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May 7, 1987

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Oregon State Employees Association
P.O. Box 3011
Salem, Oregon 97302-0011

Major David Lackey
State of Oregon Military Department
2150 Fairgrounds Road NE
Salem, Oregon 97303-3241

Re: Public Records Disclosure Petition

Dear Mr. Meadowbrook and Major Lackey:

This letter responds to Mr. Meadowbrook's petition for an Attorney General's order directing the Oregon Military Department to disclose public record information. The petition, dated April 22, 1987, was received by the Department of Justice on April 24, 1987. With Mr. Meadowbrook's professional courtesy, our response date was extended to May 8, 1987.

At the outset, we have found a possible jurisdictional problem with the petition. In reviewing the request with the Oregon Military Department, we found that the department was not aware of a prior request for information. Major Lackey then ordered a review of the department's incoming mail log, and found that the department had not received Mr. Meadowbrook's letter dated March 11, 1987.

Technically, until a person is "denied the right to inspect or to receive a copy of any public record," the person may not petition the Attorney General for review of the denial. ORS 192.450(1). In this case, there has been no denial. Nevertheless, we have reviewed the applicable statutes and regulations, and offer the following not as an order of disclosure, but as advice to the Military Department that we hope will resolve the public records request informally.

Mr. Meadowbrook seeks an order directing the Military Department to disclose "the names, addresses and phone numbers of [Oregon National] Guard members who served during the last six years with units headquartered in Marion, Polk, Linn or Yamhill counties." We interpret the request for "addresses and phone numbers" as seeking residential addresses and phone numbers. We conclude that Mr. Meadowbrook is entitled to disclosure of the names of Oregon Guard members, but that federal regulations bar us from ordering the Military Department to disclose the residential addresses and phone numbers of those Guard members.

The Military Department and the Adjutant General are public bodies for the purposes of the Oregon Public Records Law (ORS 192.410 to 192.500). Under other state laws, the Oregon Adjutant General is the Director of the Military Department and the Commander of the Oregon National Guard, subject to the direction of the Governor. ORS 396.160(1), (2). The Adjutant General is the "custodian of records of officers and enlisted men and all other records and papers required by law or regulations to be filed in the office of the Adjutant General." ORS 396.160(7). However, the Adjutant General is also subject to certain federal regulations that have a significant bearing on Mr. Meadowbrook's state public records disclosure request.

Under the Public Records Law (ORS 192.420), a person, " . . . has a right to inspect any public record of any state public body; except as provided in ORS 192.500." (Emphasis supplied.) The pertinent exemption from otherwise mandatory disclosure is ORS 192.500(2)(g) which pertains to:

> "Any public records the disclosure of which is prohibited by federal law or regulations; . . . ."

Federal regulations governing the Oregon Adjutant General bar that official's release of the residential addresses and phone numbers of Guard members.

32 CFR Parts 505 and 518 (1986) contain United States Army regulations governing the release of information from Army files. Under National Guard Regulation No. 340-17, the Army regulations apply to the Army National Guard and consequently govern the Oregon Military Department. 32 CFR § 505.3 states in pertinent part:

> "(a) Disclosure without consent. The Army is prohibited from disclosing a record from a system of records without obtaining the prior written consent of the data subject, except when disclosure is:
>
> " . . . .
>
> "(2) Required under the Freedom of Information Act." (Emphasis supplied.)

The types of personal information that the Army may disclose under the Freedom of Information Act are described in 32 CFR § 505.3(c)(1):

> "(c) Disclosure to third parties. Personal information which may be disclosed under the Freedom of Information Act:
>
> "(1) On military personnel: Name, rank, date of rank, gross salary, present and past duty assignments, future assignments that are officially established, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, military and civilian education level, duty status at any given time." (Emphasis supplied.)

We read 32 CFR §505.3 to allow the Military Department to release names of military personnel, but to forbid the Military Department to release residential addresses and telephone numbers, as Mr. Meadowbrook requests. Furthermore, our review of the National Guard Regulation No. 340-17 (enclosed) discloses that authority to release record information has been delegated to state adjutants, but authority to issue denials or partial denials of disclosure has been retained by the Chief of the National Guard Bureau.[1] We therefore conclude that the Oregon

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[1] 32 CFR § 505.1(g)(17) designates the Chief of the National Guard Bureau as the "Access and Amendment Refusal Authority" for "personnel records of the Army National Guard."

Adjutant General may release information of the types described in 32 CFR § 505.3(c)(1) without violating federal regulations, but that Mr. Meadowbrook's proper recourse is to request disclosure of other information from the Chief of the National Guard Bureau.

We have been advised by the Military Department that its files might not contain the information necessary to determine all persons who were headquartered in the four counties during the last six years. Therefore, nothing in this response should be construed as a representation that the Military Department's records are in a form that will satisfy the purposes of Mr. Meadowbrook's inquiry.

In sum, we recommend that the Military Department honor a public records request insofar as it seeks disclosure of the names of members of the Oregon National Guard; but, in our view, the Adjutant General is barred from disclosing residential addresses and telephone numbers.

Very truly yours,

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

JEM:cm
Enclosure
cc: William F. Nessly, Assistant Attorney General