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May 25, 2004

Adam P. Schwend
Rose City Radio Corp.
0234 SW Bancroft
Portland, OR 97201-4237

Re: *Petition for Public Records Disclosure Order*:
Public Employees Retirement System Records

Dear Mr. Schwend:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 19, 2004, asks the Attorney General to direct the Public Employees Retirement System (PERS) to make available the "[a]mount of money Gov. Neil Goldschmidt receives from PERS yearly." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450.

You made your request to PERS Communications Officer David Crosley on May 19. Consistent with the contents of your petition, Mr. Crosley told us that he denied your request on that date. He also told us that he made the denial based on his belief that the requested information is exempt from disclosure under ORS 192.502(2). That statute exempts from disclosure:

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

The exemption is not intended for the benefit of the public body. Its purpose is to protect the privacy of individuals from unreasonable invasion. *Jordan v. MVD*, 308 Or 433, 440-42, 781 P2d 1203 (1989).

In 2002, we issued an order addressing whether a record containing PERS retirement benefit information identifiable to a particular individual is exempt from disclosure under ORS 192.502(2). Public Record Order November 15, 2002, Jones/Voykto (2002 Order). The information you requested from PERS, benefit amounts paid to an individual, is part of the "PERS benefit information" at issue in the 2002 Order. Thus, we turn to the analysis in that order in addressing your petition.[1]

The initial question to be answered under ORS 192.502(2) is whether an amount of money former Governor Goldschmidt may receive as PERS benefits is information of a personal nature. In the 2002 Order, we reached the conclusion that such benefit information is of a personal nature, stating: "It is clear to us that the benefit amount for [a] named retiree is information that both relates to a particular person and is sufficiently peculiar to private concerns to constitute information 'of a personal nature' for purposes of the personal privacy exemption." 2002 Order at 3. We reaffirm this conclusion in relation to your petition.

To be exempt under ORS 192.502(2), it must be the case that disclosure of the personal information in question "would constitute an unreasonable invasion of privacy." An invasion of privacy is unreasonable if "an ordinary reasonable person would deem [it] highly offensive." *Jordan*, 308 Or at 442. In the 2002 Order, we concluded that disclosure of retirement benefits identifiable to an individual would be an unreasonable invasion of privacy. We considered three issues in reaching this conclusion. First, disclosure of retirement benefit information would disclose personal information about an individual not involved in disclosure of other financial information, such as a current employee's salary, including, for example, the decision to receive benefits in a lump-sum payment. Second, disclosure of benefit payment information could make retirees the subject of uninvited inquiries from persons promoting investment vehicles or other items. Third, other provisions of Oregon law attest that an "ordinary reasonable person" would deem disclosure by an employer of a former employee's retirement benefits "highly offensive." 2002 Order at 3; *see* ORS 192.550 to 192.595 (protecting certain private financial information from certain types of disclosure); 192.559 (providing for civil liability upon disclosure). We do not find any basis to alter this conclusion in regard to benefits that PERS may be paying to former Governor Goldschmidt.[2]

Having concluded that disclosure of the requested information would constitute an unreasonable invasion of former Governor Goldschmidt's privacy, the information is exempt under ORS 192.502(2) "unless the public interest by clear and convincing evidence requires disclosure in [this] particular instance." While the 2002 Order found that the public interest did

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[1] We have enclosed a copy of the 2002 Order.

[2] ORS 192.502(2) states that "[t]he party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy." Your petition is silent as to this issue, and we have confirmed with Mr. Crosley that you offered no statement to him in this regard.

not require disclosure of retirement benefit information pertaining to 32 individuals, the Order contains no indication that any of those persons were public figures. Former Governor Goldschmidt is a prominent public figure who has been the subject of recent media reports addressing his personal conduct while holding public office. While public interest in that issue may require disclosure of some public records, we find no connection between the subject of the recent stories and PERS benefits that would require disclosure of the information you requested from PERS. Given that your petition contains no reasons as to why the public interest requires disclosure of the requested information, and we have found none, we deny your petition based on the exemption stated in ORS 192.502(2).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS: AGS14082
Enclosure: 2002 Order