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DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

March 14, 2014

Rob Davis
Reporter
The Oregonian
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Re: Public Records Request for Disclosure
Oregon Department of Transportation
DOJ File No. 734315-GA0022-14

Dear Mr. Davis:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on February 28, 2014, asks the Attorney General to order the Oregon Department of Transportation (ODOT) to produce copies of "hazardous materials movement forms" submitted to ODOT. Specifically, you have requested information from those documents relating to the movement of crude oil. For the reasons that follow, we grant your petition.

The Public Records Law confers a right to inspect public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420 to 192.505. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt materials available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. ORS 192.505; *Turner v. Reed*, 22 Or App 177, 186 n. 8, 538 P2d 373 (1975).

We conclude that the conditional exemption in ORS 192.501(22) is relevant to your petition. In pertinent part, that provision exempts

> Records or information that, if disclosed, would allow a person to:
>
> * * *
>
> (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services[.]

Thus the exemption applies to information contained within the forms you have requested that would identify structural or operational vulnerabilities that would, in turn, permit the disruption or interference of services provided by the railroad companies. For purposes of your request, that would include any information that a person could use to discern future movements of hazardous material in Oregon. That is because, given that the materials are hazardous, a person could use that information to cause a catastrophic event. And, we would note, information that *specifically* identifies future movements of hazardous materials is confidential under Oregon law. *See, e.g.*, ORS 824.082 (prohibiting disclosure of information regarding the transportation of hazardous materials "at any time before or during the transportation of the hazardous materials[.]").

As noted, the exemption under 192.501(22) is conditional, however. Disclosure is still compelled if "the public interest requires disclosure in the particular instance." ORS 192.501. In your petition, you indicate that you wish to learn "where trains are moving crude oil through Oregon, when these movements began and how much has been carried compared to historic volumes of hazardous materials." You believe that that information "is vital to the public's understanding of a clear public safety risk that threatens the safety of thousands." Specifically, you have identified the public safety risk as the "risk of dying in catastrophic fireballs from exploding oil trains."

The issue to be resolved, then, is whether the public's interest in disclosure – as you have framed it – outweighs the public's interest in nondisclosure. In evaluating that issue, we recognize, as you point out, that at least some information regarding the movement of hazardous materials by train in Oregon is known to the public. For instance, the tankers carrying hazardous materials on a train must have a placard that identifies the substance contained within the tanker. Moreover, in a recent Statesman Journal article, a spokesperson for ODOT stated "Railroads aren't required to tell the state what type of crude oil is transported, or on which tracks it is carried." And, significantly, ODOT has further acknowledged that the railroad companies do not provide it with transportation schedules. Lastly, the information you request relates to past movements of crude oil, not current or future movements. For those reasons, the forms that you seek would not appear to reveal any significant information about future movements of hazardous material in Oregon beyond that which is already publicly available. By contrast, non-disclosure of that information could infringe on the public's ability to assess the local and statewide risks you have identified.

Based on the foregoing, we find that the information you have requested is not exempt from disclosure under ORS 192.501(22), because that the public interest in disclosure outweighs the public interest in nondisclosure. Therefore, we grant your petition and order ODOT to release the forms you have requested with respect to crude oil.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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