ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

July 10, 2014

Yuxing Zheng
The Oregonian
1320 SE Broadway
Portland, OR 97201
yzheng@oregonian.com

Re: Petition for Public Records Disclosure Order
Oregon Department of Administrative Services
DOJ File No. 107130-GA0073-14

Dear Ms. Zheng:

This letter is the Attorney General's order in response to your petition asking for this office to order the Department of Administrative Services (DAS) to disclose records to you pursuant to the Oregon Public Records Law, ORS 192.410 to 192.505. Specifically, you seek the names of foster children whose tort claims for abuse were settled by DAS.

You requested the reports in question from DAS on March 18, 2014. DAS provided reports to you with the names of the claimants reduced to initials. DAS asserts that the names of the claimants, all children in the foster care system, are not subject to disclosure pursuant to ORS 192.502.

You agree with DAS that a person's name is "personal" information but take issue with DAS's determination that disclosure of these names would be an unreasonable invasion of privacy and that the public interest requires disclosure in this case. You consequently conclude that the prohibition against disclosure of this personal information is inapplicable.

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." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirements 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).

As previously noted, DAS relies on ORS 192.502(2), which expressly exempts from disclosure:

> Information 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, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The Party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

In this case you do not dispute that a person's name is information of a personal nature to which ORS 192.502(2) applies. DAS has determined that disclosure of the name of a foster child who has brought a claim against the state for abuse would be an unreasonable invasion of the child's privacy. As the party seeking disclosure you have the burden of showing that public disclosure of these names would not be an unreasonable invasion of privacy.

You base your argument on the *Jordan v. MVD*, 308 Or 433, 440, 781 P2d 1203 (1989). In that case, the Supreme Court held that:

> This exemption statute requires answers to three questions – whether the information is of a personal nature, whether disclosure unreasonably invades privacy, and whether the public interest nonetheless requires disclosure. The first and second questions must be answered affirmatively as a threshold matter in order to make relevant the remaining question which serves to limit further the exemption. A showing that making disclosure as requested will unreasonably invade privacy is necessary before information of a personal nature comes within the exemption. But even then a public interest may require disclosure in the particular instance.

You argue that there is no showing that DAS must "reasonably anticipate" that the Oregonian will "harry (the citizen) incessantly" as was the case in Jordan. The facts in Jordan bear no similarity to the present situation; therefore, the court's holding does not assist us except to give an outline of the process. You also cite *Ayers v. Lee Enterprises Inc. et al*, 277 Or 527, 561 P2d 998 (1977). The court did not interpret the Public Records Law in this case as it concerned events that occurred prior to its enactment. Therefore, it is inapplicable to this public records request. You assert no other basis for why release of this information would not be an unreasonable invasion of privacy; therefore, you have not met the burden of proof required by ORS 192.502(2).

Determining whether disclosure of a person's name would be an unreasonable invasion of privacy must be made on a case by case basis. Although releasing a person's name may not normally be considered an invasion of privacy, you are not requesting the names of just anyone.

You are requesting the names of children who were in foster care who had their claims for abuse settled by the state.

There are a number of statutes which specifically prohibit disclosure of information about children. Juvenile court records are not subject to public disclosure except by the court. ORS 419A.255. Child welfare records are not subject to disclosure except by the Department of Human Services (DHS) and only as provided in ORS 409.225. Records compiled under the Child Abuse Reporting statutes are not subject to disclosure except by DHS in accordance with ORS 419B.035. Records of persons receiving public assistance are not subject to disclosure except by DHS pursuant to ORS 411.320. Federal law also protects information about children in foster care from disclosure. 42 USCA §671 (2010).

Both the state and federal government have determined that access to a child's information in these circumstances is limited, presumably, because release of this information would harm the child. Disclosing that a child was the recipient of public assistance, part of the juvenile court system or abused could negatively impact the child in numerous ways. These children did not choose to be in these situations and their identities should be protected. We conclude that it would be an unreasonable invasion of the children's privacy to disclose their names to the Oregonian.

In addition, in all but one of the claimant's cases, a protective order was issued by the court. The remaining case was settled prior to a complaint being filed. These protective orders prevent the release of the identities of the children involved in these claims. Though this analysis does not directly apply to the case that was settled without a protective order, the court's willingness to enter these protective orders emphasizes the importance of protecting the privacy of these children.

In sum, the names of the children are personal information the release of which would result in an unreasonable invasion of privacy. We therefore conclude that this information is exempt from public disclosure in the hands of DAS. As a consequence, we respectfully deny your petition.

Sincerely,

for FREDERICK M. BOSS
Deputy Attorney General

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