IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

DONT SHOOT PORTLAND and AMERICAN CIVIL LIBERTIES UNION OF OREGON, INC.; Plaintiffs, v. OREGON DEPARTMENT OF JUSTICE, Defendant.	Case No. 26CV61831 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER OREGON PUBLIC RECORDS LAW** NOT SUBJECT TO MANDATORY ARBITRATION FEE AUTHORITY: ORS 21.135(1), (2)

NATURE OF ACTION

1.

This is an action under the Oregon Public Records Law challenging the Oregon Department of Justice ("ODOJ")'s refusal to disclose public records relating to the Oregon TITAN Fusion Center ("OTFC"), as well as the validity of ODOJ's administratively created blanket exemption to the public records law that it calls the "Third Agency Rule," which the agency relied on to withhold responsive records in its custody. Plaintiffs petitioned the Attorney General for a disclosure order on October 21, 2026, and received no response.

2.

OTFC is one node in a nationwide network of approximately 80 federally resourced and federally encouraged mass domestic intelligence operations. OTFC, which is housed in the

ODOJ's Criminal Intelligence Unit, describes itself as an "information clearinghouse supported by multiple agencies," that purports to "collect, gather, analyzes, and disseminates" information "products" about Oregonians with a broad swath of partners, including federal, state, tribal, and local law enforcement agencies, public sector partners, and even private companies.

3.

OTFC, like its counterparts in other states, contributes to these mass surveillance efforts largely in secret. The public has little information about how fusion centers like OTFC work and has been repeatedly rebuffed when attempting to seek public records from the agency. In fact, the Oregon Court of Appeals recently remarked at the apparent lack of dispute ODOJ raised when a group of plaintiffs alleged that a private company encouraged Oregon law enforcement to channel information about environmental justice activists through OTFC specifically to avoid public records requirements. *Farrell-Smith v. Or. Dep't of Justice*, 354 Or. App. 24, 29 n.4 (2026). In OTFC's response to the ACLU of Oregon's and Don't Shoot Portland's request, OTFC explained its view that secrecy is in the public interest. *But see Am. Civil Liberties Union of Or., Inc. v. City of Eugene,* 360 Or. 269, 298, 380 P.3d 281 (2016) ("[T]he public interest in the transparency of government operations is particularly significant when it comes to the operation of [law enforcement].").

4.

Despite purporting to focus on crime, OTFC has drawn public scrutiny for repeatedly being caught targeting constitutionally protected activities. In 2015, an OTFC employee was exposed for using social media monitoring software to pull information about people using the hashtag #BlackLivesMatter, sweeping in posts from his own colleague who led the ODOJ's civil rights division. Last week, the Oregon Court of Appeals revived a challenge by a group of environmental

justice advocates to OTFC's operation, permitting claims to move forward that the fusion center "surveils and investigates activists and political actors based on their political and social views and without any nexus to criminal activity, and that it does so absent statutory authority or executive mandate." *Farrell-Smith*, 354 Or. App. at 26.

5.

Against a backdrop of grave public concern with OTFC, Plaintiffs Don't Shoot Portland and ACLU of Oregon—two Oregon nonprofits whose missions include advocating for racial justice, police accountability, and the right to protest—requested public records from ODOJ in December 2024 to shed light on the center's practices, particularly in response to the Black Lives Matter movement and the racial justice protests that occurred after a police officer murdered George Floyd in 2020.

6.

Under the Oregon Public Records Law, members of the public have a right to inspect any public record of a public body in this state except as expressly provided in the statute. ORS 192.314. In the words of the Attorney General, "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."[1]

[1] 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/

7.

Yet after months of delay and thousands of dollars in charges, ODOJ improperly relied on its Third Agency Rule to withhold from its response nearly 2000 records in its custody—largely the ones it said Plaintiffs would be "most interested in."

8.

The Third Agency Rule is not traceable to any statutory exemption in the Public Records Law. It is identified in neither the Oregon Attorney General's long-published public records manual[2] nor its public catalogue of exemptions to disclosure recognized in Oregon law.[3] Instead, the Third Agency Rule is set forth only in an ODOJ administrative regulation, OAR 137-090-0040.

9.

