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Oregon Department of Justice
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SENT VIA ELECTRONIC MAIL:
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**PETITION FOR PUBLIC RECORDS
DISCLOSURE ORDER**

Petitioners: Don't Shoot Portland
American Civil Liberties Union of Oregon, Inc.

Agency: Oregon Department of Justice

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Preliminary Statement

1. Petitioners seek review under ORS 192.411 of the Oregon Department of Justice's ("ODOJ") withholding of public records related to the Oregon Terrorism Information Threat Assessment Network (TITAN) Fusion Center ("OTFC").

2. OTFC is a domestic surveillance program that is housed in ODOJ's Criminal Intelligence Unit but was resourced by the federal government and operates in collaboration with federal and other law enforcement agencies as one of a network of about 80 fusion centers nationwide.

3. Requesters are Petitioners Don't Shoot Portland ("Don't Shoot PDX") and the American Civil Liberties Union of Oregon, Inc., ("ACLU of Oregon"), two Oregon nonprofits whose missions include advocating for racial justice, police accountability, and the right to protest in our state.

4. The public has little information about how fusion centers like OTFC work. They have ambiguous authority and operate with scant transparency, oversight, or accountability

at any level of government. But, like other programs that entangle state and federal law enforcement, they have shown themselves to present serious risk to privacy, civil rights, and civil liberties. In particular, they have a history of being misused to target protestors and communities of color, including in Oregon.¹ OTFC has drawn scrutiny in courts and the legislature for its troubling practices.²

5. Oregonians have good cause to distrust a state agency's secretive collaboration with the federal government and to be concerned about its implications for the right to engage in protected expression and the safety of people and communities of color. During the 2020 racial justice protests following the police killing of George Floyd, militarized federal and local law enforcement operating in Portland used tear gas, pepper balls, flash-bang grenades, sonic weapons, and other brutal tactics against peaceful protestors, journalists, and legal observers—prompting lawsuits by both Don't Shoot PDX and the ACLU of Oregon.³ At the same time, the Trump Administration's surveillance apparatus was compiling dossiers known as “baseball cards” on people who participated in the protests.⁴ In 2025, the Trump administration characterized Oregonians protesting its actions as

¹ John Sepulvado, *Black Lives Matter Report: Tweet Quoting Public Enemy Prompted DOJ Investigation*, OPB (April 11, 2016), <https://www.opb.org/news/article/black-lives-matter-report-tweet-quoting-public-enemy-prompted-doj-investigation/>; Denis C.

Theriaut, *Black Lives Matter: Oregon Justice Department Searched Social Media Hashtags*, The Oregonian/OregonLive (Nov. 10, 2015), https://www.oregonlive.com/politics/2015/11/black_lives_matter_oregon_just.html; Will Parrish & Jason Wilson, *Revealed: Anti-Terror Center Helped Police Track Environmental Activists*, The Guardian (Oct. 2, 2019), <https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-anti-terror-unit>.

² Shaanth Nanguneri, *Oregon Lawmaker Calls for Review of State Anti-Terror Center Cases Amid Free Speech Concerns*, Oregon Capital Chronicle (Sept. 11, 2026), <https://oregoncapitalchronicle.com/2026/09/11/oregon-lawmaker-calls-for-review-of-state-anti-terror-center-cases-amid-free-speech-concerns/>; Chris Lehman, *Oregon Settles Lawsuit, Forces Out DOJ Civil Rights Attorney*, OPB (Oct. 11, 2017), <https://www.opb.org/news/article/oregon-civil-rights-attorney-erious-johnson-settlement/>; Conrad Wilson, *Environmental Advocates File Lawsuit Against Oregon Justice Department Over Surveillance*, OPB (Dec. 14, 2021), <https://www.opb.org/article/2021/12/14/environmental-advocates-file-lawsuit-against-oregon-justice-department-over-surveillance/>.

³ *Don't Shoot PDX Sues Portland Over Police Use of Tear Gas*, OPB (June 5, 2020), <https://www.opb.org/news/article/tear-gas-portland-lawsuit>; *Pettibone et al. v. Biden et al.*, ACLU of Oregon, <https://www.aclu-or.org/cases/pettibone-et-al-v-biden-et-al/>.

