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January 12, 2001

Harvey Varenhorst
P.O. Box 165
Nebraska City, NE 68410-0165

Re: Petition for Public Records Disclosure Order:
Department of State Police Records

Dear Mr. Varenhorst:

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 December 15, 2000, asks the Attorney General to order the Oregon Department of State Police (OSP) to make available for inspection and copying records pertaining to specific personnel decisions OSP has made.[1] 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 any 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(1).

Your petition refers to two letters you wrote to OSP, the first dated October 14, 1999, and the second dated December 5, 2000. The copy of the October 14, 1999, letter you provided requests the information and records pertaining to LEDS Criminal Justice Information Specialist, Announcement Number LE970160A. It appears that your December 5, 2000, letter is intended to renew the requests you made in your October 14, 1999, letter, and to expand their scope to include application and hiring information regarding the applicant hired into a later open position with the same job title. OSP had not responded to your December 5th letter at the time we received your petition on December 15.

In light of your petition, OSP deferred processing the portion of your December 5th request regarding the applicant hired into a later open position to await receipt of advice from

[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

this office. The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(2). The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records, including consultation with legal counsel, and to act on the request before the Attorney General or the courts can review the matter. ***Morse Bros., Ind. v. ODED***, 103 Or App 619, 798 P2d 719 (1990). Because OSP has not denied your request for records regarding the applicant hired into a later open position, we deny the portion of your petition that seeks disclosure of those records as premature. The remainder of the order addresses OSP's response to your October 14, 1999, request.

In the copy of the October 14, 1999, letter enclosed with your petition to the Attorney General, you requested the following information and records pertaining to LEDS Criminal Justice Information Specialist, Announcement Number LE970160A:

1. The name(s) of the candidate(s)/applicant(s) selected. Their age, and a copy of their submitted qualifications, date of hire, the hiring salary, etc.

2. The name(s) of the candidate(s)/applicants on the interview or best qualified list and a copy of their submitted qualifications.

3. A copy of any interview questions, notes, and any written notes or memorandums.

4. A copy of the applicant information which I submitted. A copy of any information which was gathered or assembled regarding me.

5. A copy of the reference Job Vacancy Notice.

6. If my request is denied in any part or portion is denied in part furnish me with the State of Oregon written Statute which explains the exemption or grounds for exemption on which the action was based and provide me with the proper appeal information.

7. If the Oregon Department [of] Police receives or has any contracts with the Federal (U.S.) Government.

Gregory Hering, OSP's Personnel Director, responded to your October 14, 1999, request in a letter dated October 22, 1999. In response to categories 1 and 2, he provided the names of the individuals, but informed you that "[a]pplication materials are releasable only to the applicant or his/her designated representative." In response to category 3, Mr. Hering informed you that "data used to administer the selection process is not subject to inspection." Mr. Hering provided copies of records responsive to categories 4 and 5. Mr. Hering's responses to categories 6 and 7 suggest that the original October 14, 1999, letter that you sent to OSP requested information pertaining to the State of Texas rather than Oregon.[2] With regard to category 6, Mr. Hering

provided you with a copy of *former* OAR 105-10-011,[3] which addresses release of certain personnel records under Oregon's Public Records Law. Mr. Hering informed you that OSP did not have information relevant to category 7 of your request.

Categories 1 and 2.

In your October 14, 1999, request, you clarified the type of information that you were seeking under categories 1 and 2:

> I am requesting information regarding the candidate/applicant information which was utilized * * *. In request numbers 1 and 2, I am not requesting their date of birth, any addresses, social security numbers, or telephone numbers.

The Public Records Law does not contain an exemption specifically pertaining to records regarding employment and hiring matters. The exemption that is generally most relevant to application information is stated in ORS 192.502(2), which exempts certain information of a personal nature if disclosure would be an "unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance." ORS 192.502(2). None of the application information that you are seeking is exempt under ORS 192.502(2) or another provision of the Public Records Law. Mr. Hering informs us that OSP will disclose the employment application information you have requested, after redacting the information, e.g., social security numbers, that you stated you are not seeking.

Category 3.

OSP denied your request for interview materials pursuant to ORS 192.501(4), which conditionally exempts from disclosure:

> Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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[2] Mr. Hering has informed us that OSP is unable to locate the original October 14, 1999, records request. OSP's October 22 response to the sixth and seventh categories of your request, however, indicates that you requested information regarding Texas. Mr. Hering's letter stated, with regard to category 6, that "I do not have readily available the information regarding Texas statutes that you have requested," and for category 7, that "I do not have readily available the information regarding Federal funding for the Texas Commission on Alcohol and Drugs that you have requested."