It purports to establish a blanket rule 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. OAR 137-090-0040(2). The rule provides that ODOJ will not second-guess the originating agency's determination. *Id.* § (3). ODOJ characterized the Third Agency Rule as meaning that records are categorically "withheld as exempt" if "they consist of information reported by other law enforcement agencies, which the Fusion Center is required to keep confidential."

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[2] *Id.*

[3] *See* ORS 192.340 (requiring the Attorney General to maintain and regularly update a catalog of exemptions from the disclosure requirements of ORS 192.311 to 192.478 that is "as comprehensive as reasonably possible"); Public Records Exemptions, ODOJ, https://justice.oregon.gov/PublicRecordsExemptions/.

10.

An executive agency "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." *Guard Publishing Co. v. Lane County School Dist.*, 310 Or. 32, 39, 791 P.2d 854 (1990). ODOJ's own rule cannot supply it with the authority to withhold public records; that authority can come only from an express statutory exemption.

11.

And nothing in the Public Records Law authorizes ODOJ to set its own blanket "rule" exempting disclosure. On the contrary, a public body's "blanket policy of non-disclosure is antithetical to the legislative intent reflected in the [statutes]." *Id.*

12.

Plaintiffs challenge ODOJ's Third Agency Rule as inconsistent with the Public Records Law and, therefore, outside the scope of ODOJ rulemaking authority.

13.

Plaintiffs specifically challenge ODOJ's continued withholding of 29 responsive records in its custody under the purported authority of the Third Agency Rule and/or ORS 192.355(4), a statutory exemption that covers certain information submitted in confidence to a public agency. The 29 disputed records include at least eleven "criminal intelligence unit protest and significant event information briefs," a "criminal intelligence unit situational awareness bulletin," a "criminal intelligence unit special events calendar" and at least three "criminal intelligence unit bulletins" issued by the Portland Police Bureau ("PPB") that name Don't Shoot Portland (sometimes referred to as Don't Shoot PDX), and Sean Kealiher, one of the founding organizers of Don't Shoot Portland's community action plan, who was killed in 2019 at age twenty-three. The existence and

limited description of the records suggest OTFC and participating law enforcement agencies may be improperly surveilling people and groups engaged in protected political and non-criminal activities.

14.

The cited exemption, 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." The burden is on the agency to sustain each withholding.

15.

In its response, ODOJ asserted that "the public interest in operating a functional fusion center would suffer if it violated the Third Agency Rule and disclosed the reports." But that blanket statement cannot fulfill ODOJ's statutory burden. Not only does it rely on the dangerous premise that a "functional fusion center" is one that keeps government secrets, *see Farrell-Smith*, 354 Or App at 43 n.6 (noting the troubling "opacity of [OTFC's] activities resulting from its collaborative operations"), but it flouts the record-by-record determination required under the Public Records Law.

16.

As the Oregon Supreme Court has recognized, law enforcement's immense power means that public "trust that officers are using their authority legitimately" is essential "for our system of justice to work." *ACLU of Oregon v. City of Eugene*, 360 Or. at 297-98. Transparency regarding

OTFC's operations and information-sharing implicating community organizations, activists, and constitutionally protected expression strongly *serves* the public interest.

17.

Plaintiffs respectfully ask this Court to declare that ODOJ may not rely on the Third Agency Rule to the extent it conflicts with the public records statutes; to find that ODOJ cannot meet its statutory burden to sustain any claimed exemption here; and to order the disclosure of the disputed records.

PARTIES

18.

Plaintiff Don't Shoot Portland is an Oregon nonprofit arts and education organization that promotes social justice and civic participation. It provides essential resources, legal advocacy, and more to support communities that have been systemically marginalized and advocate for community members facing racism and discrimination. Don't Shoot Portland hosts dialogues, community forums, and workshops focusing on history, archiving, and social culture. The organization centers art as a communicative tool to facilitate discussions about race in America while providing educational assets to those most affected by discrimination in public policy. It operates the Black Memory and Preservation Lab, a living archive dedicated to preserving and uplifting Black history, art, and cultural memory, and Black Gallery PDX, a space where art and activism intersect, using art for social change to promote self-determination and empowerment. Don't Shoot Portland jointly submitted the at-issue public-records request, which referred to the organization as "Don't Shoot PDX." The organization is named in the disputed records ODOJ continues to withhold.

