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DEPARTMENT OF JUSTICE

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October 9, 2003

Brent Hunsberger
The Oregonian
Business News Reporter
1320 SW Broadway
Portland, OR 97201

Re: *Petition for Public Records Disclosure Order*:
Employment Department Records

Dear Mr. Hunsberger:

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 October 3, 2003, asks the Attorney General to direct the Oregon Employment Department to make available "withheld and redacted pre- and post-program earnings data for Trade Act Program participants in raw Trade Act Participant Report (TAPR) data released to The Oregonian on Sept. 17, 2003." 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 who is 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 from disclosure. ORS 192.450(1).

On September 17, 2003, the Employment Department provided you with a spreadsheet of Trade Act Participant Information reported in Fiscal Year 2001 and Fiscal Year 2002. The spreadsheet contains columns for reporting the following wage earnings: earnings in the third quarter prior to the participant's most recent qualifying separation, earnings in the second quarter prior to the participant's most recent qualifying separation, earnings in the first full quarter after the participant has exited, earnings in the second full quarter after the participant has exited, and earnings in the third full quarter after the participant has exited. It also indicates whether earnings were reported for each time period, but the spreadsheet does not state the amount of those earnings. On September 29, 2003, the Employment Department denied your request for

the earnings information that was redacted from the spreadsheet,[1] citing ORS 657.665, section 303(a)(1) of the Social Security Act, and the U.S. Department of Labor's Unemployment Insurance Program Letter 34-97.

ORS 192.502(9) exempts records from disclosure if "disclosure is prohibited or restricted or otherwise made confidential under Oregon law." The wage information that you seek was originally compiled from wage records provided to the Employment Department by employers pursuant to the state unemployment compensation system (ORS chapter 657) and the Federal Unemployment Tax Act. Under state law, these records are confidential. ORS 657.665(1) provides, in part:

> Information secured from employing units, employees or other individuals pursuant to this chapter:
>
> (a) Shall be confidential and for the exclusive use and information of the Director of the Employment Department in the discharge of duties and shall not be open to the public (other than to public employees in the performance of their public duties under state or federal laws for the payment of unemployment insurance benefits and to public employees in the performance of their public duties under the recognized compensation and retirement, relief or welfare laws of this state), except to the extent necessary for the presentation of a claim and except as required by the regulations of the United States Secretary of Health and Human Services pursuant to section 3304(a) of the Federal Unemployment Tax Act, as amended, and except as required by section 303 of the Social Security Act, as amended.

The release of wage information to you is not required by regulations implementing section 3304(a) of the Federal Unemployment Tax Act nor is it required by Section 303 of the Social Security Act. Several subsections of ORS 657.665 permit the Employment Department to disclose information made confidential by subsection (1)(a) to certain entities in certain circumstances, and ORS 657.670 permits disclosure to the federal government for several purposes. None of these statutory exceptions permits the Employment Department to disclose confidential wage records to you.[2] The fact that you are not asking for information that would

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[1] As a technical matter, the Employment Department did not redact the earnings information from the spreadsheet. In response to your original request the Department compiled information from the U.S. Department of Labor spreadsheet that was created based on raw data reported by Oregon. Using this information, the Department created the spreadsheet it sent to you, omitting the amount of reported earnings. However, because the Department maintains the information for which you have petitioned disclosure, we consider its September 29th denial as a denial of your request for redacted data.

[2] Your petition states that the Employment Department cannot rely on ORS 657.665 to deny the disclosure of wage records because the spreadsheet it disclosed contains other information that is arguably also covered by the confidentiality provisions of ORS 657.665. While the Oregon Court of Appeals has concluded that a public body may waive the exemption that applies to a record by publicly disclosing substantially all of the information contained in it, the court has also stated that "there is no blanket principle that applies to waiver under the Oregon public records inspection law." *Oregonian Publishing v. Portland School Dist. No. 1J*, 152 Or App 135, 142 (1998) *aff'd on other grounds* 329 Or 393 (1999); *Springfield School Dist. #19 v. Guard Publishing Co.*, 156 Or App 176, 182, 967 P2d 510 (1998). The Department has not publicly disclosed the wage records that you seek, and the fact

identify the employer reporting the particular wages or the individual earning the wages does not create an exception to the confidentiality requirements stated in ORS 657.665.

Because ORS 657.665 prohibits disclosure of the wage records that you seek, we deny your petition under ORS 192.502(9).[3]

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Tom Fuller, Communications & Public Information Manager,
Oregon Employment Department,

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that it disclosed related information does not alter the confidential status of the undisclosed wage records. *Springfield School Dist. #19*, 156 Or App at 181. The fact that the Department provided you with the redacted spreadsheet is not determinative of whether the wage records are subject to disclosure.

[3] Because the Oregon statute prohibits disclosure, we do not discuss the confidentiality requirements of the federal law cited in the Employment Department's September 29th denial of your request.