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April 25, 2014

SENT VIA EMAIL ONLY

Molly Young
The Oregonian
1320 SW Broadway
Portland, OR 97201
myoung@oregonian.com

Re: Petition for Public Records Disclosure Order
Oregon Bureau of Labor & Industries
DOJ File No. 839107-GA0047-14

Dear Ms. Young,

This letter is the Attorney General's order in response to your petition asking our office to direct the Oregon Bureau of Labor & Industries (BOLI) to disclose certain records to you under the Oregon Public Records Law, ORS 192.410 to 192.505. Specifically, you ask that we order BOLI to provide unredacted copies of a handful of emails that BOLI previously disclosed to you in redacted form. The emails in question are inquiries received by BOLI pertaining to a City of Portland ordinance regarding sick leave. In providing the emails to you, BOLI redacted them to mask the identities and email addresses of the individuals who submitted the inquiries.

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). Exemptions to public disclosure requirements must be express in the law and not inferred. Express exemptions are construed narrowly to further the general policy in favor of disclosing public records. According to the court of appeals, 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." A public body asserting that

an exemption from disclosure applies bears the burden of sustaining its action. ORS 192.450(1); ORS 192.490.

In support of its redactions, BOLI relies on the disclosure exemptions codified at ORS 192.502(2) and ORS 192.502(40). The former exemption applies to "[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, unless the public interest by clear and convincing evidence requires disclosure in the particular instance." The latter exempts "[e]lectronic mail addresses in the possession or custody of an agency" apart from addresses the public body assigned to its employees for work purposes. For the reasons that follow, we conclude that the material redacted by BOLI is exempt from disclosure pursuant to ORS 192.502(2) and deny your petition on that basis. Because ORS 192.502(2) resolves this matter, we express no opinion with respect to the application of ORS 192.502(40).

To assess the application of ORS 192.502(2), we first examine whether the information withheld is "of a personal nature." The Oregon Court of Appeals has interpreted this particular requirement broadly to essentially mean "individual information" including things like "[h]ome addresses, * * * one's age, weight, and residential telephone number." *Jordan v. Motor Vehicles Division*, 308 Or 433, 441 (1989). We conclude that the redacted information constitutes "individual information" as that phrase has been interpreted by the Oregon Supreme Court.

The fact that information is "of a personal nature" does not necessarily mean that it is exempt from public disclosure, however. Instead, information is exempt under ORS 192.502(2) only "if disclosure would constitute an unreasonable invasion of privacy." Although ORS 192.502(2) provides that "[t]he party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy," the Oregon Supreme Court has required that a public body asserting the exemption to "initially make a threshold showing that the disclosure would constitute an unreasonable invasion of privacy." ATTORNEY GENERAL'S PUBLIC RECORDS & MEETINGS MANUAL (2011) (MANUAL) at 65 (citing *Jordan*, 308 Or at 443).

We have explained that "[t]he mere fact that 'the information would not be shared with strangers is not enough to avoid disclosure.' An invasion of privacy will be unreasonable where 'an ordinary reasonable person would deem [it] highly offensive.'" MANUAL at 65-66 (citations omitted). Applying this standard, our office has found that things such as names, addresses, telephone numbers and electronic mail addresses generally are not exempt from disclosure. *See, e.g.*, MANUAL at 68.

Under these particular circumstances, however, we conclude that disclosure of personally identifying information, including email addresses, would constitute an unreasonable invasion of privacy. In the simplest terms, we believe that disclosing information identifying these individuals would create an unacceptable risk that their employers may fire them or otherwise punish them for contacting BOLI. Following your petition, BOLI sent emails to the individuals in question, explaining that the Oregonian was seeking to know their names and email addresses

and asking whether they would be comfortable having that information shared. None of the individuals indicated that they would be comfortable with that. But one of the eight individuals actually responded to emphasize that disclosing this information would put his or her job in jeopardy. We find this explanation to be compelling and consistent with the reality that all of these individuals have raised questions about their employers' conduct with BOLI regulators. Under such circumstances, we think that a reasonable person would find disclosure highly offensive. This conclusion is also consistent with our longstanding view that the identities of nonfinalist applicants for state employment positions are exempt from disclosure "[b]ecause of the potential professional threat to candidates that could arise from the release of their names[.]" Letter of Advice dated October 13, 1988 to W.T. Lemman, Chancellor, at 9.

Having concluded that disclosure of the redacted information would constitute an unreasonable invasion of privacy, it remains only to assess whether "the public interest by clear and convincing evidence requires disclosure in the particular instance." ORS 192.502(2). In your petition, you argue that the public interest favors disclosure of this information:

> Portland's sick leave ordinance took effect Jan. 1. Under the law, businesses must grant earned time off to allow ill employees a chance to recover without the risk of losing their jobs.
>
> The ordinance was controversial from the beginning. Some say the law will hurt businesses by increasing labor costs, eventually pushing employers out of Portland or keeping others from setting up shop in the city.
>
> Others support the law. The Oregonian asks for this information as part of an examination of whether the law is working as intended. The public interest in examining the new ordinance is strong, because other cities may consider similar ordinances. Additionally, workers and employers in the city of Portland have a strong interest in an independent assessment of the law.

Although we agree with the public interests that you have identified, we do not agree that those public interests require the identification of the individuals who have contacted BOLI with these questions and concerns. BOLI has disclosed to you the substance of the communications. Thus, to the extent that the documents reveal the number and nature of issues that are arising, that information has been provided to you. Although disclosing the names could enable you to contact the individuals, their response (or lack of response) to BOLI's email indicates that none of them are interested in speaking with you. Moreover, these individuals are merely employees who had questions or concerns that they shared with BOLI – nothing in the record suggests that they have particular expertise that would further the public interests you have suggested. Conversely, the ability of individuals to make inquiries to BOLI regarding their employers' practices helps BOLI carry out its statutory functions. Disclosing the identities of individuals who express doubts or questions about their employers' business practices would discourage people from taking advantage of this service. We have already noted that disclosure

could threaten their employment as well. Under the circumstances we cannot conclude that the public interest clearly requires disclosure.

For those reasons, your petition is respectfully denied.

Sincerely,

STEVE WOLF
Chief Counsel

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cc via email only:
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