⁴ Jonathan Levinson, *Newly Un-Redacted Report Shows How Feds Politicized Response to 2020 Portland Protests*, OPB (Oct. 27, 2022), <https://www.opb.org/article/2022/10/27/newly-un-redacted-report-shows-how-feds-politicized-response-to-2020-portland-protests/>; Maxine Bernstein, *Federal Agents Labeled Portland Protestors 'Violent Antifa Anarchists,' Improperly Gathered Intel, Report Says*, The Oregonian/OregonLive (Feb. 22, 2023), <https://www.oregonlive.com/crime/2022/10/federal-dossiers-on-arrested-portland-protesters-named-their-friends-family-reviews-disclose.html>.

domestic terrorists in an effort to justify deploying the National Guard to Portland, an overreach ODOJ rightfully challenged in court.⁵ Justified local concern with federal abuses has led Oregon to pass successive legislation to keep state resources out of the federal government's agenda, including a 2026 law forbidding state officials' assistance with federal actions against individuals based on their protected expression or identity or in violation of constitutional privacy protections.⁶ In the current moment, it is critical that Oregonians understand the nature of federal, state, and local law enforcement collaborations, including in conducting surveillance and other monitoring of people engaged in dissent and the impact of that surveillance on privacy, civil rights, and civil liberties.

6. Given these very serious public concerns, Don't Shoot PDX and the ACLU of Oregon seek an order from this office requiring the disclosure of wrongfully withheld public records regarding OTFC.

7. Don't Shoot PDX and the ACLU of Oregon jointly submitted the public records request at issue to ODOJ on December 12, 2024 (attached as Exhibit 1). It sought records to illuminate OTFC's surveillance of protestors and communities of color, including records naming the two organizations and other well-known community organizers and activists.

8. ODOJ made rolling partial responses to the request beginning in March of 2025, with repeated agency delays dragging the fulfillment timeline out to June of 2026. David Pitcher (david.pitcher@doj.oregon.gov) sent the agency's final partial response on June 2, 2026; earlier partial responses and withholdings were sent by either David Pitcher or Carmen Graham (carmen.graham@doj.oregon.gov). Correspondence with ODOJ concerning the request is attached as Exhibit 2.

9. As relevant to this petition, ODOJ withheld nearly 2000 responsive records in its custody on the purported authority of an ODOJ administrative regulation, OAR 137-090-0040, which sets forth ODOJ's so-called "Third Agency Rule." That blanket "rule" states that ODOJ's Criminal Intelligence Unit, which houses OTFC, will confidentially maintain information in its custody that it receives from other agencies, and will deny access to the information—even when sought under Oregon's Public Records Law—except with the originating agency's consent. Or. Admin. Code § 137-090-0040(2). In practice, though, as the agency put it to Petitioners, records are "withheld as exempt" under the Third Agency Rule if "they consist of information reported by other law enforcement agencies, which the Fusion Center is required to keep confidential." Ex. 2 at 17.

⁵ Maxine Bernstein, *'A Win for Oregon': 9th Circuit Dismisses Trump Appeal Over National Guard Deployment*, The Oregonian/OregonLive, (Feb. 18, 2026), <https://www.oregonlive.com/crime/2026/02/a-win-for-oregon-9th-circuit-dismisses-trump-appeal-over-national-guard-deployment.html>.

⁶ House Bill 4138, <https://olis.oregonlegislature.gov/liz/2026R1/Downloads/MeasureDocument/HB4138/Enrolled>.

10. Nothing in the Public Records Law authorizes ODOJ to set its own blanket “rule” exempting disclosure.

11. ODOJ’s only suggestion that its Third Agency Rule withholdings might be justified under the Public Records law came in its first partial production on March 25, 2026, when it indicated it had “reviewed a small subset of the search results” and “anticipated” that “most of the responsive records” would be covered by ORS 192.355(4), which is an exemption that covers certain information “submitted to a public agency in confidence.” Ex. 2 at 21.

12. ORS 192.355(4), which must be construed narrowly, permits nondisclosure of information (1) “submitted to a public body in confidence” *only* where the information (2) “is not otherwise required by law to be submitted” and (3) “should reasonably be considered confidential,” (4) “the public body has obliged itself in good faith not to disclose the information,” and (5) “the public interest would suffer by the disclosure.” ORS 192.355(4).

13. ODOJ stated the records were “reports, investigative materials, and information submitted by other law enforcement agencies” that were “submitted in confidence” and that “OTFC believe[d] the public interest in operating a functional fusion center would suffer if it violated the Third Agency Rule and disclosed the reports.” Ex. 2 at 21.