19.

Plaintiff American Civil Liberties Union of Oregon, Inc. ("ACLU of Oregon") is an Oregon nonprofit with over 52,000 members and donor-supporters statewide. ACLU of Oregon envisions a more just, equitable, and caring democracy in Oregon. It works in partnership and collaboration with communities and organizations across the state to respond to civil liberties and civil rights issues, including by educating and dispelling misinformation, advocating at all levels of government, and fighting in courts to protect and advance Oregonians' democracy, civil liberties and civil rights. ACLU of Oregon jointly submitted the at-issue public-records request and seeks inspection and copies of the records ODOJ continues to withhold.

20.

Defendant Oregon Department of Justice is a state agency and public body within the meaning of ORS 192.311(4) & (6) and houses OTFC within its Criminal Justice Division. ODOJ is the custodian of the disputed records within the meaning of ORS 192.311(2). It continues to withhold records responsive to Plaintiffs' December 12, 2024, request.

JURISDICTION AND VENUE

21.

This Court has subject matter jurisdiction under ORS 28.010, 192.411, 192.418, 192.431, 183.400(2), and *Hay v. Or. Dep't of Transp.*, 301 Or. 129, 137-38, 719 P.2d 860, 866-67 (1986).

22.

Plaintiffs petitioned the Attorney General under ORS 192.411 on October 21, 2026, to review ODOJ's reliance on the Third Agency Rule and withholding of nearly 2000 responsive records in its custody, including the records disputed herein. The Attorney General effectively denied the petition by failing to issue an order within seven days of receiving it. ORS 192.418(1).

23.

Venue is proper in Marion County under ORS 192.411(2).

FACT BACKGROUND

24.

OTFC is a secretive, domestic surveillance program that is housed in ODOJ's Criminal Intelligence Unit. It is one of a network of 80 state-run, multi-agency entities propped up across the country following the Sept. 11 terrorist attacks.

25.

The public has little information about how fusion centers like OTFC work.

26.

According to OTFC, "a fusion center is a collaborative effort *of two or more agencies*" (emphasis added).

27.

OTFC describes itself as an "information clearinghouse supported by multiple agencies." And while OTFC is staffed by about five full-time employee analysts from ODOJ, it is also supported by what it describes as "[k]ey partner agencies *in* the OTFC" (emphasis added), including the Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Transportation Security Administration (TSA), Bureau of Land Management (BLM), and local law enforcement. Participating agencies assign personnel to work at OTFC.

28.

Together, the multi-agency center supposedly "collect[s], gather[s], analyz[es], and disseminat[es]" information "products" about Oregonians.

29.

OTFC shares information from and with federal, state, tribal, and local law enforcement agencies, public sector partners, and even private companies.

30.

At least some of the withheld so-called Third Agency records originated with agencies that operate "in" OTFC.

31.

OTFC also manages the Terrorism Liaison Officer program, which trains a primary point of contact in a participating law enforcement agency (or public or private sector group), who forwards information on indicators and warnings of "suspicious activity or events" to OTFC. While the program initially targeted law enforcement, it has been expanded to "highly encourage" participation by county and city emergency management, fire, and other public safety personnel, as well as private or public personnel.

32.

PPB's Criminal Intelligence Unit participates in OTFC's TLO program.

33.

It is unclear from ODOJ's response to Plaintiffs' records request whether any of the withheld so-called Third Agency records were actually produced by OTFC TLOs housed in other agencies.

34.

While fusion centers purport to keep people safe from terrorist and criminal threats by making information sharing more effective, a bipartisan Congressional investigation revealed that they had failed to provide significant useful information. Instead, fusion centers had "forwarded

intelligence of uneven quality—oftentimes shoddy, rarely timely, sometimes endangering citizens' civil liberties and Privacy Act protections, and more often than not unrelated to terrorism."

35.

Indeed, fusion centers have a history of wrongly targeting and monitoring activists and communities of color, associating protest and advocacy with "terrorism" without evidence of wrongdoing. Such abuse is made more likely by the lack of oversight and transparency that defines the fusion center network.

