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June 27, 2014

SENT VIA EMAIL ONLY

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Re: Petition for Public Records Disclosure Order:
Public Employee Retirement System
DOJ File No. 459100-GA0069-14

Dear Ms. Noah:

This letter is the Attorney General's order on your petition asking our office to order the Public Employees Retirement System (PERS) to disclose records to you under the Public Records Law, ORS 192.410 to ORS 192.505.

On June 4, 2014, you requested that PERS provide you with "a list of retirees in Jackson County who have received or are receiving PERS benefits," including the name of each recipient and "each retiree's monthly benefit, retirement date, retirement plan, months of service, retirement calculation method, final salary, and annual benefit." PERS initially responded, in a letter dated June 9, 2014, that it would provide the requested information. PERS subsequently sent a letter dated June 19, 2014 and signed by Communications Director David Crosley, enclosing "a compact disk with the entire PERS benefit recipient database for the January 1,

2014 pension roll that includes name, gross monthly benefit, effective retirement date, retirement plan, months of service, final salary, and retirement calculation method." PERS also informed you that "as of 2013, there were 4,847 PERS benefit recipients living in Jackson County. PERS paid a total of $133,903,178 to benefit recipients in the county in 2013 and the average annual benefit was $27,626." However, PERS denied your request for a list limited to retirees located in Jackson County, "because a list of PERS benefit recipients in a finite geographical area compromises personally identifiable information and is also a nonfinancial record." PERS cited ORS 192.502(12) as the basis for its denial.

Your petition asserts that PERS must provide you with a database limited to retirees located in Jackson County. You argue that "a Jackson County-specific database is not revealing any more about an individual except verifying what county he lives in, which is readily available through other public sources, such as property records, driver's licenses, voter registration lists, newspaper stories, etc."

The Oregon Public Records Law, ORS 192.410 to ORS 192.505, confers on any person the right to inspect any public records of a public body in Oregon, subject to express exemptions. ORS 192.420(1). ORS 192.502(12) is one of those exemptions, and provides that the following public records are exempt from disclosure:

> "Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A."

At least two other orders previously issued by this office have addressed the scope of that exemption. Public Records Order, October 1, 2010, Hinkle; Public Records Order, December 1, 2010, Thompson. In those orders, this office noted that reasoned that "the phrase 'other nonfinancial membership records' should be understood to exempt from disclosure information that concerns a member in the member's individual capacity and not the member's capacity as a current or former public employee, that must ultimately be kept up-to-date by the member and not the employer, or that is unnecessary to calculate the benefits payable on an account, but is necessary to properly manage the account for the member's benefit." Hinkle, at 2. We noted further that ORS 192.502(12) differs from ORS 192.502(2), which provides an exemption for "information of a personal nature * * * if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest * * * requires disclosure in the particular instance." ORS 192.502(12) does not require a showing that disclosure would be an unreasonable invasion of privacy, and expressly reaches contact information—such as addresses and telephone numbers—that is not protected by ORS 192.502(2). *Id.*

Applying that reasoning here, we conclude that the information sought—essentially, the county that a PERS member is located in—is a "nonfinancial membership record" under ORS 192.502(12). Information about the physical location of a member is not information that concerns the member in his or her capacity as a current or former employee, nor is it necessary to calculate the benefits payable on an account. The physical location of a member concerns the

member in his or her individual capacity, and is information that the member needs to provide to PERS so that the account can properly be managed for the member's benefit. It is also similar to the specifically listed examples of "nonfinancial membership records."

You assert that the disclosure of the county in which the member is located is not "an unreasonable invasion of privacy" because that information "is readily available through other public sources, such as property records, driver's licenses, voter registration lists, newspaper stories, etc." As we explained in the Hinkle PRO, however, ORS 192.502(12) does not require a showing that disclosure would be an unreasonable invasion of privacy. ORS 192.502(12) exempts all "nonfinancial membership records," including addresses and telephone numbers, that pertain to a PERS member in his or her individual capacity, as opposed to his or her capacity as a current or former public employee, or to the calculation of his or her retirement benefits. The fact that the same information may be available from other public sources does not mean that it is available from PERS under the Public Records Law.

For the reasons stated above, we conclude that information regarding the county that a PERS member is located in is exempt from disclosure under ORS 192.502(12), and PERS is not required to provide Ms. Noah with a database of retiree information that is specific to retirees located in Jackson County. We therefore deny Ms. Noah's petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General