14. In other words, based on only a small sample of records, the agency suggested its withholdings would be justified under the Public Records Law because any departure from the Third Agency Rule would categorically result in public harm. The premise of its unlawful position was that a “functional fusion center” is one that keeps government secrets.

15. Petitioners later learned through a supplemental records request submitted by the ACLU of Oregon (attached as Exhibit 3) that ODOJ had made its determinations to withhold the almost 2000 records pursuant to the Third Agency Rule based on labels affixed to the information by the originating agency at the time it was disseminated, like “For Official Use Only” or “Law Enforcement Sensitive.” Ex. 3 at 6. ODOJ had neither made its own record-specific determination in response to Don’t Shoot PDX and the ACLU of Oregon’s request nor asked the originating agencies to do so.

16. This petition challenges ODOJ’s blanket refusal to disclose records in its custody pursuant to the Third Agency Rule; based on pre-existing dissemination markings attached by other agencies; because of a different government’s preference for secrecy; without consideration of the reasonableness of keeping a particular record confidential or the public interest in the specified records; or on any other basis that departs from the standards set forth in the Oregon Public Records Law.

17. As the Attorney General has stated, “Oregon’s public records [laws] are built on a simple idea: government should be transparent and accountable to the people it serves. . . .

[E]xceptions are narrow, and the presumption is clear: Oregonians have a right to know what their government is doing.”⁷

18. If ODOJ insists on keeping information related to OTFC concealed from the public, then to sustain its withholding, ODOJ cannot apply blanket rules. It must show why each of the disputed records fits under a specific statutory exemption and that no information therein could be properly segregated for disclosure. ODOJ cannot meet that burden here.

I. Petitioners’ Request and ODOJ’s Responses

December 12, 2024 Records Request

19. On December 12, 2024, Petitioners submitted a public records request to ODOJ concerning OTFC’s collection, investigation, and dissemination of information about people engaged in protest activity and communities of color, as well as the adequacy of the privacy, civil rights, and civil liberties safeguards applicable to those practices. Ex. 1.

20. The request had six parts. Part 1 sought OTFC internal policies and other guidance; Part 2 sought records documenting OTFC’s investigation of individuals and groups engaged in protest, including Don’t Shoot PDX, ACLU of Oregon, Teresa Raiford (founder of Don’t Shoot PDX), and Sean Kealiher, a young activist and founding organizer of Don’t Shoot PDX’s community action plan who was killed in 2019. Part 3 sought records concerning the definition of certain terms related to extremism, and Part 4 sought records including those terms. Part 5 sought records referring to Don’t Shoot Portland, Don’t Shoot PDX, Black Gallery PDX (an extension of Don’t Shoot PDX), Teresa Raiford, Sean Kealiher, and/or ACLU of Oregon. Part 6 sought records relating to procedures for correcting or expunging inaccurate OTFC information. Ex. 1.

ODOJ’s Delayed, Rolling, Partial Responses

21. In its initial partial response, on March 25, 2025, ODOJ disclosed some records responsive to Part 1 (including OTFC’s privacy policy, training materials, and other information) and indicated it had nothing responsive to Part 6. ODOJ reported 278 potentially responsive records to Parts 2 and 5 of the request (relating to specifically identified people and organizations), and 11,265 potentially responsive records to Parts 3 and 4 (including or defining extremism-related terms). Ex. 2 at 20. ODOJ’s fee estimate was \$6,112.

22. ODOJ also stated that it “anticipate[d]” that “many of the documents” of “most interest[]” to Petitioners would likely be “exempt pursuant to ORS 192.355(4)(information submitted in confidence) and the “Third Agency Rule” set forth in Oregon Administrative Rule 137-090-0040(2)(requiring confidentiality of reports, investigative material, and information submitted to OTFC by another agency).” Ex. 2 at 19.

⁷ Attorney General’s Public Records and Meetings Manual 2024, ODOJ, <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>

23. In the same email, ODOJ indicated it had reviewed only a “small subset” of the search results. Yet it represented that “most of the responsive records” were “reports, investigative materials, and information submitted [in confidence] by other law enforcement agencies,” and that “OTFC believe[d] the public interest in operating a functional fusion center would suffer if it violated the Third Agency Rule” and disclosed the reports. Ex. 2 at 21.