36.

OTFC is no exception. Its surveillance practices have been the source of significant public concern in Oregon. OTFC has already been sued for monitoring several environmental and indigenous justice groups and activists who protested a proposed fracked-natural-gas pipeline terminal in Coos Bay (in collaboration with the pipeline company), and for monitoring social media accounts for the hashtag #BlackLivesMatter, including of ODOJ's own Civil Rights Division director.

37.

Oregon law forbids 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 law 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).

38.

Moreover, the Oregon Court of Appeals recently allowed a lawsuit to move forward that alleges OTFC's operations are *ultra vires*, noting that the powers the fusion center claims seem "elephantine" in comparison to what the laws it cites to justify its operations actually authorize. *Farrell-Smith*, 354 Or. App. at 42.

39.

In the absence of clear legislative or executive authorization, OTFC has defined its own power and practices, which remain largely opaque.

40.

OTFC has relied on its collaborative structure and information sharing to avoid public records requirements.

41.

Significant public mistrust regarding OTFC has spurred calls for legislative reform and investigation by lawmakers.

42.

Representative Paul Evans, who co-chairs a public safety legislative subcommittee, serves on the House Emergency Management and Veterans Committee, and has been a legislative appointee of the Oregon Homeland Security Council since 2018 has called it "absolutely vital" for the legislature to review OTFC's work. Representative Evans expressed concern about whether OTFC was functioning as a "surveillance system on people who are legally going about their lives," and whether funding threats from the federal administration had "allowed for conversations

and surveillance to go where it shouldn't have gone." Lawmakers in California pushed for a similar audit of that state's fusion center earlier this year.

43.

The public has a significant interest in understanding whether OTFCs' operations may have transgressed the guardrails of Oregonians' statutory and constitutional protections and whether OTFC's partnership with federal law enforcement and intelligence agencies may have compromised Oregonians' civil liberties.

44.

Don't Shoot Portland and ACLU of Oregon are two Oregon nonprofits dedicated to advocating for racial justice, police accountability, and the right to protest in our state. They jointly submitted the records request at issue in order to illuminate how OTFC works with other law enforcement agencies to monitor and surveil Oregonians engaged in lawful advocacy and protest, including for racial justice.

45.

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 Portland'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.

46.

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.

47.

The ACLU of Oregon's social media posts about this public records dispute since the filing of the petition to the Attorney General on October 21, 2026, surpassed 15,000 impressions in one week. Major news outlets reported on the petition, highlighting its significance in tandem with the separate litigation challenging OTFC's alleged *ultra vires* operations.

48.

Both Don't Shoot Portland 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.

PROCEDURAL HISTORY

December 12, 2024 Request

49.

On December 12, 2024, ACLU of Oregon and Don't Shoot Portland jointly 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 that apply to those practices.

50.

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, Teressa Raiford (founder of Don't Shoot Portland), and Sean Kealiher, a young activist and founding organizer of Don't Shoot Portland who was killed in 2019. Parts 3 and 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, Teressa Raiford, Sean Kealiher, and/or ACLU of Oregon. Part 6 sought records relating to procedures for correcting or expunging inaccurate OTFC information.

51.

ODOJ acknowledged receipt of the request on December 17, 2024.

52.

Following a meeting and further discussion about the scope of the request in January 2025, ODOJ produced its first partial response on March 25, 2025.

53.

In that initial partial response, ODOJ disclosed some records in response 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).

54.

ODOJ also stated that it anticipated that "many of the documents" of "most interest[]" to Plaintiffs 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 submi□ed to OTFC by another agency)."

55.

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."

56.

Plaintiffs agreed to narrow Requests 2 through 5. For requests 2 and 5, Plaintiffs limited the search terms to "Don't Shoot Portland," "Don't Shoot PDX," "Black Gallery PDX," "Teressa Raiford," "Sean Kealiher," and "ACLU of Oregon." For requests 3 and 4, Plaintiffs limited the

search terms to "Black identity extremist," "Black identity extremism movement," "domestic terrorism," and "environmental violent extremism."

57.

