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Gary Blackmer, Director
Oregon Secretary of State, Audits Division
255 Capitol St NE Suite 500
Salem OR 97310

Re: Petition for Public Records Disclosure Order
Oregon Secretary of State
DOJ File No. 165001-GA0093-13

Dear Mr. Iboshi and Mr. Blackmer:

This letter is the Attorney General's order in response to Mr. Iboshi's petition asking our office to order the Audits Division of the Secretary of State's office (Audits Division) to disclose certain information under the Oregon Public Records Law, ORS 192.410 to 192.505. Mr. Iboshi's request to the Audits Division relates to a recent audit of benefits programs administered by the Department of Human Services (DHS) and the Oregon Health Authority. This audit culminated in the release of an audit report entitled "Public Assistance: Improve Eligibility Procedures and Consider Approaches of Other States." The report is available at www.sos.state.or.us/audits/pages/state_audits/full/2013/2013-10.pdf (accessed September 11, 2013). Mr. Iboshi focuses on a particular finding, reported on page 16, that an unidentified individual continued to receive Supplemental Nutritional Assistance Program (SNAP) benefits after winning more than $900,000 in the lottery. According to the audit report, DHS responded

that the individual was entitled to the benefits received because (in essence) DHS rules permit assets and lump sum income to be disregarded when calculating SNAP eligibility. Mr. Iboshi subsequently sought additional information from the Audits Division: "I would like to know the amount of SNAP benefits this unidentified person received after winning the lottery. How long the unidentified person continued to receive SNAP benefits after winning the lottery? How much money this unidentified person won in the lottery?" The Audits Division denied Mr. Iboshi's request, and his petition followed. For the reasons that follow, we grant Mr. Iboshi's petition and order the Audits Division to disclose the requested information.

The Oregon Public Records Law 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." Exemptions from the general disclosure requirement must be express in the law. Even express exemptions are construed narrowly, meaning 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).

In denying Mr. Iboshi's request, the Audits Division asserted that granting the request "would disclose information that is confidential under federal and state laws." The Audits Division provided a link to a document summarizing numerous state and federal confidentiality statues and regulations. We have reviewed the laws cited by the Audits Division and identified a handful of laws potentially applicable to the information requested by Mr. Iboshi. However, as we now explain, we have determined that none of those laws exempts the information in question from disclosure.

Federal law does not prohibit the disclosure of the requested information.

As noted above, the information requested by Mr. Iboshi pertains to a single discreet portion of page 16 of the audit report, concerning SNAP benefits:

> For SNAP, we found 251 individuals continued to receive benefits after winning the lottery. Figure 7 shows the breakdown of the 251 individuals and their winnings:

Figure 7: Lottery and SNAP Matches

Total Lottery Winnings	**Count**
>$900,000	1
200,000-899,999	0
80,000-199,999	5
60,000-79,999	4
40,000-59,999	7
20,000-39,999	30
10,000-19,999	88
[<]$5,000-9,999	116

Total	251

> Of these, 20 individuals continued to receive benefits after winning $30,000 or more. These individuals received SNAP benefits totaling $49,502. One person continued receiving benefits after winning more than $900,000. Another won twice, and had combined winnings totaling about $150,000. According to DHS management, all 20 individuals who received $30,000 or more were categorically eligible and therefore not required to report their winnings. This is because any lump sum payments, including lottery winnings, are considered assets, which are not considered under categorical eligibility rules.

Mr. Iboshi's request is likewise limited to information about SNAP benefits. Consequently, to determine whether federal law prohibits SOS from disclosing the information requested by Mr. Iboshi, we look to federal laws governing the SNAP program.[1]

Pertinently, 7 USC sec. 2020(e)(8) requires "safeguards which prohibit the use or disclosure of information obtained from applicant households[.]" Because the information requested by Mr. Iboshi was not "obtained from applicant households," we conclude that this federal prohibition is inapplicable. Specifically, information about the number and amounts of payments into an unnamed individual's account is information that relates directly to the actions of the state SNAP program. The program has that information without any need to "obtain [it] from applicant households." As for the amount of this individual's lottery winnings, SOS obtained that information directly from the Oregon State Lottery. As a result, the federal statute requiring confidentiality for certain information about SNAP beneficiaries does not apply to Mr. Iboshi's request. The federal rule implementing the statutory confidentiality requirement is not materially different. *See* 7 CFR § 272.1(c) (requiring restrictions against disclosure "of information obtained from food stamp applicant or recipient households"). It is likewise inapplicable.

State law does not prohibit the Audits Division from disclosing the requested information.

