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December 17, 2013

Thomas A. Larkin
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Re: Petition for Public Records Disclosure Order
Oregon Department of Consumer & Business Services, Division of Finance & Corporate Securities
DOJ File No. 440420-GA0129-13

Dear Mr. Larkin,

This letter is the Attorney General's order in response to your petition asking us to direct the Department of Consumer and Business Services, Division of Finance and Corporate Securities (DFCS) to disclose certain public records to you under the Oregon Public Records Law, ORS 192.410 to 192.505. You had previously requested 11 categories of documents from DFCS.

The Oregon Public Records provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). A public body that asserts a statutory exemption from disclosure has the burden of demonstrating that the law permits the material in question to be withheld from public disclosure. ORS 192.450(1); ORS 192.490(1).

DFCS denied your public records request citing ORS 192.501(3). That provision conditionally exempts from public disclosure "[i]nvestigatory information compiled for criminal law purposes." The exemption is conditional in that it applies "unless the public interest requires disclosure in the particular circumstances." In your petition, you essentially argue that the information you requested pertains to DFCS civil proceedings and therefore is not within the scope of the exemption cited by DFCS. You also argue that, to the extent the exemption may apply to some of the materials, ORS 192.505 requires DFCS to segregate exempt materials and provide you with any nonexempt records responsive to your request.

DFCS informs us that the United States Attorney's Office (USAO) has requested particular records responsive to your request as part of a criminal matter currently under consideration by USAO. With respect to the particular records compiled by USAO for use in its investigation, we respectfully deny your petition. Our office has long held that public records need not have originated with a criminal investigatory agency in order to fit within the scope of ORS 192.501(3). Public records originally created for a purpose such as a DFCS civil proceeding may fall within the scope of the exemption if they are subsequently compiled by law enforcement in connection with the investigation of a criminal matter. *See*, for example, Public Records Order, August 4, 1998, Lawson (exempting for disclosure ODOC records requested by the Oregon State Police as part of a criminal investigation); Public Records Order, July 8, 2004, Meyer (exempting from disclosure records of Board of Accountancy provided to Portland Police Bureau); Public Records Order, December 18, 2002, Crombie (exempting from disclosure records of Department of Human Services (DHS) based on prosecutor's representation that public disclosure would interfere with pending criminal prosecution). We conclude that the material requested by USAO falls within the scope of ORS 192.501(3). Your petition does not suggest any public interest that would nevertheless require disclosure of the records at this time, and no such interest is apparent to us. As a result, we conclude that the material specifically requested by USAO is presently exempt from disclosure. Your petition is respectfully denied with respect to those records.

DFCS informs us that there are additional materials in DFCS's possession responsive to your request. DFCS states that it will provide you with an estimate of the cost of gathering those materials and reviewing them for other possible exemptions. DFCS anticipates that the additional records would include the following: printouts from the PACER system regarding the bankruptcy proceedings; printouts from the internet regarding media coverage of this matter; existing registration filings pertaining to the matter you have inquired about; and communications between DFCS and the General Counsel Division of the Oregon Department of Justice pertaining to that matter. We respectfully deny your petition as moot with respect to the materials not requested by USAO. Should you proceed with this request and disagree with any exemptions asserted by DFCS, you may challenge those assertions by separate petition to this office.

Sincerely,

Mary H Williams

MARY H. WILLIAMS
Deputy Attorney General

MCK:tmt/4852546
cc via email only:
Rick Blackwell, DCBS