[3] The rule has been renumbered OAR 105-010-0011.

This office has previously interpreted the exemption in ORS 192.501(4) to mean that "[i]nformation used to administer the test is confidential until the test has been given. Examination information remains confidential if the test will be reused." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 31 (1999).

Mr. Hering has informed us that OSP continues to use the interview questions at issue to evaluate applicants. These questions appear on a document titled "Examination Form." Four of the ten questions on the Examination Form – numbers 4, 5, 6 and 10 –call for the applicant to respond to a specific hypothetical scenario. Disclosing these questions in response to a public records request would threaten the integrity of the applicant evaluation process. Therefore, questions 4, 5, 6 and 10 come within the test question exemption. We find no basis to conclude in this particular instance that the public interest in disclosing these questions outweighs the public interest in protecting the integrity of the applicant evaluation process used by OSP. The remainder of the Examination Form is subject to disclosure. Mr. Hering informs us that OSP will disclose the Examination Forms pertaining to the finalists for the position of LEDS Criminal Justice Information Specialist, Announcement Number LE970160A, after redacting questions 4, 5, 6 and 10.

Based on the same analysis, the interviewers' notes are subject to disclosure except to the extent that they reveal test question 4, 5, 6 or 10. To the extent that the interviewers' notes regarding the applicants' responses to the questions on the Examination Form directly or indirectly reveal a question that is exempt from disclosure, those notes also are exempt under ORS 192.501(4). We find no basis to conclude in this particular instance that the public interest in disclosing these portions of the interviewers' notes outweighs the public interest in protecting the integrity of the applicant evaluation process used by OSP. Mr. Hering informs us that OSP will disclose the interviewers' notes, after redacting the exempt portions.

Categories 4 and 5.

Because OSP provided you with the records responsive to these categories of your request in its October 22, 1999, response to your request, we deny the portion of your petition addressing these categories as moot.

Category 6.

You requested statutory provisions relied on in denying your request and that set out appeal procedures.[4] In response to this request, OSP provided you with a copy of an administrative rule promulgated by the Oregon Department of Administrative Services, *former* OAR 105-10-011. The relevant Oregon *statutory* provisions, however, are contained in the Public Records Law. Because of the confusion regarding your original request to OSP, we cannot determine that OSP denied your request. Therefore, we deny your petition in regard to category 6 as premature. Mr. Hering informs us, however, that OSP will respond to your request as it appears in your petition to the Attorney General by sending you copies of the Public

[4] As explained above, it appears that in your original request to OSP you requested information regarding Texas statutes.

Records Law exemption provisions cited in this order as well as ORS 192.450, which explains the procedures for petitioning the Attorney General and seeking judicial appeal.

Category 7.

Given the confusion regarding your request in relation to OSP's contractual relationship with the federal government, we cannot determine that OSP denied your request. Therefore, we deny your petition in regard to category 7 as premature. Mr. Hering informs us, however, that OSP has at least one contract with the federal government. We recommend that you contact Mr. Hering by letter or telephone ((503) 378-3720) to clarify your request. Mr. Hering has confirmed that OSP will process your revised request.

To summarize our order with regard to your October 14, 1999, request for records, for categories 1 and 2 we deny your petition as moot because OSP has agreed to provide those records to you, with the information redacted that you identified as being outside the scope of your request, e.g., social security numbers. With regard to category 3, we deny your petition, in part, because those portions of the records that reveal test questions 4, 5, 6 or 10 are exempt from disclosure under ORS 192.501(4), and we deny the remainder of your request in regard to category 3 records as moot because OSP has agreed to provide the nonexempt portion of those records to you. We deny your petition with regard to categories 4 and 5 as moot inasmuch as OSP has already provided you with the responsive records. In light of the confusion regarding your original request to OSP with respect to categories 6 and 7, we deny your petition as premature in relation to these categories. Nonetheless, OSP has agreed to provide you with copies of the statutes responsive to category 6 and is prepared to process a clarified request for category 7.

Mr. Herring informs us that OSP will send you the records responsive to your October 14, 1999, request, consistent with this order, no later than January 19, 2001.

Sincerely,

PHILIP SCHRADLE
Special Counsel to the Attorney General