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Steve Mayes  
Steve Mayes Investigations  
P.O. Box 10362  
Portland, Oregon 97296

Rebeca Plaza  
Sr. Deputy City Attorney  
Portland City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Steve Mayes seeking access to certain Portland Police Bureau  
investigative records

Dear Mr. Mayes and Ms. Plaza:

Petitioner, Steve Mayes, requested that the Portland Police Bureau (PPB) provide him, under the public records law, "all police reports and photos related to the case [17-144769]." Mr. Mayes noted that the victim's identity was known and that the criminal prosecution that resulted from this investigation was closed. PPB denied his request, citing the confidentiality provisions of ORS 124.090 pertaining to the investigation of reports of elder abuse.

The facts of the underlying incident are not particularly relevant to our analysis of the relevant legal issues. A summary of the facts is in the public record, but will not be recited here except to note that the case unquestionably involves elder abuse. For the reasons discussed in more detail below, investigations such as this follow the same framework as those of suspected child abuse and may only be disclosed by the Department of Human Services (DHS). Because PPB is without authority to release these records, we must deny the petition.

## **DISCUSSION**

### **A. Elder Abuse Reports – ORS 124.090**

ORS 124.090 provides that,

Notwithstanding the provisions of ORS 192.311 to 192.478 [the Public Records Law], the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the provisions of ORS 124.050 to 124.095, are confidential and are not accessible for public inspection.

Although we have rarely been called on to interpret the scope of this provision, in all respects relevant here ORS 124.090 tracks the wording of ORS 419B.035, which prohibits public bodies other than DHS from releasing investigations of child abuse under the public records law.

We have consistently held that police reports documenting a report of child abuse are within the scope of ORS 419B.035. *Petition of Jon Friedman*, MCDA PRO 14-13 (2014) (noting we may not order release of even redacted versions of child abuse investigation reports); *Petition of Greg Roberson*, MCDA PRO 09-01 (2009); *Petition of Sharon Wiley*, MCDA PRO 07-01 (2007). The same rule applies to the elder abuse reporting framework in ORS Ch. 124.

As an initial matter, ORS 124.060 and ORS 124.065 together provide that all mandatory reporters of elder abuse, “public or private officials” in the language of the statute, who have reasonable cause to believe elder abuse has occurred must report the circumstances to DHS or a law enforcement agency. Having reviewed the police reports at issue here, it is readily apparent that this investigation was the direct result of a mandatory reporter contacting the Portland Police Bureau. It is also beyond reasonable dispute that this case involved “elder abuse” as defined in multiple subsections of ORS 124.060(1).

Having received a report of elder abuse under ORS 124.060, PPB had a statutory duty to investigate. ORS 124.070 (“[u]pon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse.”) The ensuing investigation by PPB, and the reports documenting that investigation, are “records compiled under the provisions of ORS 124.050 to 124.095” because they are the official record of that statutorily mandated investigation. Any photographs of the victim taken are also included within the chapter’s confidentiality provisions. ORS 124.080.

Importantly, the language in ORS 124.090 does not create a public records exemption in the ordinary sense. Rather, it provides that the public records law, as a whole, does not apply to these records: “[n]otwithstanding the provisions of ORS 192.311 to 192.478 [...]” That distinction is important because, among other things, it expressly removes the requirement of segregating exempt information from non-exempt information set out in ORS 192.338. This means that even a partially redacted version of a report coming within the scope of this section may not be released.

Because the records at issue were compiled as required by ORS 124.070, ORS 124.090 prohibits PPB from releasing them under the public records law.

### **ORDER**

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon