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August 14, 2000

Elisa Williams
Staff Writer
Forbes Magazine
233 Wilshire Boulevard, Ste. 220
Santa Monica, CA 90401

Re: *Petition for Public Records Disclosure Order: Adult and Family Services Division Records*

Dear Ms. Williams:

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 August 8, 2000,[1/] states that the Adult and Family Services Division (AFS) of the Department of Human Services, State of Oregon, had "denied [your] public records request for a complete list of the corporate participants in the state's Jobs Plus program." For the reasons stated below, we respectfully deny your petition as premature.

Phil Laymon of AFS advises us that he spoke to you by telephone on or about July 27, 2000, and that you asked him for a list of the employers who had participated in the JOBS Plus program. Mr. Laymon then conferred with the Deputy Administrator for AFS, Jim Neely, who was concerned that disclosure of the employer names could either directly or indirectly identify public assistance recipients in violation of ORS 411.320 and 418.130.[2/]

[1/] Your petition was faxed to this office after 5:00 p.m. on August 7, 2000. Accordingly, we treat it as received the next business day, August 8.

[2/] ORS 411.320(1) provides:

> For the protection of applicants for and recipients of public assistance, except as otherwise provided in this section, the Adult and Family Services Division shall not disclose or use the contents of any records, files, papers or communications for purposes other than those directly connected with the administration of the public assistance laws

On August 2, 2000, Mr. Laymon conveyed AFS' concern to you and explained that AFS could produce a list of those JOBS Plus employers that had a sufficient number of employees so that the identify of public assistance recipients would be protected. Mr. Laymon understood that you agreed to amend your original request for the complete list and to instead accept such an abbreviated list.

Mr. Laymon telephoned you on August 7, 2000, to advise you that AFS systems personnel were working on developing the list. Mr. Laymon also informed you that AFS felt obligated to remind the employers of the state and federal confidentiality mandates and their obligations not to disclose information that would lead to the identification of JOBS Plus employees. Although you advised Mr. Laymon that you did not think it was appropriate for AFS to contact the employers and to advise them of your request for information, you did not tell Mr. Laymon that you were reinstituting your request for a "complete" employer list.

Upon receipt of your petition, this office asked Assistant Attorney General (AAG) G. Catriona McCracken to contact AFS and determine the status of the agency's response to your records request. Mr. Neely and Mr. Laymon both informed AAG McCracken that AFS is having technical difficulties in developing a list that would not disclose the identify of public assistance applicants and recipients, but that the agency is still endeavoring to produce a list that would provide you with extensive JOBS Plus employer contacts while at the same time protecting the confidentiality of the JOBS Plus Program client participants..

ORS 192.430 requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian." The public's "reasonable" opportunity to inspect records correspondingly allows the public body a "reasonable" time to respond to a records request. The amount of time that is "reasonable" depends upon the volume of the records requested, the staff available to respond to the records

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of Oregon or as necessary to assist public assistance applicants and recipients in accessing and receiving other governmental or private nonprofit services, and these records, files, papers and communications are considered confidential subject to the rules and regulations of the Adult and Family Services Division.

ORS 418.130(1) provides:

Except as otherwise provided in this section, no person shall, except for purposes directly connected with the administration of the temporary assistance for needy families program or as necessary to assist public assistance applicants and recipients in accessing and receiving other governmental or private nonprofit services and in accordance with the rules of the Adult and Family Services Division * * * solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, * * * any information concerning persons applying for or receiving such aid, directly or indirectly derived from the records, papers, files or communications of the Adult and Family Services Division * * * .

request, the difficulty in determining whether any of the records are exempt from disclosure and the need to consult with its legal counsel. Thus, a public records custodian acts "reasonably" even if the custodian does not comply with timelines imposed by the requestor as long as the custodian provides access to the nonexempt records within a "reasonable" period of time. *Morse Bros., Inc. v. ODED,* 103 OR App 619, 798 P2d 719 (1990); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 7-8.

Mr. Neely states that AFS has not denied your records request. Moreover, given AFS' continued attempts to provide you with a list of JOBS Plus employers, we do not find that there has been a constructive denial due to any delay on the agency's part. Although you have petitioned this office for a "complete" list of JOBS Plus employers, you apparently have not advised AFS of your decision that you are again seeking the complete list.

Absent a request to and a denial by a state agency of a records request, this office does not have jurisdiction over a public records petition. *See* ORS 192.450(1). Accordingly, we deny your petition as premature.[3/]

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS05275
c: Jim Neely, AFS
Phil Laymon, AFS

[3/] If you are no longer willing to accept anything less than a complete list of JOBS Plus employers, you should advise AFS of that decision so that AFS can respond appropriately to your records request. If AFS does deny your request, a public records petition to the Attorney General's Office would then be timely.