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April 6, 2005

Ronald Vrooman
14725 SW Glenbrook Road
Beaverton, OR 97007

Re: *Petition for Public Records Disclosure Order*:
Employment Department Records

Dear Mr.Vrooman:

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 March 31, 2005, asks the Attorney General to direct the Oregon Employment Department to make available "the names and information of those that have been audited" by the Employment Department. On April 1, 2005, in a telephone conversation with this office, you clarified that you were seeking the names of mortgage brokers that have been audited in the past two years and the names of those brokers that have been found out-of-compliance with Employment Department statutes. 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. A "public record" includes:

> any writing containing information relating to the conduct of the public's business * * * prepared, owned, used or retained by a public body regardless of physical form or characteristics.

ORS 192.410(4). Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1).

On March 29, 2005, you spoke with Renee Bryant, Manager, Unemployment Insurance Tax Section, Oregon Employment Department, and asked that the Department provide you with the names of mortgage brokers that have been audited by the Department. Ms. Bryant informed

us that she denied your request the same day, explaining that: 1) the Department did not maintain a list of mortgage brokers that have been audited and does not have a computer system that would allow them to compile this data,[1] and 2) the information you sought was confidential under ORS 657.665.

ORS 192.502(9) exempts records from disclosure if "disclosure is prohibited or restricted or otherwise made confidential under Oregon law." Generally, information maintained by the Employment Department is confidential. ORS 657.665(1) provides, in part:

> Information secured from employing units, employees or other individuals pursuant to this chapter:
>
> (a) Shall be confidential and for the exclusive use and information of the Director of the Employment Department in the discharge of duties and shall not be open to the public (other than to public employees in the performance of their public duties under state or federal laws for the payment of unemployment insurance benefits and to public employees in the performance of their public duties under the recognized compensation and retirement, relief or welfare laws of this state), except to the extent necessary for the presentation of a claim and except as required by the regulations of the United States Secretary of Health and Human Services pursuant to section 3304(a) of the Federal Unemployment Tax Act, as amended, and except as required by section 303 of the Social Security Act, as amended.

Information on employers maintained by the Employment Department is typically provided to the Department from employing units themselves, from employees of employing units, from unemployment insurance claimants, or from employees of other regulatory agencies. This information is provided to the Department under ORS Chapter 657, which governs unemployment insurance benefits, payroll taxes, the Oregon State Employment Service, and other programs operated by the Department. As such, the information is provided by employing units, employees or other individuals under ORS Chapter 657 and therefore is confidential under

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[1] We have been informed by Ms. Bryant that the Employment Department does not maintain a list of the names of mortgage brokers that have been audited by the Employment Department. According to Ms. Bryant, the Department's existing computer system does not allow it to develop a computer list of mortgage brokers that have been audited. While the Department maintains a list of individual employers that have been audited, Ms. Bryant informs us that responding to your request for mortgage brokers would require Department staff to go through the files of every employer that has been audited in the past two years to determine if the employer fits the definition of a mortgage broker.

While the records containing the information you requested are exempt from disclosure for reasons discussed in the main body of the Order, assuming they were subject to disclosure under the terms of the Public Records Law, we note that the Employment Department could charge a fee "reasonably calculated to reimburse it for its actual cost in making such records available," ORS 192.440(3), and require prepayment of an estimated fee before acting on the request. Among other costs, the fee could include staff time to locate records containing the names of mortgage brokers that have been audited and to delete exempt material from those records. THE ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) 13-14.

ORS 657.665. Because the names of the employing units the Department decides to audit are drawn from this information, they also are confidential under ORS 657.665.

All information about a particular employing unit used by the Employment Department during an audit is provided by the employing unit, by employees, or by other individuals pursuant to ORS Chapter 657 and therefore is confidential under ORS 657.665. The Department's assessment of taxes, interest or penalties against a particular employer as the result of an audit is based on this information. As such, the names of employers that have been assessed taxes, interest or penalties under ORS Chapter 657 as a result of an audit are also made confidential by ORS 657.665.

The disclosure to you of the names of mortgage brokers that have been audited by the Department and the names of those brokers that were found to be out-of-compliance with Employment Department law is not required by regulations implementing section 3304(a) of the Federal Unemployment Tax Act nor is it required by Section 303 of the Social Security Act. Several subsections of ORS 657.665 permit the Employment Department to disclose information made confidential by subsection (1)(a) to certain entities in certain circumstances. None of these statutory exceptions permits the Employment Department to disclose otherwise confidential records to you.

Because ORS 657.665 prohibits disclosure of the names of mortgage brokers that have been audited by the Employment Department in the past two years and the names of those brokers that the Department has determined are out-of-compliance with Employment Department statutes, we deny your petition under ORS 192.502(9).

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS15318
c: Renee Bryant, Manager, Unemployment Insurance Tax Section, Oregon Employment Department