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Re: Public Records Petition; Credit Union Section Records

Dear Mr. Gardner and Ms. Rayment:

This letter responds to Mr. Gardner's August 19, 1987 petition for a public records disclosure order. Mr. Gardner courteously allowed us an extension of time to act on the petition. He asks the Attorney General to order the Credit Union Section of the Financial Institutions Division of the Department of Insurance and Finance to make certain documents available for his inspection. For the reasons discussed below, we respectfully deny the petition in major part, but allow the petition with regard to some information on documents Mr. Gardner seeks to inspect.

Mr. Gardner seeks disclosure of all documents and information submitted to the Credit Union Section by two credit unions (Federal-Metals and Safeway Norwest) with their applications for a central credit union designation. The Credit Union Section previously disclosed some documents submitted by the credit unions, but the section withheld other

records that it deemed confidential. In our view, the Credit Union Section complied in most respects with the public records disclosure law when it separated exempt and non-exempt material and made non-exempt material available for Mr. Gardner's examination. See ORS 192.500(3).

Most of the documentary information which the Credit Union Section declined to disclose is exempt from the mandatory disclosure requirements of ORS 192.410 et seq. The Credit Union Section based its denial on ORS 192.500(1)(b) (trade secrets exemption), ORS 192.500(2)(c) (confidential information exemption), and ORS 192.500(2)(e) (credit union and consumer finance exemption). Under the particular circumstances of this case, ORS 192.500(2)(e) subsumes the trade secrets and confidential information exemptions and resolves the public records issue presented by the petition.

ORS 192.500(2)(e) specifically addresses the types of documents Mr. Gardner wishes to inspect. That statute, amended effective July 1, 1987, provides that:

> "The following public records are exempt from disclosure under ORS 192.500:
>
> " . . . .
>
> "Records, reports and other information received or compiled by the Director of the Department of Insurance and Finance in the administration of ORS chapter 723 and 725, not otherwise required by law to be made public, to the extent that the interest of lending institutions, their officers, employes and customers in preserving the confidentiality of such information outweighs the public interest in disclosure." Or Laws 1987, ch 373, sec 23(e).

Under this law, most of the information on the documents withheld from Mr. Gardner's inspection are exempt from disclosure requirements.

We have reviewed the documents which the Credit Union Section refused to disclose. These documents were submitted to the Department of Insurance and Finance to facilitate applications for designation as a central credit union. The undisclosed documents were received by the Department of

Insurance and Finance in its administration of the Credit Union Law, ORS chapter 723. We are aware of no law outside the Public Records Disclosure Law which requires that these documents be made public, and Mr. Gardner has cited no such law requiring public accessibility to the withheld records. Moreover, it appears that these particular documents were filed with requests by the credit unions that the information be held in confidence.

This request for confidential treatment was reasonable. The undisclosed information submitted by Federal-Metal and Safeway Norwest primarily consists of internal business analysis and planning information. This information is commercially sensitive documentation. We therefore conclude that the credit unions have a substantial interest in preserving the confidentiality of this information.

We also conclude that this interest in preserving confidentiality outweighs the public interest in disclosure of the business analysis and planning information withheld from Mr. Gardner's inspection. We measure the interest in confidentiality against the public interest in knowing how the Credit Union Section conducts its business in acting upon applications for a central credit union designation. That agency business is not shrouded in secrecy and is supervisory in nature. The Credit Union Section does not have an economic relationship with these credit unions, and even where a state agency has an economic, rather than merely supervisory relationship with an entity furnishing commercially sensitive information to the agency, the legislature has determined that the interest in confidentiality outweighs the public interest in disclosure. See Or Laws 1987, ch 373, §23e (exempting from Public Records Law disclosure requirements financial information and marketing strategy information submitted to economic development agencies by loan applicants). With regard to the commercially sensitive information submitted to the Credit Union Section, we deny Mr. Gardner's petition for a disclosure order.

We find, however, that the Credit Union Section should have drawn a slightly finer distinction between commercially sensitive information and other business information submitted by the credit unions, when the Credit Union segregated the information it disclosed from the information it withheld.

The undisclosed documents relating to Federal-Metals' application for central credit union designation may be

described as:

Document No. 1: Exhibit F to the Operating Agreement, which exhibit consists of Table #1 (Key Management Ratios); Table #2 (Other Management Ratios); Table #3 (Projections and Spread); and Table #4 (Functional Cost Analysis).

Document No. 2: Appendix 1 to the Operating Agreement, which appendix consists of the "Business Plan" of the Federal Metals Credit Union.

Document No. 3: Minutes of a Special Meeting of the Board of Directors of Federal-Metals Credit Union on May 6, 1987.

Applying the ORS 192.500(2)(e) test for exemption, we conclude as follows:

1) Regarding Document No. 1:
   a) Table #1 is not exempt from disclosure;
   b) Table #2 figures for the following items are exempt from disclosure: Investments/Earnings Assets; Shares/Total Savings; IRA/Total Savings; Deposit/Total Savings; Share Drafts/Total Savings; Certificates/Total Savings; Christmas Club/Total Savings; Total Savings/Total Liab & Equity; Special Reserve/Total Savings; Reserve (6% req.); Fixed Assets/Total Assets; Average Loan APR. Other information on Table #2 is not exempt from disclosure.
   c) Table #3 is exempt from disclosure;
   d) Table #4 figures for "% of Assets/Liabilities" and "Rate" under the heading "Income" are exempt from disclosure; all figures for items under heading "Cost of Funds" are exempt from disclosure; and the figures for "Totals," "Net Spread," "Reserves (2%)," and "Margin" are exempt from disclosure. Other information on Table #4 is not exempt from disclosure.

2) Regarding Document No. 2: The entire Business Plan is exempt from disclosure. We note that the Business Plan does incorporate some information from tables in Document No. 1, but the portions of that information that are not exempt from disclosure will be disclosed when the exempt and non-exempt materials in Document No. 1 are separated.

3) Regarding Document No. 3: The minutes of the special meeting of the board are exempt from disclosure.

The undisclosed documents relating to Safeway Norwest's application for central credit union designation may be described as pages of a combined Business Plan and Economic Study:

Page 2 - Listing of Positive and Adverse Factors Affecting Membership Growth;
Pages 3-7 - Projections and Marketing Strategies; and
Page 9 - Economic Feasibility Study.

Applying the ORS 192.500(2)(e) test for exemption, we conclude:

a) Regarding Page 2 - the listing of positive factors is not exempt from disclosure, but the listing of adverse factors is exempt from disclosure.
b) Regarding Pages 3 - 7 - the information is exempt from disclosure.
c) Regarding Page 9 - the information is exempt from disclosure.

We therefore deny the petition with regard to the above-listed information that is identified as exempt from disclosure. However, we allow the petition in part and direct the Credit Union Section to disclose the above-listed information that is identified as not exempt from disclosure.

Respectfully submitted,

James E. Mountain Jr

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JEM:cm
cc: Mark Wada, Attorney for Federal-Metals and Safeway Norwest Credit Unions
Kathi Dahlin, Assistant Attorney General
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