ODOJ reported that the narrowed terms returned 6,362 records, though ODOJ represented it would be producing "far fewer" than that after separating exempt material. 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."

58.

Plaintiffs 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.

59.

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.

60.

On September 19, 2025, ACLU of Oregon checked in again on the status of the request. ODOJ responded on September 23 that it was "almost done." On October 15, ODOJ reported that it would be making the production on October 20. But on that day, ODOJ said it was still working through the review and would only be making a partial response. It produced 100 pages.

61.

Weeks later, on November 13, 2025, ODOJ produced another "partial response." 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, 2026. But on that day, ODOJ indicated it needed until February 20.

62.

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

63.

On April 14, 2026, 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.

64.

On April 27 and May 7, 2026, 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." The records did not indicate which claimed exemptions applied to which redactions.

65.

On June 2, 2026, ODOJ completed its review of the records and made a final partial production.[4] 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 PPB. Three reference "Don't Shoot Portland," 1 references "Don't Shoot PDX," and 25 reference "Sean Kealiher."

[4] 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.

66.

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).

67.

ODOJ described the withheld record referencing "Don't Shoot PDX" as "PPB Crime Analyst Unit Situation Report dated May 19, 2017 (Law Enforcement Only)."

68.

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).

69.

ODOJ did not provide a similar log for the nearly 2,000 additional records Plaintiffs later learned it had 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.

70.

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 on the basis of an asserted exemption.

Follow-Up Request for Records

71.

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. Only then did ODOJ produce logs showing it had withheld nearly 2,000 records "pursuant to" that rule.

72.

ODOJ made its Third Agency Rule determinations based on "instructions" made by the originating agency at the time of dissemination, usually on the "products" themselves. In other words, ODOJ relied on pre-existing labels on the records like "For Official Use Only" or "Law Enforcement Sensitive."

73.

ODOJ did not reach out to any originating agency to inquire about potential release of the records based on Don't Shoot Portland and ACLU of Oregon's request.

74.

ODOJ did not make its own independent determination that the contents of each withheld record met the requirements of any statutory exemption to the right to inspect public records.

Petition to the Attorney General

75.

On October 21, 2026, Plaintiffs petitioned the Attorney General for review of ODOJ's denial of their right to inspect public records.

76.

The Attorney General failed to issue any order or respond in any way within 7 days of receiving the petition, effectively denying Plaintiffs' appeal on October 28, 2026.

77.

Plaintiffs file this lawsuit seeking declaratory and injunctive relief to challenge the legality of ODOJ's continuing withholdings.

FIRST CLAIM FOR RELIEF

Violation of Right to Inspect Public Records

Oregon Public Records Law

78.

All paragraphs of this Complaint are incorporated herein by reference.

79.

"Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.338, 192.345 and 192.355 [listing exemptions from disclosure]." ORS 192.314(1). Exemptions are narrowly construed.

80.

The Third Agency Rule set forth in OAR 137-090-0040 cannot supply ODOJ with the authority to withhold public records. That authority can come only from an express statutory exemption. An executive agency's blanket rule of nondisclosure of responsive records in its custody absent an originating agency's consent is not an exemption scheme authorized in statute.

Guard Publishing, 310 Or. at 39 (a public agency "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").

81.

Plaintiffs submitted a lawful request for public records pursuant to ORS 192.314 on December 12, 2024. ODOJ completed its response to the request on June 2, 2026. The records responsive to Plaintiffs' request that ODOJ continues to withhold are public records in its custody.

82.

In correspondence with Plaintiffs, ODOJ predicted based on small samples that the request would cover exempt records. But it ultimately withheld almost 2,000 responsive records in its custody without citing the exemption it thought authorized their nondisclosure.

83.

ODOJ withheld those records pursuant to the Third Agency Rule, not any statutory exemption.

84.

ODOJ made its withholding determinations pursuant to the Third Agency Rule based on labels the originating agencies had affixed to the records when OTFC received them—like "For Official Use Only" or "Law Enforcement Sensitive"—as a proxy for the originating agency's lack of consent. ODOJ did not reach out to those agencies to inquire about their consent to release the records in response to Plaintiffs' request, did not contest the pre-dissemination markings, and did not otherwise make its own determinations that each withheld record met the requirements of a statutory exemption to the Public Records Law.