24. Petitioners agreed to narrow Parts 2 through 5 of the request. For Parts 2 and 5, Petitioners limited their request to records concerning “Don’t Shoot Portland,” “Don’t Shoot PDX,” “Black Gallery PDX,” “Teresa Raiford,” “Sean Kealiher,” and “ACLU of Oregon.” For Parts 3 and 4, Petitioners limited their request, at least initially, to the terms “Black identity extremist,” “Black identity extremism movement,” “domestic terrorism,” and “environmental violent extremism.” Ex. 2 at 17.

25. On May 13, 2025, ODOJ reported that the narrowed search terms returned 6,362 responsive records, but stated it would be producing “far fewer” than that after separating exempt material. Ex. 2 at 16. It again represented, based on a “small sample of these documents,” that it “believe[d]” most would “ultimately be withheld as exempt because they consist of information reported by other law enforcement agencies, which the Fusion Center is required to keep confidential.” Ex. 2 at 17.

26. Petitioners submitted a fee of \$3,392 for the revised request, which ODOJ confirmed receiving on May 30, 2025, indicating it would begin its review of the records. Ex. 2 at 15.

27. On July 9, 2025, Petitioners checked in on the status of the request. On July 15, 2025, ODOJ estimated that it would take another 6-8 weeks to complete its review and response. Ex. 2 at 14.

28. On September 19, ACLU of Oregon checked in again on the status of the request. ODOJ responded on September 23 that it was “almost done.” Ex. 2 at 13. On October 15, ODOJ reported that it would be making the production on October 20. Ex. 2 at 13. But on that day, ODOJ said it was still working through the review and would only be making a partial response. Ex. 2 at 12. It produced 100 pages. Ex. 2 at 11.

29. Weeks later, on November 13, ODOJ produced another “partial response.” Ex. 2 at 11. The next production did not come until January 9, 2026, and that, too, was only a partial response. ODOJ stated it would complete its production by February 6. Ex. 2 at 10. But on that day, ODOJ indicated it needed until February 20.

30. On February 20, 2026, ODOJ said that limited staff availability required an extension to March 13. Ex. 2 at 9. On that day, ODOJ did produce more records, but still only another partial response. Ex. 2 at 9.

31. On April 14, ODOJ said it needed an additional 30 days to complete its review, again due to staff availability, but that it would make rolling productions as records were cleared for disclosure. Ex. 2 at 8.

32. On April 27 and May 7, ODOJ released additional records, redacting some information “under ORS 192.345(22) (interference with property or services), ORS 192.345(23) (security measures), ORS 192.355(1) (internal advisory communications), ORS 192.355(4) (information submitted in confidence), and the Third Agency Rule, OAR 137-090-0040.” Ex. 2 at 7-8. The records did not indicate which claimed exemptions applied to which redactions.

33. On June 2, 2026, ODOJ completed its review of the records and made a final partial production responsive to Parts 2 and 5 of the request (relating to specifically identified people and organizations).⁸ In that communication, ODOJ reported that it was withholding 29 additional records pursuant to ORS 192.355(4) and OAR 137-090-0040. All 29 were received from the Portland Police Bureau (“PPB”). Three reference “Don’t Shoot Portland,” 1 references “Don’t Shoot PDX,” and 25 reference “Sean Kealiher.” Ex. 2 at 2.

34. ODOJ described the three withheld records referencing Don’t Shoot Portland as follows:

- PPB Criminal Intelligence Unit Bulletin dated 11/20/18 (FOUO).
- PPB Criminal Intelligence Unit Bulletin dated 1/8/2019 (FOUO).
- PPB Criminal Intelligence Unit Bulletin date 3/19/20 (FOUO).

Ex. 2 at 2.

35. ODOJ described the withheld record referencing “Don’t Shoot PDX” as “PPB Crime Analyst Unit Situation Report dated May 19, 2017 (Law Enforcement Only).” Ex. 2 at 2.

36. As to Sean Kealiher, ODOJ stated that the withheld records “pertain to the following PPB bulletins”:

- 10/14/19 Criminal Intelligence Unit Situational Awareness Bulletin (LES)
- 10/15/19 Criminal Intelligence Unit Special Events Calendar (FOUO)
- 9/16/21, 9/20/21, 9/21/21, 9/22/21, 9/23/21, 9/27/21, 9/28/21, 10/5/21, 10/6/21, 10/7/21, 10/11/21 Criminal Intelligence Unit Protest & Significant Event Information Briefs (all marked FOUO).

Ex. 2 at 2.

