ELLEN F. ROSENBLUM
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

April 15, 2013

Celeste Mieffren
OSPIRG
1536 SE 11th Ave, Ste A
Portland, OR 97227

Dennis Thompson
Department of Revenue
955 Center Street
Salem, OR 97301-2555

Re: Petition for Public Records Disclosure Order
Department of Revenue
DOJ File No. 150800-GA0031-13

Dear Ms. Meiffren and Mr. Thompson,

This letter is the Attorney General's order in response to Ms. Meiffren's petition asking our office to order the Oregon Department of Revenue (DOR) to disclose certain information to her. The information in question was previously redacted by DOR in response to Ms. Meiffren's request for public records. The information relates to the Oregon Enterprise Zone Act, 285C.050 to 285C.250, which provides for "tax incentives and other assistance available to stimulate sound business investments that support and improve the quality of life" in designated enterprise zones. ORS 285C.055. Specifically, DOR redacted four categories of information in disclosing reports to Ms. Meiffren:

1) The number of a business' pre-existing employees in the enterprise zone;
2) The number of a business' current employees in the enterprise zone;
3) The average annual compensation a business pays those employees;
4) The investment cost of property placed in service in a given year.

For the reasons explained below, we grant Ms. Meiffren's petition with respect to the first two categories of information redacted by DOR, and respectfully deny Ms. Meiffren's petition with regard to the third and fourth categories of information.

The Oregon Public Records Law, ORS 192.410 to 192.505, 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). Exemptions from disclosure 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 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).

DOR asserts that ORS 285C.145(4) and ORS 192.501(2) expressly authorize DOR to withhold the redacted information from public disclosure. The former statute is specifically applicable to certain information compiled in connection with the Oregon Enterprise Zone Act:

> Records, communications or information submitted to a public body by a business firm for purposes of ORS 285C.050 to 285C.250 that identify a particular qualified property, that reveal investment plans prior to authorization, that include the compensation the firm provides to firm employees, that are described in ORS 192.502 (17) or that are submitted under ORS 285C.225 or 285C.235 are exempt from disclosure under ORS 192.410 to 192.505 and, as appropriate, shall be shared among the county assessor, the zone sponsor, the Department of Revenue and the Oregon Business Development Department.

The latter statute relied on by DOR provides a general exemption for "trade secrets." That exemption applies "unless the public interest requires disclosure in the particular instance."

We begin by observing that ORS 285C.145(4) does not expressly exempt from disclosure information about the current or previous numbers of a firm's employees. The same is true of ORS 192.502(17), which is incorporated into ORS 285C.145(4). And it appears that this information is required to be submitted under ORS 285C.140 and 285C.220, rather than ORS 285C.225 or 285C.235. Thus, this information is exempt from disclosure only if it is exempt by virtue of the generally-applicable exemption for "trade secrets." For reasons that are essentially identical to those stated in Public Records Order, March 11, 2013, Meiffren and Grove, we conclude that regardless of whether this information might qualify for protection as a trade secret, the public interest requires its disclosure in the particular instance. Succinctly, the publicly funded incentives enjoyed by these businesses represent a significant public investment, and the creation of employment opportunities for residents is among the most significant goals of that investment. The public has a correspondingly significant interest in this information, which will contribute significantly to an informed assessment of the extent to which that investment is paying off. Weighed against that interest favoring disclosure, we perceive only an attenuated possibility that disclosing information about the number of these businesses' employees within the enterprise zone will cause competitive harm to the businesses. Consequently, we conclude that the exemption of ORS 192.501(2) does not apply to the redacted information about current and prior numbers of employees within the enterprise zone. We order DOR to disclose that information to Ms. Meiffren.

If the other categories of information redacted by DOR were subject to an exemption that likewise required us to consider the public interest served by disclosure, we might well reach a similar conclusion. We have determined, however, that ORS 285C.145(4) expressly exempts those categories of information from disclosure without regard to the public interest.

With respect to the annual compensation amounts redacted by DOR, ORS 285C.145(4) expressly provides that "information * * * that include[s] the compensation [a] firm provides to firm employees * * * [is] exempt from disclosure under ORS 192.410 to 192.505." We readily conclude that the law expressly permits DOR to withhold the redacted compensation without regard to the public interest. We must respectfully deny Ms. Meiffren's petition with respect to compensation information.

We conclude that information about the amount of a business' investment is likewise exempt from disclosure by virtue of ORS 285C.145. We acknowledge that it is neither information that would "identify a particular qualified property, * * * reveal investment plans prior to authorization, [or] include the compensation the firm provides to firm employees" nor information "described in ORS 192.502(17). But DOR informs us that the source of this information is "the property schedule submitted * * * pursuant to ORS 285C.225." Our review of that statute confirms that it requires businesses to submit this cost information. ORS 285C.225(4)(b). And ORS 285C.145(4) expressly exempts from disclosure information "submitted under ORS 285C.225." We must respectfully deny Ms. Meiffren's petition in this regard as well.

For the foregoing reasons, Ms. Meiffren's petition is granted in part and denied in part. We conclude that the information DOR redacted with regard to business' pre-existing and current number of employees is not exempt from disclosure, and order DOR to disclose that information to Ms. Meiffren. But we conclude that the law expressly exempts from disclosure the redacted information showing the compensation that the businesses pay to their employees and showing the investment cost of the business' properties. We respectfully deny Ms. Meiffren's petition with respect to those categories of information. Insofar as our order requires DOR to disclose information to Ms. Meiffren, DOR has seven days within which to comply or announce its intention to institute judicial proceedings. ORS 192.450(1).

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

MCK:bw1/4124907-v1