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DEPARTMENT OF JUSTICE
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May 12, 2009

Nathan R. Rietmann
Attorney at Law
1270 Chemeketa St. NE
Salem, OR 97301

Re: Petition for Public Records Disclosure Order:
Office of the Secretary of State, Elections Division

Dear Mr. Reitmann:

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. We received your petition on May 1, 2009, and we thank you for allowing us until May 13, 2009 to respond. Your petition asks the Attorney General to direct the Elections Division of the Office of the Secretary of State to provide copies of the following documents:

1. A true and complete copy of the complaint against Mr. Sizemore and other parties that was filed with the Oregon Secretary of State Elections Division by Steven Berman of Our Oregon on February 11, 2009.
2. A true and complete copy of the addendum to the February 11, 2009 complaint referenced immediately above that was filed with the Oregon Secretary of State Elections Division on February 18, 2009.

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. In this case, the requested records were not provided by the Elections Division because the Division identified the records as exempt from disclosure on the basis of ORS 192.501(3) at this time.

ORS 192.501(3) conditionally exempts:

> Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
>
> (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
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> (b) The offense with which the arrested person is charged;
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> (c) The conditions of release pursuant to ORS 135.230 to 135.290;
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> (d) The identity of a biographical information concerning both complaining party and victim;
>
> (e) The identity of the investigating and arresting agency and the length of the investigation;
>
> (f) The circumstances of the arrest, including time, place, resistance, pursuit and weapons used; and
>
> (g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

This exemption is conditional in that it applies "unless the public interest requires disclosure in the particular instance." ORS 192.501.

We have conferred with Compliance Specialist Jennifer Hertel and Elections Division Director John Lindback concerning the circumstances of this request and the Division's response. We have also conferred with Erik Wasmann, who heads the Department of Justice unit that would ultimately bring any prosecutions related to the reports in question. And we have reviewed the material that the Division withheld in response to your request for records, along with publicly available documents finding or alleging unlawful conduct by your client, such as the "Opinion Finding Contempt of Court (Contempt #4)" entered by the Multnomah County Circuit Court in Case No. 0108-08942 on December 1, 2008.

The material that was redacted from the first document, and the contents of the second document, contain allegations concerning potential criminal activity, and the matter is under active investigation at this time. Because the reports to the Secretary of State appear to constitute "the report of a crime," we assume that they must nevertheless be disclosed "unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation."

Both the Division and the possible prosecutor have stated their view that there is a clear need to delay disclosure of this record at this time, as the investigation is ongoing. *See* Public Records Order, October 10, 1996, Reed at 3 (relying on District Attorney's statement of need to delay disclosure during the particular ongoing investigation). We recognize that the report to the Division was filed by an entity that has been involved in a number of civil legal proceedings involving your clients. That circumstance may suggest that at least some allegations in the report to the Division are allegations that overlap with or relate to allegations that have been made elsewhere. However, our review indicates that the factual allegations that the Division withheld from disclosure are not repetitive of allegations that have been publicly made in the course of any civil legal proceedings. Consequently, we see no basis for disagreeing with the view of the Division and Mr. Wasmann that present disclosure of the substance of the allegations would unduly hamper the ongoing investigation.

It follows that the withheld material is exempt from disclosure pursuant to ORS 192.501(3) "unless the public interest requires disclosure in the particular instance." We have perused your petition and the underlying correspondence between you and the Division, and it does not appear that you have proffered any basis for concluding that the public interest currently requires disclosure of these materials. The general interest served by nondisclosure is the general public interest in allowing investigations to proceed without undue interference, to help ensure that violations of the law are identified and successfully prosecuted. We are unable to perceive a basis for concluding that the general public interest in the successful operation of the criminal justice system is overcome in this instance. *See* Public Records Order, October 10, 1996, Reed at 3-4.

In short, we find that there is presently a clear need to delay disclosure of the information withheld from you. We respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Jennifer Hertel, Elections Division