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DEPARTMENT OF JUSTICE

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Telephone: (503) 378-4400

November 18, 1988

Roger F. Dierking
Attorney at Law
13513 N.E. Beech Street
Portland, OR 97230

Re: **Petition for Public Records Disclosure Order; Oregon Child Support Program Records**

Dear Mr. Dierking:

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 November 7, 1988,[1] asks the Attorney General to direct the Child Support Program, Adult and Family Services Division (AFSD) of the Department of Human Resources to disclose the names and addresses of obligors in the Oregon Child Support Program. AFSD has declined to provide you with the requested information. For the reasons stated below, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. The records you wish to inspect fall within exceptions to the general rule of public accessibility to government records.

ORS 192.502(7) exempts from disclosure "any public records or information the disclosure of which is prohibited by federal law or regulations." The disclosure of information you request is prohibited by 26 USC §§ 6103(a)(2), (l)(6), and (p)(4).

AFSD regularly obtains tax return information on obligors, specifically the obligors' mailing addresses, pursuant to 26 USC § 6103(l)(6). That statute authorizes the Internal Revenue

Service (IRS) to disclose that information to the state child support enforcement agency "only for the purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations." 26 USC § 6103(p)(4)(C) requires that as a condition of receiving return information, the state child support enforcement agency must

> "restrict * * * access to the returns or return information only to persons whose duties or responsibilites require access and to whom disclosure may be made under the provisions of this title."

26 USC § 6103(a)(2) further provides that tax return information shall be confidential, and that no employe of any state who has or had access to return information shall disclose any such information obtained under the provisions of this section. Criminal and civil penalties for unauthorized disclosure are provided under 26 USC §§ 7213(a)(2) and 7431(a)(2), (c).

These federal statutes prohibit AFSD from disclosing the addresses of child support obligors that AFSD obtained from the IRS pursuant to 26 USC § 6103(l)(6) for purposes of child support enforcement. AFSD routinely updates its records of obligors' addresses from the IRS tax return information when seeking to obtain the tax refunds of delinquent obligors. Disclosure of any of those addresses is prohibited under 26 USC § 6103(p)(4). Those records, therefore, are exempt from disclosure under ORS 192.502(7). Because AFSD does not record the source of its information on the obligor addresses, it is impossible for AFSD to identify which of the obligor addresses have been obtained pursuant to 26 USC § 6103(l)(6).

The other relevant Public Records Law exemption is ORS 192.502(8), which exempts from disclosure "public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." The disclosure of information you request is prohibited by ORS 314.835 and 418.135.

ORS 314.835 makes it unlawful for any person or entity to disclose or use any information obtained from the Oregon Department of Revenue (DOR) except for the purposes authorized. The purpose for which DOR releases information on obligor addresses to AFSD is to enable AFSD to collect child

support. ORS 314.840(2)(j), ORS 418.135. Under ORS 314.835, AFSD may not disclose for any other purpose the addresses of any child support obligors that AFSD has received from the DOR. Again, because AFSD does not record the source of its information on obligor addresses, it is impossible for AFSD to identify which addresses have and which have not been obtained from the DOR.

ORS 418.135(1) prohibits the release by AFSD of information on the addresses of obligors whose children receive public assistance. ORS 418.135(1) provides:

> "All state, county and city agencies, officers and employes shall cooperate in the location of parents who have abandoned or deserted, or are failing to support, children receiving public assistance and shall on request supply the Adult and Family Services Division * * * with all information on hand relative to the location, income and property of such parents. * * * The Adult and Family Services Division shall use such information only for the purposes of administration of public assistance to such children, * * * and * * * shall [not] use the information or disclose it for any other purpose. * * * * (Emphasis added.)

Contrary to the statement in your letter that this statute prohibits disclosure only of information about applicants and recipients, ORS 418.135(1) specifically prohibits AFSD's disclosure of the addresses of child support obligors whose children are recipients of public assistance, except for purposes of administration of public assistance to such children. AFSD is responsible for the administration of public assistance in Oregon. ORS 411.010(3); 411.060. Even if, as you state, the release of the obligors' names and addresses "will serve the public interest and benefit the federal and Oregon programs for which the data is collected," the release of such information to you would not be for purposes of administration of public assistance to the obligors' children. ORS 418.135(1), therefore, prohibits that release.

In sum, disclosure of addresses of child support obligors obtained from the Internal Revenue Service or the Oregon Department of Revenue is prohibited by 26 USC § 6103(p)(4) and

ORS 314.835, respectively. These addresses are exempt from disclosure under the Public Records Law. ORS 192.502(7), (8). Disclosure of the addresses of child support obligors whose children are recipients of public assistance is prohibited by ORS 418.135. Those addresses, therefore, are exempt from disclosure under the Public Records Law. ORS 192.502(8).

The Child Support Program of AFSD may have records on child support obligors whose children are not recipients of public assistance and whose addresses were provided directly by the obligors rather than by the IRS or the Oregon Department of Revenue. Those records would not be exempt from disclosure under the Public Records Law.[2] However, the Child Support Program's records do not indicate the source of the information that they contain on the obligor's address. Thus, it is impossible for AFSD to separate, pursuant to ORS 192.505, the exempt and non-exempt material for purposes of providing you with any lists of obligors' names and addresses. Where the non-exempt material cannot be separated from the material that is exempt from disclosure, all of the material must be considered to be exempt. Turner v. Reed, 22 Or App 176, 186 n 8, 537 P2d 373 (1975).

For these reasons, we conclude that the obligor information you desire is exempt from disclosure under the Public Records Law and, therefore, that AFSD lawfully withheld disclosure. Accordingly, we respectfully deny your petition.

Very truly yours,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
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cc: Darlene Woodard, Director, Oregon Child Support Program, AFSD, P. O. Box 14506, 502 Public Service Bldg., Salem, OR 97309
Amy Veranth, Assistant Attorney General

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[1] We appreciate your courtesy in allowing us an extension of time in which to issue this order.