37. ODOJ did not provide a similar log for the nearly 2000 additional records it had apparently withheld under the Third Agency Rule. In fact, apart from its earlier predictions based on small samples of the responsive records, ODOJ never actually stated that it had ultimately determined that every record it withheld was subject to exemption. Petitioners were left to guess the basis for ODOJ’s withholding of records not included in its various partial productions.

⁸ In August 2026, ODOJ produced a few additional responsive documents in its custody that it located during its review of a separate request from the ACLU of Oregon.

38. ODOJ completed its response without ever providing a written statement disclaiming custodianship of the requested records. *See* ORS 192.329(2). Instead, it either provided responsive records or withheld them, confirming its status as a custodian within the meaning of ORS 192.311(2)(b).

Follow-Up Request for Records

39. On May 22, 2026, ACLU of Oregon submitted a supplemental request to better understand the role the Third Agency Rule had played in ODOJ's decisions to withhold records responsive to the December 12, 2024 request. Ex. 3 at 1-3. Only then did ODOJ produce logs showing it had withheld nearly 2,000 records (attached as Exhibit 4) "pursuant to" that rule. Ex. 3 at 6.

40. ODOJ also explained how it made its Third Agency Rule determinations: based on "instructions" made by the originating agency at the time of dissemination, usually on the "products" themselves. Ex. 3 at 2. In other words, ODOJ relied on pre-existing labels on the records like "For Official Use Only" or "Law Enforcement Sensitive." *See* Ex. 3 at 6.

41. ODOJ indicated it had not reached out to any originating agency to inquire about potential release of the records based on Don't Shoot PDX and ACLU of Oregon's request. Ex. 3 at 6.

II. Grounds for Review

42. Petitioners seek this office's review of ODOJ's reliance on the Third Agency Rule to withhold nearly 2000 records responsive to its December 12, 2024 request. The burden is on the agency to sustain each withholding. ORS 192.411.

ODOJ Improperly Relies on its "Third Agency Rule" to Withhold Public Records.

43. The Oregon Public Records Law makes clear that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505 [listing exemptions from disclosure]." ORS 192.420(1). Under the statutory scheme, "disclosure is the rule," and exemptions are narrowly construed. *Guard Publishing Co. v. Lane County School Dist.*, 310 Or. 32, 37, 791 P.2d 854 (1990).

44. Here, ODOJ relied on the Third Agency Rule as the basis for withholding responsive records. Ex. 2 at 16-17; Ex. 3 at 6. But ODOJ's own rule cannot supply it with the authority to withhold public records. That authority can come only from an express statutory exemption.

45. "A public body must adhere strictly to the requirements of the [public records] statutes." *Guard Publishing*, 310 Or. at 39, 791 P.2d 854. It "may not exempt itself from its responsibilities under the Inspection of Public Records law by adopting a policy that seeks to deprive citizens of their right under the law to inspect public records." *Id.*

46. ODOJ's blanket rule is inconsistent with Oregon law and, therefore, outside the scope of ODOJ rulemaking authority. See *Smith v. Dep't of Corr.*, 369 P.3d 1213, 1215 (Or. Ct. App. 2016) ("[A] rule is deemed to exceed its statutory authority not only if it exceeds the express or implied authority of the statutes that the rule purports to implement, but also if the rule 'contravene[s] some other applicable statute.'" (quoting *Planned Parenthood v. Dep't of Human Resources*, 297 Or. 562, 574, 687 P.2d 785 (1984))).

47. Here, OAR 137-090-0040 purports to authorize ODOJ to categorically withhold records, recognizing only one exception: where ODOJ has the originating agency's consent for disclosure—which the agency seemingly does not require itself to seek out Or. Admin. Code §137-090-0040(2) ("Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned."). That is not an exemption scheme authorized in statute. Because ODOJ's blanket rule is not "within the range of discretion allowed by the ... policy of the [public records] statutes," it exceeds its statutory authority. *Planned Parenthood*, 297 Or. at 574, 687 P.2d 785.

48. The Rule's defiance of the Public Records Law is explicit: it states that ODOJ will only comply with that law "to the degree the materials requested are not classified according to defined restrictions on dissemination." Or. Admin. Code §137-090-0040(1).

49. The Rule further makes clear that the originating agency's decision on restriction "shall not be contested" by ODOJ. *Id.* Again, that violates the statute: a third-party agency's unilateral decision about what should be disclosed to the public is nowhere listed in the Public Records Law's recognized exemptions.

