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April 25, 1996

RECEIVED
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GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Robert Sterling
News Editor
MAIL TRIBUNE
PO Box 1108
Medford, OR 97501

Re: ***Petition for Public Records Order:***
Secretary of State, Elections Division Records

Dear Mr. Sterling:

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 April 18, 1996, asks the Attorney General to direct the Elections Division to make available a complaint concerning United States Representative Wes Cooley filed by Mr. Frank Wood. 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. If 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).

The complaint you identified in your petition was filed with the Secretary of State Elections Division pursuant to ORS 260.345. That statute allows any elector to file a written complaint with the Secretary of State involving an alleged violation of the election laws. The Secretary of State examines the complaint to determine whether the complaint raises any allegation that requires investigation and conducts any investigation he deems necessary. ORS 260.345(3). After the investigation is completed, if the Secretary of State believes that a violation of an elections law has occurred that is subject to criminal penalties, the Secretary of State shall refer the matter to the Attorney General and request prosecution. ORS 260.345(4)(a). Thus, with respect to violations of the elections laws, any criminal investigation is handled initially by the Secretary of State.

In this case, the complaint you requested alleges a violation that could be subject to criminal penalties. ORS 260.715, 260.993. Mr. Scott Tighe, Elections Division Manager,

informs us that the Secretary of State is conducting and has not yet completed an investigation of the potential criminal violation.

Because of the criminal nature of the complaint, we consider whether ORS 192.501(3), which conditionally exempts from disclosure certain criminal investigatory material, exempts this record from public disclosure. ORS 192.501(3) provides:

> The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:
>
> * * * * *
>
> (3) 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;
>
> (b) The offense with which the arrested person is charged;
>
> (c) The conditions of release pursuant to ORS 135.230 to 135.290;
>
> (d) The identity of and 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 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.

(Emphasis added.)

The complaint you have requested is part of the criminal investigatory material. The complaint is also a "report of a crime," which is to be disclosed unless there is a "clear need to delay disclosure in the course of a specific investigation." Mr. Tighe informs us that, for this specific investigation, the name of the complaining party, the name of the person alleged to have committed the election law offense, and the basic allegation of the offense can appropriately be released without compromising the investigation. Mr. Tighe advises us that he will release to you a redacted copy of the complaint, with this information on it.

Mr. Tighe further informs us that, based upon advice of counsel from the Criminal Justice Division of the Department of Justice, there is a need to delay disclosure of the other material in the complaint to avoid compromising the pending investigation and any potential criminal prosecution. Because the requested complaint material is within the scope of the exemption in ORS 192.501(3), it is necessary to determine whether the public interest nevertheless requires disclosure in this particular instance.

The petition did not set forth any reasons why the public interest requires disclosure in this instance. The governmental interest that weighs against disclosure at this time is the general public's interest in having persons who have violated the law successfully prosecuted. The Secretary of State Elections Division has concluded that release of the remaining information in the complaint could jeopardize the criminal investigation and, consequently, any criminal prosecution. On balance, we conclude that at this time the public interest in successful operation of the criminal justice system outweighs the public interest in disclosure of the remaining information in the complaint. Accordingly, we conclude that the remainder of the complaint is exempt from disclosure. ORS 192.501(3).

For these reasons, we deny your petition to compel disclosure. The Elections Divisions has voluntarily agreed to disclose certain identifying information concerning the complaint. The remainder of the information in the complaint is exempt from disclosure under ORS 192.501(3).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

LRR:AV:lrr/JGG0D986
c: Scott Tighe, Manager, Elections Division
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