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Sent Via Email Only

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Ben Miller
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Re: Public Records Appeal

Dear Mr. Rogaway and Mr. Miller:

This letter serves as the Order in Mr. Rogaway's appeal of a denial of public records by the City of Eugene for records related to EGP 22-10705. After review, as is outlined below, it is my Order that some of the records be released with redactions and others are denied in full.

Mr. Rogaway seeks:

1. Records associated with the arrest and citation of Mark Frohnmayer on July 15 in Eugene (Case No. 22-10705)
2. Officer body camera footage associated with his arrest and citations; and
3. Records of his blood alcohol level, as measured by Eugene police or their delegates.

The City of Eugene (City) has denied the request in full on two occasions, citing ORS 192.345(3) conditionally exempting release of Criminal Investigatory Records. The City further relies upon ORS 192.345(40), conditionally exempting the release of Body Worn Cameras.

The City provided me access to all of the relevant records. I have divided them into three categories:

1. Written records regarding the investigation and arrest (further specified in the City's response at page 2);
2. Body worn camera footage (four); and
3. In car video (ICV) (one)

The City has agreed to release the Uniform Criminal Citation and Complaint, subject to redactions for personal identifiers. That document is included in the written records identified in number 1 above.

Further, regarding the written records, Mark Frohnmayer was arrested for driving under the influence of intoxicants on July 15, 2022. On August 22, 2022, Mr. Frohnmayer entered a guilty plea to that charge and entered a diversion program. By entering that plea, Mr. Frohnmayer admitted the elements of the charge of driving under the influence of intoxicants, that he operated a motor vehicle while under the influence of intoxicants. There is no longer a criminal investigation subject to ORS 192.345(3) and the records are no longer exempt. It is unpersuasive that there is a possibility that Mr. Frohnmayer could make his way into the appeal process during or at the conclusion of the diversion term. If that were the case, police reports would always be subject to that exemption when charges are filed because there are possibilities of appeal and post-conviction relief, despite the statute of limitations.

Because the written records contain personal identifying information, I find that those reports are subject to redaction for any home address, phone number, date of birth, and Oregon Driver's License number.

Because the criminal investigatory materials are no longer exempt, the in car video from Officer Orsborn's vehicle is not exempt and is ordered to be disclosed. In car video is not subject to the exemption provided by ORS 192.345(40). The ICV is subject to redactions for personal identifying

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information including a code to operate a vehicle, home address, and phone number.

Disclosure of body worn camera recordings are governed by ORS 192.345(4). That statute renders the recording “conditionally exempt.” That is, the recording is exempt from disclosure “unless the public interest requires disclosure in the particular circumstance.” I do not find that there is a public interest in this DUII arrest that overcomes the exception to the exemption to release of the Body Worn Camera footage. The City is **not** ordered to disclose the body worn camera footage pursuant to ORS 192.345(40).

Therefore, it is hereby Ordered that the City of Eugene release the written records related to EGP 22-10705 (with redactions listed above). The City is further Ordered to release the single In Car Video (with redactions listed above). The appeal is Denied as to the Body Worn Camera footage.

The records required to be disclosed and subject to redaction are subject to costs of redacting and producing the records unless the City agrees to waive or reduce the fees.

Both parties have the opportunity to appeal this Order to Lane County Circuit Court.

Thank you both for your courtesies in addressing this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patricia W. Perlow". The signature is stylized and cursive.

Patricia W. Perlow, District Attorney