50. Indeed, ODOJ's practice suggests the rule does not even require that ODOJ seek the originating agency's determination that (1) "the [record] may be released *to the requestor*" (emphasis added) or (2) "the requestor should be referred to that agency for disposition of the case." Or. Admin. Code §137-090-0040(1). Neither happened here. ODOJ confirmed that it never asked any of the disseminating agencies to consider whether documents could be released in connection with Petitioners' request. Ex. 3 at 6. Nor did ODOJ ever identify or refer Petitioners to the originating agencies. In fact, other than the 29 withheld PPB Bulletins, Petitioners only learned anything about the identity of those agencies as a result of its separate records request seeking more information about ODOJ's opaque withholdings. Even then, ODOJ disclosed only those agencies' abbreviated titles. Ex. 4.

51. ODOJ instead purported to rely on the Third Agency Rule to withhold nearly 2000 records outright. According to ODOJ, if the "information [was] reported by other law enforcement agencies," then "the Fusion Center is required to keep [it] confidential." Ex. 2 at 17.

52. Petitioners challenge ODOJ's reliance on the Third Agency Rule to withhold responsive records in its custody.

ODOJ Must Sustain a Statutory Exemption for Each Withholding.

53. ODOJ never cited a statutory basis for its ultimate withholding of nearly 2000 “third agency” records,⁹ even though it was required to do so under ORS 192.329(2).

54. To the extent ODOJ’s position is that ORS 192.355(4) authorized the withholdings (the exemption it suggested in March 2025 it “anticipated” would “likely” apply based on its review of a small sample), it must show that all the information it seeks to withhold meets the elements of that exemption. If only portions of a record are exempt, the agency must disclose any reasonably segregable non-exempt material.

55. ODOJ’s stated position that OTFC, per agency rule, cannot disclose information “reported by other law enforcement agencies”—or even that it cannot disclose such information if it came to OTFC with some kind of dissemination restriction—does not square with the statute. A public body’s “blanket policy of non-disclosure is antithetical to the legislative intent reflected in the Inspection of Public Records Law,” and an agency cannot “exempt records from disclosure simply by promising the contributor confidentiality.” *Guard*, 310 Or. at 39. Even assuming the disputed records were, as a factual matter, “submitted in confidence,” the exemption has four additional prongs that must be satisfied for any such information to be lawfully withheld.

56. ODOJ must show, “on an individualized, case-by-case basis,” *Hood Tech. Corp. v. Oregon Occupational Safety & Health Div.*, 168 Or. App. 293, 304-05, 7 P.3d 564 (2000) (quoting *Guard*, 310 Or. at 39), that that the information was (1) submitted in confidence (2) not otherwise required by law to be submitted; that (3) such information should reasonably be considered confidential, (4) the public body has obliged itself in good faith not to disclose the information, and (5) the public interest would suffer by the disclosure. Or. Rev. Stat. Ann. § 192.355. An administrative policy, document marking, or prior instruction does not eliminate the need for that statutory showing.

57. Here, ODOJ cannot meet that burden at least because disclosure of records regarding OTFC’s practices and information sharing about community organizations, activists and First Amendment activities like protest strongly *serves* the public interest. Indeed, ODOJ properly recognized as much when it granted Petitioners a reduced fee in processing the request and indicated to the ACLU of Oregon that there were thousands of records of “interest[]” being withheld. Ex. 2 at 19.

58. Oregon’s public records law recognizes a fundamental public interest in understanding how government business is conducted. *Am. Civil Liberties Union of Or., Inc. v. City of Eugene*, 360 Or. 269, 294–99, 380 P.3d 281 (2016). “The public interest in the transparency of government operations is particularly significant when it comes to the operation of [law enforcement].” *Id.* at 298 (discussing police departments). ODOJ suggests that secrecy is necessary to the public interest in a functional fusion center. But the Oregon Supreme Court has recognized the opposite principle: that transparency enables the public to “trust that officers are using their authority legitimately,” and that given

⁹ It did so only for the 29 withheld PPB documents identified on June 2, 2026.

officers’ “immense power,” such public trust is essential “for our system of justice to work.” *Id.* at 297-98. “It is important for the public to know when [law enforcement officers] overstep; it is important for the public to know when they do not.” *Id.* at 298 (discussing police officers).