85.

Many of the records ODOJ continues to withhold under the Third Agency Rule originated from "partner agencies" in the OTFC.

86.

For the 29 PPB records named in ODOJ's June 2, 2026, response that ODOJ continues to withhold, ODOJ cited the Third Agency Rule and/or ORS 192.355(4) as the applicable exemptions. ODOJ has the burden to sustain its withholdings.

87.

To meet the requirements of ORS 192.355(4), ODOJ must show on an individualized, case-by-case basis that information it continues to withhold (1) was submitted to a public agency in confidence; (2) was not otherwise required by law to be submitted; and (3) should reasonably be considered confidential; that (4) the public body has obliged itself in good faith not to disclose the information; and that (5) the public interest would suffer by the disclosure. An administrative policy, document marking, or prior instruction does not eliminate the need for the individualized statutory showing.

88.

PPB participates in OTFC's TLO program and, on information and belief, is a partner agency within OTFC. ODOJ must show the records were submitted "to" OTFC, and not by an OTFC agency or agent.

89.

The 29 PPB records should not reasonably be considered confidential.

90.

The public interest would not suffer from the disclosure of the 29 PPB records, all of which name Plaintiff Don't Shoot Portland or one of its founding organizers. On the contrary, 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.

91.

There is a fundamental public interest in understanding how government business is conducted. That public interest is especially significant when it comes to the operation of law enforcement.

92.

It is important for the public to know when law enforcement officers overstep, just as it is important for the public to know when they do not. Transparency facilitates the public trust that is essential "for our system of justice to work." *ACLU of Oregon* v. *Eugene*, 360 Or. at 298.

93.

Oregonians have been vocal about their concern with warrantless police surveillance in particular in many contexts. For example, in 2025, Oregonians came out in droves to oppose a state bill that would have expanded police drone usage, submitted more than 1,000 testimonies against the proposal. And over the last year, Oregonians have expressed outrage at law enforcement's use of Flock's automated license plate readers to monitor drivers, with at least nine Oregon cities and counties ending their Flock contracts, turning off their cameras, or deinstalling the camera systems entirely.

94.

The public has reason to be concerned about the risk that OTFC and participating agencies have unlawfully surveilled 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. OTFC itself has garnered significant attention from the courts, lawmakers, journalists, and the public based on evidence that it has inappropriately used its resources to monitor and interfere with political advocacy.

95.

The existence and limited description of the 29 withheld PPB records naming Don't Shoot Portland and Sean Kealiher further suggest OTFC and participating law enforcement agencies have improperly surveilled people and groups engaged in protected political and non-criminal activities.

96.

For more than 10 years, Don't Shoot Portland has been a local leader in advocacy for racial justice. In 2019, a jury acquitted Teressa Raiford, its founder, after PPB arrested her for standing in the street while she was leading a protest marking the one-year anniversary of the police shooting of Michael Brown. The organization's activism and arts and education programming have been covered by news outlets in Oregon and beyond.

97.

Sean Kealiher's life and death have also been the subject of major news coverage, podcasts, and other public media in Oregon and nationwide.

98.

Oregon Public Broadcasting (OPB) retrieved records from PPB in 2022 through its own public records appeal that implied that police had slow-walked the investigation of Mr. Kealiher's 2019 killing. PPB arrested the prime suspect almost three years after the incident, following pressure from public records litigation with The Intercept and OPB.

99.

The responsive records ODOJ continues to withhold referencing Mr. Kealiher are from the week of his killing, on October 12, 2019, and from the months following The Intercept's and OBP's June 2021 public records requests.

100.

The public has a significant interest in disclosure of OTFC's purported "criminal intelligence" concerning Don't Shoot Portland and Mr. Kealiher. Past and ongoing lawsuits concerning the legality of OTFC's operations heighten the public interest in disclosure of the disputed records.

101.

ODOJ itself recognized some public interest in the disputed records when it granted Plaintiffs a reduced fee in processing the request and indicated to the ACLU of Oregon that there were thousands of records of "interest[]" being withheld.

102.

