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May 23, 2023

Salem Reporter  
Ardeshir Tabrizian  
Les Zaitz  
Via Email

City of Salem  
Dan Atchison  
Lori Evans  
Keith Stahley  
Via Email

**RE: Public Records Appeal Opinion; Petition dated May 3, 2023**

All:

The following is my decision regarding this current public records appeal following my statutorily required administrative review. As discussed below, I find that the petition should be denied in part and granted in part.

**Background**

On April 6, 2023, the Salem Reporter (SR) requested several records from the City of Salem (the City) which I will characterize here for the sake of brevity as communication both internal and external to the public related to the investigation of a March 28, 2023, fatal crash involving a bicyclist and a federal Drug Enforcement Agency (DEA) Agent. The City provided seven documents responsive to the request on April 28, 2023.

SR filed a public records appeal petition on May 3, 2023. The City filed a response on May 10, 2023, and further provided the redacted and unredacted documents for my review. SR filed a supplemental response to the City's response on May 15, 2023.

Two of the seven documents provided were complete and unredacted emails. As such, I will not be addressing them here. This decision letter will focus on the remaining five documents and whether their partial redaction is covered by exemption under the applicable law.

### **1. The Memorandum of Understanding**

The first provided document is the Salem Police Department Memorandum of Understanding (MOU) with the federal Drug Enforcement Agency. This document contains one redacted section containing the names of the three Salem Police Department officers assigned to the task force. In reviewing the unredacted document, and given the City's factual assertions, I confirm that those officers are in fact still assigned to that task force and are routinely working in an undercover capacity. Public release of their names or any other identifying information would pose a grave risk to their safety. A plain reading of ORS 181A.672(2) makes this redaction lawful and appropriate.

### **2. Text Communication to DEA Agent 3-28-23 (message only)**

The City provided a text communication to a DEA Agent. The name of the receiving DEA Agent was the only redaction and the City cited ORS 192.355(8) and 5 U.S.C. Sec. 552(b)(7)(F) by reference. The Federal Code prohibits release of information compiled for law enforcement purposes if the information could "reasonably be expected to endanger the life or physical safety of any individual." Oregon statutes allow federal law to be asserted when citing exemptions. ORS 192.355(8). Similar to the MOU's redaction above, the Agent's name is protected from public release due to the danger to that Agent if his identity is revealed. This redaction is lawful and appropriate.

### **3. Text Communication to DEA Agent 3-28-23 (photographs)**

The City provided a text communication of photographs (the communication itself did not contain any further narrative or commentary) to a DEA Agent. The City redacted the name of the receiving DEA Agent. This redaction was appropriate and lawful for the reasons stated above. The photographs were further redacted citing ORS 192.345(3) as being compiled for criminal law purposes. In weighing the public interest in seeing those photographs with the public interest in a complete investigation, the latter is more compelling. This event is truly tragic. All parties - the victim's family, any potential suspect, and the community - have a vested interest in ensuring that an objective and thorough investigation can be completed. SR's argument that this was a "collision investigation" and not a "criminal" one is not a legal distinction. Every police investigation also determines criminal liability, if any.<sup>1</sup> One that involves the death of an individual is certainly no different.<sup>2</sup> Redaction of the photographs was thus appropriate under the law.

### **4. Email Exchange Between Salem PD Officials and District Attorney**

The City provided an email communication between Salem PD Officials and me, the District Attorney. A portion of my message was redacted citing ORS 192.345(3). In reviewing the content of that email, I find that it is merely an administrative fact statement, rather than one

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<sup>1</sup> See *Jensen v. Schiffman*, 24 Or App 11 (1976).

<sup>2</sup> The criminal nature of this investigation is further illustrated by the fact that the Keizer Police Department has delivered some investigatory information to the District Attorney's Office under Case No. 23-979 and is currently engaging in requested additional investigation.

compiled for criminal law purposes as part of the investigation. I find that the City should release the full email.

**5. Text Message from Assistant Chief Miller 3-31-23**

The City provided a text message from Assistant Chief Miller. Portions of that message were redacted citing ORS 192.345(3). In reviewing the content of that text message, I find that it is discussing administrative decisions and not otherwise compiled for criminal investigatory purposes. As such, the City should release the full email.

As with any District Attorney's statutory administrative review decision regarding public record appeal matters, should any party disagree, this opinion is further appealable *De Novo* to the Marion County Circuit Court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paige E. Clarkson', with a long horizontal line extending to the right.

Paige E. Clarkson  
District Attorney

Cc: Chief Trevor Womack, Salem Police Department