59. Here, Petitioners seek records concerning a surveillance program with ambiguous operational authority,¹⁰ a scope of powers undefined and unregulated by any independent body, opaque entanglement with federal law enforcement, and a documented history of abuse. Petitioners’ request has the public purpose of seeking to illuminate OTFC’s access to private information about individuals and groups not suspected of criminal activity and the degree to which it is monitoring constitutionally protected activities and civil liberties, particularly of communities of color.

60. Oregon law specifically prohibits law enforcement from collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information “directly relates to an investigation of criminal activities,” and there are “reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.” ORS 181A.250. The requested records will aid the public understanding of OTFC’s compliance with state law, and the degree to which, whatever the center’s benign intent, in practice it “may have allowed for ... surveillance to go where it shouldn’t have gone.”¹¹

61. It is not far-fetched for the public to be concerned about fusion centers and participating agencies unlawfully surveilling Black activists and others engaged in protected expression. State, local, and federal law enforcement in Oregon and nationwide have a long, documented history of doing so. Indeed, ORS 181A.250 was passed in the late eighties after revelations that PPB had been maintaining secret files for decades on innocent people and political organizations, including the ACLU of Oregon—around the same time Congressional investigations revealed that the FBI had engaged in extensive surveillance of civil rights activists and Black leaders, including Martin Luther King, Jr., that it labeled subversive (part of its now-infamous Cointelpro program).¹² But federal spying on movements against structural racism did not end with Cointelpro. During the first Trump administration, a leaked report showed that the FBI’s counterterrorism unit had defined “Black Identity Extremists” as a specious security threat and engaged in widespread

¹⁰ *Farrell-Smith v. Or. Dep’t of Justice*, 354 Or. App. 24 (2026), <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/43119/rec/1> (reviving challenge alleging that at least some of the fusion center’s operations exceed ODOJ’s statutory authority).

¹¹ Shaanth Nanguneri, *Oregon Lawmaker Calls for Review of State Anti-Terror Center Cases Amid Free Speech Concerns*, Oregon Capital Chronicle (Sept. 11, 2026), <https://oregoncapitalchronicle.com/2026/09/11/oregon-lawmaker-calls-for-review-of-state-anti-terror-center-cases-amid-free-speech-concerns/>

¹² Briefing Paper, ACLU of Oregon (2002), https://www.aclu-or.org/app/uploads/drupal/sites/default/files/181575_Briefing_Paper_02.pdf?fbclid=IwAR3mdsa0WeeE273OI0DCm6HAmCJaSsAqiEvO15GqOTzUQeiLj_0DtidmdsA

surveillance of Black Lives Matter activists.¹³ And notwithstanding ORS 181A250, local law enforcement in Oregon continue to unlawfully target racial and social justice movements and treat protest itself as a threat.¹⁴

62. OTFC is no exception to this legacy of abuse. After one of its analysts was caught monitoring social media accounts using the hashtag BlackLivesMatter, an independent report concluded that the center as a whole was operating with insufficient internal checks to prevent racial profiling.¹⁵

63. Oregonians have a right to understand the degree to which OTFC is perpetuating the unlawful targeting of communities of color and individuals and groups engaged in dissent that has been the throughline of government surveillance, past and present, at all levels of government.

64. In contrast to the significant public interest in transparency, OTFC cannot show categorically that disclosure would impede any government function when it admittedly neither made its own individualized determinations based on the content of the records nor even inquired with the originating agencies whether the records could be released.

65. At a minimum, even if it redacts documents, ODOJ must disclose, unless it sustains a specific basis to withhold it, reasonably segregable information in the records sufficient to permit the public to understand each withholding, such as the record date, title or description, document type, originating agency, ODOJ/OTFC recipient or unit, and dissemination restriction.

¹³ *'Discredit, Disrupt, And Destroy': FBI Records Acquired By The Library Reveal Violent Surveillance of Black Leaders, Civil Rights Organizations*, <https://www.lib.berkeley.edu/about/news/fbi>; Mike German, *The FBI Targets a New Generation of Black Activists*, Brennan Center for Justice (June 26, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/fbi-targets-new-generation-black-activists>.

