

July 17, 2006

Mr. D. Rahn Hostetter
Attorney at Law
203 E. Main Street
P.O. Box 400
Enterprise, OR 97828-0400

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

Dear Mr. Hostetter:

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 July 10, 2006, asks the Attorney General to direct the Oregon State Police (OSP) to make available for inspection and to produce copies of the following records:

1. All notes, journals, reports, and tape recordings made or conducted by Scott Moore concerning investigation of Warren Morris and/or Scott Morris on alleged wildlife violations.

In your petition, you state that your request for the records was denied by Priscilla Darras, OSP Records Request Specialist on June 29, 2006. On July 11, 2006, Senior Assistant Attorney General Herbert F. Lovejoy spoke with Ms. Darras, was referred to her supervisor, Ms. Cecily Brown. Mr. Lovejoy was informed that two sets of records exist which fall within your petition for disclosure of records. First, there are OSP records concerning a pending criminal Fish and Wildlife case in Wallowa County, Oregon against Gregg K. Clapper, in which Warren Morris is a witness. Second, there is a supplemental OSP report to the criminal case against Mr. Clapper, written by OSP Sergeant Scott Moore, that concerns an investigation into past alleged Fish and Wildlife violations, as well as alleged perjury, against Warren or Scott Morris. With regard to the first set of records, we respectfully deny your petition on the ground that the records you

request constitute “[i]nvestigatory information compiled for criminal law purposes” that are exempt from disclosure under ORS 192.501(3). With regard to Sergeant Moore’s supplemental report, we respectfully deny your petition as moot because OSP has agreed to release those records to you.

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 195.420. 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 it is “reasonably possible” to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 OR App 177, 186 n 8, 538 P2d 373 (1975).

ORS 192.501(3) exempts “[i]nvestigatory information compiled for criminal law purposes” from disclosure “unless the public interest requires disclosure in the particular instance.” The investigatory information exemption advances the public interest in preventing interference with ongoing law enforcement proceedings, including pending criminal prosecutions. *Jensen v. Schiffman*, 24 Or App 11, 16, 544 P2d 1048 (1976). As the court noted in *Jensen, supra*: “* * * investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely ‘interfere with enforcement proceedings[.]’ 24 Or App at 16 citing 5 USC § 552(b)(7)(A). We have previously observed that the governmental interest favoring nondisclosure in these situations “is the general public’s interest in having persons who have violated the law successfully prosecuted.” Public Records Order, August 30, 1995, Heinz.

On July 11, 2006, AAG Lovejoy spoke with Wallowa County District Attorney Daniel Ousley who informed AAG Lovejoy that the criminal Fish and Wildlife case against Mr. Clapper is still pending. District Attorney Ousley also confirmed that Warren Morris is a witness in that case and is expected to testify at trial. Finally, Wallowa County Circuit Court records confirm that Mr. Clapper’s case is currently scheduled for trial on December 11, 2006. *See* Wallowa County Circuit Court Case No. 05M5881. Because the criminal case in which Mr. Morris is a witness remains pending against Mr. Clapper, we deny your petition as it relates to those records under ORS 192.501(3).

Regarding the supplemental OSP report to the criminal case against Mr. Clapper, written by OSP Sergeant Scott Moore, that concerns an investigation into past alleged Fish and Wildlife violations, as well as alleged perjury, against Warren or Scott Morris, District Attorney Ousley informed AAG Lovejoy that he has received Sergeant Moore’s report and has declined to prosecute Warren Morris for perjury or Scott Morris for the past alleged Fish and Wildlife violations. Moreover, District Attorney Ousley informed AAG Lovejoy that he has previously provided Sergeant Moore’s report to you. Finally,

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Ms. Brown informed AAG Lovejoy that, notwithstanding it being a supplemental report to the reports in Mr. Clapper's criminal case, OSP will disclose Sergeant Moore's supplemental report to you. Accordingly, we deny your petition as it relates to that record as moot.

Sincerely,

Peter D. Shepherd
Deputy Attorney General

AGS17848
c: Cecily Brown, Records Supervisor, Oregon State Police