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April 23, 2021

Mario Odighizuwa
mto6157060@yahoo.com [via email only]

Erik Van Hagen
Legal Services Director, TriMet
1800 SW 1st Avenue, Suite 300
Portland, Oregon 97201

Re: Petition of Mario Odighizuwa seeking access to certain TriMet video recordings

Dear Mr. Odighizuwa and Mr. Van Hagen:

Petitioner, Mario Odighizuwa, had a dispute on January 17, 2021, with two TriMet bus operators regarding his ability to wear a mask onboard a TriMet bus. Shortly thereafter petitioner filed a complaint with TriMet about the operators' conduct and made a public records request for video of the incident.

On February 26, 2021 TriMet completed its response to petitioner's request by asserting that the video was presently exempt from disclosure as it pertained to an ongoing disciplinary action. TriMet additionally invited petitioner to "follow [up] on the availability of the records in the future."

Petitioner then contacted this office to review TriMet's actions in response to his request.

DISCUSSION

A. Personnel Discipline Action – ORS 192.345(12)

ORS 192.345(12) conditionally exempts from disclosure,

A personnel discipline action, or materials or documents supporting that action.

TriMet states in its response to this office that its investigation of petitioner's complaint against one of the two bus operators is ongoing and pending a determination of possible discipline.

TriMet is correct that we have generally considered ORS 192.345(12) presumptively applicable to pending disciplinary proceedings. *Petition of Mayne*, MCDA PRO 18-52 (2018), see also ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 64 (2019) ("When a records request is received during the course of a personnel investigation, and unless the public interest requires disclosure, the records can be withheld until the investigation concludes so that the public body can determine whether this exemption applies or not.")

We have declined in the past to extend the provisions of ORS 192.345(12) to materials that, although relevant to a personnel discipline action, were created outside of it. *Petition of Barnes*, MCDA PRO 17-01 (2017). In this case, however, TriMet informs us that the video would have been purged as part of its routine process except for the initiation of a personnel investigation. That is, but for the investigation, the video would not exist. The video, in that context, is covered by this section.

This public records exemption can be overcome by a showing that, the public interest nonetheless requires disclosure. However, we have concluded in similar cases that a person requesting video directly relating to him or herself does not establish a public interest. See, *Petition of Jay Shore*, MCDA PRO 17-53 (2017), MANUAL at 23 (“if a requester seeks records relating to the requester, a mere allegation that the public body has treated the individual oppressively, absent a broader public interest, does not satisfy the public interest standard.”)

ORDER

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon