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J. Todd Foster
Staff Writer
THE OREGONIAN
1320 SW Broadway
Portland, OR 97201

Steve Bennett
Executive Director
Board on Public Safety Standards & Training
550 N. Monmouth Avenue
Monmouth, OR 97361

Re: ***Petition for Public Records Disclosure: Board on Public Safety Standards and Training Records***

Dear Mr. Bennett and Mr. Foster:

This letter is the Attorney General's order on Mr. Foster's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on October 1, 1996,[1/] asks the Attorney General to direct the Board on Public Safety Standards and Training (BPSST) to produce a copy of "all disciplinary findings, including investigative notes, interview summaries, disciplinary recommendations and documentation of discipline imposed against Capt. Jerry Hawley since he joined the academy as an instructor 21 years ago." For the reasons that follow, we grant the petition in part and deny the remainder of the 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. However, the Attorney General may order a state agency to disclose records only if the agency first has denied a request for public records. *See* ORS 192.450(1).

The petition states that Mr. Foster requested and was denied the records by Steve Bennett at BPSST. Mr. Bennett informs us that he has provided Mr. Foster with a copy of the disciplinary action imposed on Capt. Hawley with respect to an incident involving BPSST student Samuel Sachs. Because BPSST has not denied Mr. Foster's request for this particular public record, but provided Mr. Foster with a copy of the record, we deny the

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[1/] We appreciate Mr. Foster's extending the time within which the law would have otherwise obligated us to respond to his petition.

petition as moot insofar as it covers the letter imposing discipline on Capt. Hawley in relation to the incident with Mr. Sachs.

With respect to the remaining documents requested, an explicit exemption in the public records law for discipline records is pertinent. ORS 192.501 provides in relevant part:

> The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:
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> * * * * *
>
> (12) A personnel discipline action, or materials or documents supporting that action.

ORS 192.501(12) exempts from disclosure personnel discipline action and related records unless the public interest requires disclosure in the particular instance. The term "public interest" in disclosure is not defined in the Public Records Law. The Oregon Court of Appeals has stated that "[t]he Public Records Law expresses the legislature's view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted." ***Guard Publishing Co. v. Lane County School Dist.***, 96 Or App 463, 468-69, 774 P2d 494 (1989); *reversed on other grounds*, 310 Or 32, 791 P2d 854 (1990). The Court of Appeals also characterized the public interest in disclosure as "the right of the citizens to monitor what elected and appointed officials are doing on the job." ***Jensen v. Shiffman***, 24 Or App 11, 17, 544 P2d 1048 (1976).

The conditional exemption contained in ORS 192.501(12) covers completed disciplinary actions where a sanction was imposed. ***City of Portland v. Rice***, 308 Or 118, 775 P2d 1371 (1989). Our review of the records that are the subject of this petition discloses that Capt. Hawley received a disciplinary sanction for the matters relating to the complaint of Samuel Sachs and for incidents unrelated to Mr. Sachs' complaint.

In ***City of Portland v. Rice***, the court addressed the exemption in ORS 192.501(12), stating: "The policy intended by the legislature * * * protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes." *Id.* at 124 n 5 (citation omitted). Ordinarily, a disciplinary sanction and the documents supporting that action are matters of primary significance to the employer and employee with little relevance to the public interest. In assessing the public interest in disclosure, we have previously considered the position of the employee within the state agency, the basis for the discipline action, whether the conduct for

which discipline is imposed is also the subject of criminal charges, and the extent to which the information had already been made public. *See* Public Record Order November 26, 1990, (Nealy/Hogan), Public Record Order January 27, 1992, (Moody).

Under the circumstances presented here, we conclude that the public interest requires disclosure of the investigatory documents relating to the discipline resulting from the Sachs complaint. We conclude that the public interest does not require disclosure of any documents relating to other discipline imposed on Capt. Hawley during his tenure at BPSST.

In the particular circumstances of this request, we view the following factors to both increase the public interest in disclosure of the documentation relating to the Sachs complaint and to reduce the privacy expectation of the employee in that matter.

Citizens grant great authority to law enforcement officers. The public has a significant interest, therefore, in monitoring the manner in which law enforcement officers exercise their authority in the diverse communities within this state. The public also has a legitimate interest in monitoring the effectiveness of the instruction given to law enforcement officers concerning their duty to treat all members of the state's diverse communities equally under the law and with proper respect and dignity regardless of race, sex, religion, disability, age or ethnicity.

BPSST is charged with the responsibility to certify public safety personnel, including law enforcement officers. ORS 181.640(1)(a) and (b) require BPSST to establish "minimum standards of physical, emotional, intellectual and moral fitness" for law enforcement personnel and to establish reasonable minimum training for professional development for public safety personnel. BPSST certifies law enforcement officers as being qualified and trained to be employed in law enforcement in their communities.

Capt. Hawley is employed by BPSST as a staff member. In addition to his administrative duties, he also provides classroom instruction to students seeking certification about the minimum standards of "emotional, intellectual and moral fitness" that a law enforcement officer must meet to be certified. The minimum fitness standards necessarily include the ability and willingness of the student to enforce the law in the diverse communities of this state without regard to gender, race, religion or ethnicity, while treating all citizens with equal dignity and respect. In addition to providing classroom instruction about these standards, BPSST expects its staff members, particularly those who are certified law enforcement officers, as is Capt. Hawley, to model the standards by their own conduct and deportment in and outside the classroom.

BPSST has disciplined Capt. Hawley for making comments that were insensitive and offensive to a student's religious beliefs and ethnicity. BPSST imposed the discipline after

conducting an investigation based on complaints made by the student in question. In these circumstances, where a law enforcement officer who is charged by BPSST with the responsibility to provide instruction about the minimum standards of moral fitness is found by BPSST to have engaged in conduct that is contrary to or incompatible with those standards, the public interest in disclosure of the corrective action taken by BPSST, and the information BPSST had that formed the bases of the discipline, outweighs the employee's expectation of privacy in the disciplinary matter.[2/] We note, as well, that most of the information relating to the substance of this discipline and the reasons for it had already been publicized even prior to the release of the disciplinary document itself.

Therefore, we grant the petition as to the disciplinary investigation of Capt. Hawley and related records concerning the Sachs complaint and order BPSST to disclose those records. BPSST has seven days from the date of this order within which to comply. ORS 192.450(2).

As to any remaining disciplinary records concerning Capt. Hawley, the discipline was not for any situation in which Capt. Hawley was acting in an instructional or staff capacity with BPSST students for whom he had training responsibilities or for any situation in which Capt. Hawley was exercising law enforcement officer functions. Thus, the public interest in such discipline is no different than it would be with any public employee. The discipline did not involve conduct that was also the basis of criminal charges or implicate any criminal proceedings. Moreover, the situations underlying such discipline has not been made public. Accordingly, we find no overriding public interest in depriving Capt. Hawley of his privacy surrounding the reasons for other discipline of him. We therefore deny the remainder of the petition for any other disciplinary action of Capt. Hawley and the documents supporting such action. Such records are exempt from disclosure under ORS 192.501(12).

Sincerely,

THOMAS A. BALMER
Deputy Attorney General

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[2/] Although BPSST disclosed the disciplinary action imposed on Capt. Hawley related to the Sachs complaint, we do not believe that disclosure of that record alone satisfies the public interest in disclosure. The public interest related to this disciplinary action is not merely in knowing that discipline was imposed, but knowing that appropriate discipline was imposed. Whether the discipline was appropriate depends upon the facts for which the discipline was imposed. Those facts are set forth in the investigation documents.