal law purposes. The department will provide the non-exempt records to you within seven days of the date of this letter. The department may charge you a fee to reimburse it for its actual cost in making such records available, including its photocopy costs and the time spent by agency personnel in reviewing and redacting the records. See ORS 192.440(3).

For the reasons described above, we deny your petition as moot with respect to the records that the department has agreed to release. To the extent that the records you request are exempt from disclosure under ORS 192.501(3), your petition to compel disclosure is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:AV:SMT:bja/JGG0A387
c: Lieutenant Clifford Daimler, Director
Identification Services Section
Forensic Services Division, Oregon State Police
Lloyd Smith, Director
Law Enforcement Data System, Oregon State Police