¹⁴ Troy Brynson, *Oregon Appeals Court Upholds Limits on Police Video Recording of Protests*, OPB (Mar. 12, 2025), <https://www.opb.org/article/2025/03/12/oregon-appeals-court-upholds-ruling-prohibiting-police-from-video-recording-protests/>; *Records Show Illegal Local and Federal Police Surveillance in Southern Oregon*, Information for Public Use (last visited Oct. 21, 2026), <https://info4publicuse.org/2023/11/illegal-spying-medford-police/>

¹⁵ *Report: Oregon DOJ Needs Training to Prevent Profiling*, Associated Press (Apr. 12, 2016), <https://www.statesmanjournal.com/story/news/politics/2016/04/12/report-oregon-doj-needs-training-prevent-profiling/82943904/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z114030e009175v114030d--40--b--40--&gca-ft=201&gca-ds=sophi>. As noted above, OTFC also has a history of improperly monitoring environmental activists. Will Parrish & Jason Wilson, *Revealed: Anti-Terror Center Helped Police Track Environmental Activists*, The Guardian (Oct. 2, 2019), <https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-anti-terror-unit>.

66. Both Don't Shoot PDX and the ACLU of Oregon are nonprofit, public interest organizations with missions that include educating the public about their rights to privacy and to protest, as well as barriers to an inclusive and free democracy.

67. As a civic and arts education organization, Don't Shoot PDX regularly uses public records as educational assets to build dialogue through a historical context in order to activate and sustain social change. For example, its Liberated Archives for Black Lives program emphasizes the importance of teaching, documenting, and preserving Black history, illustrating Oregon's record of discriminatory lawmaking and law enforcement through print material, historical documents, archival footage, and photography. The program has been presented in partnership with libraries, universities, and museums across the country through mediums including art exhibits, panel discussions and plenaries, and community preservation workshops. The organization is also home to the Black Memory Lab, a curated reference library that features a rare book collection and fully equipped processing center dedicated to the care and preservation of personal and communal histories. The Lab seeks to ensure that notwithstanding attempts to ban or distort Black history, generations of stories, artifacts, and legacies are not lost or silenced. Don't Shoot PDX's work uses archival materials, like government public records, to create the opportunity to record a community counter-narrative that celebrates Black history, art, and cultural memory.

68. The ACLU of Oregon frequently disseminates information to the public about government and law enforcement activities through its website, social media, legislative advocacy, and public engagement activities. It regularly communicates with over 52,000 members and donor-supporters statewide through the mail, e-mail, social media, its website (www.aclu-or.org), and other online forums. It is the state affiliate of the national American Civil Liberties Union, which also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, including by making available information obtained through state and federal public records requests as well as explanatory materials that collect, summarize, and analyze those records.

69. Both Don't Shoot PDX and the ACLU of Oregon have the ability and commitment to ensure that what they learn through this request is shared for the public's benefit.

70. OTFC describes itself as an "information clearinghouse" for the use of "Oregon law enforcement, public safety and public and private sector communities."¹⁶ A major programmatic focus is the "development and exchange of information," premised on the notion that "combining intelligence resources will allow greater dissemination of intelligence products and . . . enhance the ability to predict, prevent, and respond to terrorist threats and related criminal activity within the state."¹⁷ In other words, OTFC's stated function is to traffic information, much of it received from other agencies. Permitting

¹⁶ Oregon TITAN Fusion Center, ODOJ, <https://www.doj.state.or.us/oregon-department-of-justice/divisions/criminal-justice/ortitan/>

¹⁷ OTFC Privacy Policy, *available at* <https://digitalcollections.library.oregon.gov/nodes/view/192000>.

OTFC to invoke a categorical Third Agency Rule to deny the public's right to inspect any records it did not originate will necessarily maintain a near complete veil of secrecy over its entire operations. Such a shrouded agency operation flies in the face of the transparent government that the people of Oregon and their elected officials have mandated in the Oregon Public Records Law. The cost, as the Oregon Supreme Court rightfully recognized, is the critical public trust needed for Oregon's justice system to work effectively.

III. Requested Order

Petitioners respectfully request that the Attorney General issue an order:

- A. Determining that ODOJ may not rely on its Third Agency Rule, prior dissemination markings, or any other categorical basis to withhold OTFC public records;
- B. Requiring disclosure of the disputed records; and
- C. Granting such further relief as is necessary to enforce Petitioners' rights under the Oregon Public Records Law.

Dated: October 21, 2026

Respectfully submitted,



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Encl.:

- Exhibit 1** — December 12, 2024 Records Request
- Exhibit 2** — Correspondence Re: December 12, 2024 Records Request
- Exhibit 3** — May 22, 2026 Records Request & Related Correspondence
- Exhibit 4** — ODOJ Logs of Records Withheld Under Third Agency Rule