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July 17, 2000

Pat Forgey
News-Register
P.O. Box 727
McMinnville, OR 97128

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

Dear Mr. Forgey:

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 July 10, 2000, asks the Attorney General to order the Sex Offender Registration Unit of the Oregon State Police (OSP) to "make available in electronic form the unit's Sex Offender Database." 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).

Shelly Wacker, OSP Sex Offender Registration Unit Manager, informs us that the Sex Offender Registration Program has a large database of information on persons required to report as sex offenders. The sex offender information that you seek is not exempt from disclosure under the Public Records Law, but it is only a small part of the information contained in the larger database, the rest of which is confidential or otherwise nondisclosable. Oregon Laws 1999, chapter 626, section 1 specifically restricts the information that OSP may release regarding certain persons required to report as sex offenders. For example, for a person under supervision for the first time, the agency may release only the offender's name and date of birth, a physical description and photograph, the name and zip code of the city where the offender resides, and the name and telephone number of the contact person at the agency that is supervising the offender. Or Law

1999, ch 626, § 1(2)(a). The complete database includes additional data about the offender, such as the offender's social security number, residence address, employment information and other information that the agency may not disclose under the legislation. Moreover, if the offender is a supervised juvenile, the agency may not release the offender's physical description or photograph or the month or day of the offender's birth. Or Laws 1999, ch 626, § 1(b). The Public Records Law exempts from disclosure any information the disclosure of which is prohibited or made confidential under Oregon Law. ORS 192.502(9).

When a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). OSP has a software program that permits the agency to select from the larger electronic database those items of information on sex offenders that Oregon Laws 1999, chapter 626, section 2 permits OSP to provide. This information may be displayed on computer monitors and may be provided to individual requestors in the form of paper screen prints. In responding to your request, Ms. Wacker stated that OSP will "provide available sex offender information in the form of paper copies (screen prints containing sex offender information)."

You have expressly requested, however, that the sex offender information be made available to you in electronic form. ORS 192.440(2) provides:

> If the public record is maintained in a machine readable or electronic from, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

Ms. Wacker informs us that the software for the sex offender registration program was developed specifically for OSP by an outside contractor. According to Ms. Wacker, although the software program permits the nonexempt sex offender information to be separated from the confidential information for viewing and printing by screen, the existing software does not permit that segregated information to be exported electronically. At our request, Ms. Wacker spoke with the contractor to confirm that this is the case. OSP would need to have the contractor reprogram the software to permit the nonexempt sex offender information to be exported to an electronic file.

With respect to the responsibility of public bodies to create new computer programs in order provide public records in the form requested, we have stated:

> The distinction between disclosing an existing record and creating a records is especially important in relation to computer-stored data. We have concluded that although computer data and printouts generated for use by the public body are public records, a public body is not obligated * * * to create a new program to extract the data in its computer in a manner requested by the public.
>
> * * * We believe that the Public Records Law imposes a duty on public bodies to retrieve and make available nonexempt computer or electronically stored data and information, when requested, through the computer software or programs in use by the public body. *See* ORS 192.440(2). This does not mean that public bodies must develop or acquire new or additional software or programs in order to retrieve the requested information. We merely conclude that when a public body uses computer software or programs to retrieve information for its own purposes, the public body must use that same software or program to retrieve and make available data or information stored by it in computer or electronic form in response to a public records request.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 5-6 (1999) (citations omitted).

Because the OSP database contains both exempt and nonexempt information on sex offenders and OSP cannot make the nonexempt information available electronically without reprogramming its computer, we conclude that the nonexempt information that you seek is not "available" in electronic form within the meaning of ORS 192.440(2). Consequently, the Public Records Law requires only that OSP make the records available in the form in which they are "maintained," i.e., on screen prints. OSP has offered to do so.

For these reasons, we respectfully deny your petition to compel disclosure.

Sincerely,



DAVID SCHUMAN
Deputy Attorney General

DS/mch/AGS05161
c: Shelly Wacker, Sex Offender Registration Unit Manager, OSP