One of the withheld documents—the October 15, 2019, PPB Criminal Intelligence Unit Special Events Calendar referencing Sean Kealiher—is already available to the public on the ACLU of Oregon's website. ACLU of Oregon obtained the document through a separate public records request to PPB.

103.

PPB's release of the document, as well as the document's contents, also undermine ODOJ's other continuing withholdings. The document is more than seven years old, and it identifies a community event and memorial for Sean Kealiher scheduled for October 26, 2019. The calendar states that PPB had no known information at the time about planned criminal activity or counterdemonstration activity at the service.

104.

In contrast to the significant public interest in transparency and in the withheld PPB records in particular, 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. And there can be no harm to the public interest in the disclosure of the October 15, 2019, record, which is already publicly available.

105.

A fusion center that requires keeping public records secret to operate is not in the public interest.

106.

Treating third-agency origin as a sufficient basis for exemption would shield the very collaboration and information sharing the public seeks to understand.

107.

To enforce their rights under the Public Records Law, Plaintiffs respectfully seek declaratory and injunctive relief finding that ODOJ failed to comply with ORS 192.329(2)(a) & (b) by failing to cite exemptions for all records it withheld from its completed response; ordering

that ODOJ cannot rely on the Third Agency Rule, other agencies' preference for nondisclosure, or document sensitivity labels affixed by other agencies to withhold any record not exempt from disclosure under the Oregon Public Records law; and requiring ODOJ to release the 29 PPB records named in its June 2, 2026 email that the agency continues to withhold.

SECOND CLAIM FOR RELIEF

***Ultra Vires* Administrative Rule**

Uniform Declaratory Judgments Act, Administrative Procedure Act, Public Records Law

108.

All paragraphs of this Complaint are incorporated herein by reference.

109.

The parties' public records dispute places the validity of the Third Agency Rule at issue in this action.

110.

"[W]hen an administrative rule cannot be reconciled with a statute, it is the statute that controls." *State v. Newell*, 238 Or. App. 385, 392, 242 P.3d 709 (2010). 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." *Smith v. Dep't of Corr.*, 276 Or. App. 862, 864-65, 369 P.3d 1213 (2016) (quoting *Planned Parenthood v. Dep't of Human Resources*, 297 Or. 562, 574, 687 P.2d 785 (1984)).

111.

ODOJ's blanket rule is inconsistent with Oregon law and, therefore, outside the scope of ODOJ rulemaking authority.

112.

Here, OAR 137-090-0040 purports to authorize ODOJ to categorically withhold records requested under the Public Records Law, 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. OAR 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."). The Rule further makes clear that the originating agency's decision on restriction "shall not be contested" by ODOJ. *Id.* That is not an exemption scheme authorized in statute.

113.

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 Publishing*, 310 Or. at 39. Even assuming so-called Third Agency records are "submitted in confidence," the corresponding statutory exemption has four additional prongs that must be satisfied for any such information to be lawfully withheld.

114.

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." OAR 137-090-0040(1).

115.

Petitioners respectfully seek a declaration that OAR 137-090-0040 exceeds ODOJ's authority under the Oregon Public Records law to the extent it purports to authorize the categorical

denial of the right to inspect public records or to exempt records from disclosure based on conditions not recognized in the public records statutes.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

A. Order that ODOJ may not rely on OAR 137-090-0040, the Third Agency Rule, other agencies' preference for nondisclosure, or document sensitivity labels affixed by other agencies to withhold any record not exempt from disclosure under the Oregon Public Records Law;

B. Declare that OAR 137-090-0040 exceeds ODOJ's statutory authority to the extent it purports to authorize the denial of the right to inspect public records based on any condition not recognized in the public records statutes;

C. Declare that ODOJ failed to comply with ORS 192.329(2)(a) & (b) by failing to cite exemptions for all records it withheld from its completed response;

D. Declare that ODOJ's continuing withholding of the records and information at issue is unlawful;

E. Order ODOJ to produce all 29 PPB records named in its June 2, 2026, email;

F. Award Plaintiffs costs, disbursements, and reasonable attorney fees as authorized by ORS 192.431; and

G. Grant such other relief as the Court deems just and proper.

Date: October 29, 2026

Respectfully submitted,

s/ *Kelly Simon*

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