ORS 411.320(1) specifies that DHS must treat records pertaining to public assistance confidentially:

> For the protection of applicants for and recipients of public assistance, except as otherwise provided in this section, the Department of Human Services may not disclose or use the contents of any public assistance records, files, papers or communications for purposes other than those directly connected with the administration of the public assistance programs or necessary to assist public assistance applicants and recipients in accessing and receiving other governmental

[1] The citations provided by Secretary of State include a number of provisions pertinent to other federal programs, some of which were also examined as a part of the audit.

> or private nonprofit services, and these records, files, papers and communications are considered confidential subject to the rules of the department. * * *

We assume for the sake of our analysis that the information requested is the type of information that falls within this disclosure prohibition. By its terms, however, this prohibition applies to DHS. Although we have no difficulty concluding that it likewise applies to DHS employees and agents, we are not persuaded that it applies to the Audits Division. That division is a part of the separate, constitutionally-created office of the Secretary of State. A primary purpose of the Audits Division is to illuminate issues in the administration of government programs so that those issues can be considered and addressed. Given the specificity of the statutory language, we are reluctant to infer that the legislative assembly intended to constrain the Audits Division in its performance of that constitutionally-mandated function.

Moreover, other subsections of ORS 411.320 strongly suggest that the prohibition is not intended to apply beyond DHS. Among other things, ORS 411.320(3) allows DHS to provide law enforcement officers with photographs of applicants or recipients who are fugitives. It seems very likely that the legislature anticipated and intended that such photographs could be re-disclosed by officers attempting to effect an arrest. That apparent intent is consistent with the fact that the statutory prohibition against disclosure is written to apply only to DHS.

Our interpretation is further buttressed by relevant context. Specifically, a related statute initially enacted alongside ORS 411.320 imposes a narrower disclosure prohibition against a broader category of actors. ORS 411.335 provides that "[n]o person or agency" is to disclose "lists or names" of applicants for and recipients of public assistance,[2] except for in the course of administering a public assistance program. This statute demonstrates that, when the legislature intends for a prohibition to have a broad scope, it has no difficulty saying so. We conclude that the prohibition of ORS 411.320 does not apply to the Audits Division.[3]

The "personal privacy" exemption of ORS 192.502(2) does not apply to the requested information.

ORS 192.502(2) conditionally exempts from disclosure "[i]nformation of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy."

We readily conclude that the disclosure of the amount of lottery winnings is not an unreasonable invasion of privacy. We do think, however, that, in the vast majority of cases, information about specific applicants for or recipients of public assistance is "of a personal

[2] Mr. Iboshi has not requested lists or names.

[3] This order should not be understood to opine on the scope of the disclosure prohibition in ORS 411.320. The prohibition of that statute applies to DHS and its agents. Because it does not apply to the Audits Division we need not go into the meaning of the prohibition.

nature." And we assume that the limited information requested by Mr. Iboshi constitutes such information.[4] Given the facts of this case, however, we nevertheless conclude that disclosure of the information requested by Mr. Iboshi does not constitute an unreasonable invasion of privacy. When public benefits are paid to individuals who clearly do not require them due to a large windfall, it is not unreasonable for the public to be informed as to how much unneeded assistance was provided over what period of time. The fact that DHS interprets its rules and relevant federal laws to permit the receipt of benefits under such circumstances does not persuade us that disclosing the data requested by Mr. Iboshi would constitute an unreasonable invasion of privacy.

The "transferred records" exemption of ORS 192.502(10) does not apply to the requested information.

ORS 192.502(10) exempts from disclosure "[p]ublic records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable." As with the previous exemption, we conclude that this exemption would nearly always apply to information about specific applicants for, or recipients of, public assistance. And we again assume that the limited information requested by Mr. Iboshi would generally qualify for this exemption. By its terms, however, the exemption applies only when "the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable." To the extent that the information requested by Mr. Iboshi is confidential in the hands of DHS, the apparent purpose that originally gives rise to the confidential nature of information about public assistance recipients is to protect the less fortunate from the stigma that may arise from publication of the fact that they require public assistance. Here, however, the Secretary of State's audit has revealed that the particular recipient to whom this information relates has received benefits when the person did not require them. We do not think that the confidentiality provisions were enacted to prevent the public from being informed how much unneeded assistance was provided by a public assistance program over what period of time in the context of an audit report.

Conclusion

For those reasons, we conclude that the information requested by Mr. Iboshi is not exempt from disclosure in the hands of the Audits Division. We consequently grant Mr. Iboshi's

[4] Although we proceed on the contrary assumption, it is not actually obvious to us that Mr. Iboshi has asked for any information that is inherently personal. He has asked for two pieces of information about transactions by which DHS placed funds into an unidentified individual's account, and he has asked for the amount of an individual's lottery winnings.

petition and order the Audits Division to provide it to Mr. Iboshi. The Audits Division has seven days within which to comply with this order or announce its intention to institute court proceedings. ORS 192.450(2).

Sincerely,

Mary H Williams

MARY H. WILLIAMS
Deputy Attorney General