THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER



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

February 14, 1995

Charles K. Johnson
c/o Roland W. Johnson
Kirby & Johnson
P.O. Box E
Enterprise, OR 97828

Re: ***Petition for Public Records Disclosure Order: Oregon State Police and Wallowa County District Attorney Records***

Dear Mr. Johnson:

This 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 7, 1995, asks the Attorney General to direct Oregon State Police Senior Trooper Jarrett D. Parker and Wallowa County District Attorney Daniel Ousley to make available for inspection and copying an affidavit or other record supporting issuance of a search warrant issued by Judge Valentine on December 14, 1994, to search Charles K. Johnson's dwelling and premises. For the reasons that follow, we respectfully deny your petition.

Your petition alleges that District Attorney Ousley denied your request for the record. A district attorney is an elected official, and the Attorney General may not review an elected official's denial to inspect or copy a public record. ORS 192.480. ORS 192.480 and 192.490 establish the procedure to obtain judicial review of a district attorney's denial of a records request.

Your petition also alleges that Senior Trooper Jarrett Parker of the Oregon State Police has denied your request to review the same record. Senior Trooper Parker is not an elected official, and the Attorney General does have authority to review a denial of a request to review the records of a state agency.

Nonetheless, we find that the records you request are partially exempt from disclosure. ORS 192.501(3) provides in pertinent 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:
>
> * * *
>
> (3) Investigatory information compiled for criminal law purposes.

In ***Jensen v. Schiffman***, 24 Or App 11, 544 P.2d 1048 (1976), the court interpreted this exemption to protect from disclosure information compiled in investigations connected with contemplated prosecutions because disclosure likely would interfere with law enforcement proceedings.

We have been informed by District Attorney Ousley and by Senior Trooper Parker that there is an on-going investigation in connection with a contemplated criminal prosecution and that this investigation requires that portions of the affidavit be withheld from public inspection to avoid compromising the investigation. Based on this information, we find that the exemption for criminal investigatory material, ORS 192.501(3), justifies withholding those portions of the affidavit that relate to an on-going criminal investigation. We do not believe that the fact that the affidavit was used to obtain a search warrant requires a different conclusion. So long as the material is investigatory material compiled for criminal law purposes, it may be withheld from disclosure until the investigation is complete.[1/] You have not identified, and we do not find, any public interest requiring disclosure in this particular instance.

Senior Trooper Parker has informed us that he would release the portions of the affidavit that do not relate to the on-going criminal investigation. The Public Records Law requires that exempt records be separated from non-exempt records. ORS 192.505. As to the non-exempt portions of the affidavit, we find that there has been no denial of disclosure by the Oregon State Police.

In summary, we conclude that the Attorney General may not issue an order regarding the denial of inspection of a public record by the Wallowa County District Attorney, an elected official. Further, we find that portions of the affidavit are investigatory information compiled for criminal law purposes, and that those portions are exempt from disclosure under ORS 192.501(3) while the investigation is pending. As to the remainder of the

---

[1/] Mr. Ousley has informed us that the complete record will be provided to you as soon as the investigation is competed.

affidavit that is not exempt from disclosure, there has been no denial by the Oregon State Police. For these reasons, we respectfully deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

c: Daniel Ousley
Wallowa County District Attorney
101 S. River #210
Enterprise, OR 97282

Jarrett D. Parker, Senior Trooper
Oregon State Police
Fish and Wildlife Division
P.O. Box 367
Enterprise, OR 97828