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

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SENT VIA EMAIL ONLY
cbrosseau@oregonian.com

Carli Brosseau
The Oregonian - Media Group
1500 SW 1st Avenue Suite 400
Portland OR 97201

Linsay Hale
Department of Public Safety Standards & Training
4190 Aumsville Hwy SE
Salem OR 97317-8983

Re: Petition for Public Records Disclosure Order
Department of Public Safety Standards & Training
DOJ File No. 259001-GA0056-15

Dear Ms. Brosseau and Ms. Hale:

This letter is the Attorney General's order in response to Oregonian reporter Carli Brosseau's petition seeking an order directed to the Department of Public Safety Standards and Training (DPSST) with respect to requests for public information filed by Ms. Brosseau. Ms. Brosseau's petition, filed on February 20, 2015, originally concerned a fee estimate generated by DPSST in response to her request. The initial fee estimate included a fee in excess of $13,000 for data extracted from DPSST's "Skills Manager" database. While this petition has been pending before this office, however, DPSST has refined its estimate of the work required to make the information available. As a result, the estimate has been lowered to $4,526.40 and DPSST has offered to waive 25% of its costs. The Oregonian has accepted DPSST's more refined estimate and fee reduction offer, making much of the initial petition moot.[1] While Ms.Brosseau's petition was pending, however, substantive issue arose with respect to whether one particular field in Skills Manager should be disclosed to the Oregonian or withheld. The field in question is the date of birth field for the individuals about whom Skills Manager contains data. It was agreed that this office would issue an order with respect to that question. For the reasons that follow, we conclude that the date of birth field is not exempt from disclosure and order that it be included in the information provided to the Oregonian.

[1] Ms. Brosseau's petition concerned two databases maintained by DPSST. The Oregonian and DPSST have agreed to treat the two data sets sequentially. This order relates to the Skills Manager request only and does not address the Oregonian's petition insofar as it relates to the second database.

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 requirement 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). A person whose request for a public record has been denied by a state agency may petition this office for review of that decision. *Id.*

In support of the position that the dates of birth should be withheld, DPSST initially cited ORS 192.502(3). That provision exempts from disclosure "[p]ublic body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers *contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.*" (Emphasis added.) DPSST is not the employer or recipient of the volunteer services of the individuals to whom Skills Manager pertains, however. We consequently conclude that the dates of birth are not exempt pursuant to ORS 192.502(3). It remains to consider whether the dates of birth may be withheld on the basis of the personal privacy exemption of ORS 192.502(2), which allows public bodies to withhold "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." Under this exemption, the person seeking disclosure "shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy." But before such a showing is required, a public body must make a threshold showing that the information requested is personal in nature and that disclosure would constitute an unreasonable invasion of privacy. *Jordan v. Motor Vehicles Division*, 308 Or 433, 443 (1989) (Noting that "both requirements for threshold entitlement to the exemption [were] established" and thus the public body could "refus[e] disclosure until a showing is made either involving a public interest or that the disclosure would not constitute an unreasonable invasion of privacy.")

We readily conclude that birth dates are "information of a personal nature." The Oregon Supreme Court has interpreted that phrase to include all information "relating to a particular person[.]" *Jordan*, 308 Or at 441. A person's date of birth clearly is information relating to that person. Personal information is only exempt from disclosure, however, if disclosure would constitute "an unreasonable invasion of privacy." An invasion of privacy will be unreasonable where "an ordinary reasonable person would deem [it] highly offensive." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2014) at 75 (quoting from *Jordan).* We do not believe that an ordinary reasonable person would find disclosure of dates of birth to be highly offensive. Birthdates are commonly shared within office environments, and we are aware that law enforcement agencies frequently disclose dates of birth of individuals they are seeking in connection with criminal allegations. Though social norms of privacy change and evolve, we do

not think at this time that disclosure of dates of birth can be considered highly offensive.[2] We think this determination is supported by ORS 192.501(30), which deals specifically with the personal information of public safety officers in the possession of DPSST. Specifically, the statute provides that officers' home addresses and home telephone numbers in DPSST's possession are conditionally exempt from disclosure, but only if the officer specifically requests that DPSST not disclose that information. Two features of this exemption are relevant to our evaluation. First, the exemption is explicitly limited to home address and home phone number. In that context, a decision that the dates of birth are exempt would require us to effectively add to the statutory exemption. We cannot do that. *See* ORS 174.010. Second, even that limited information is only exempt following a specific request from an officer; the statute does not categorically exempt even officer addresses and phone numbers from disclosure. This legislative judgment regarding the limited categories of personal information that are appropriately exempt from disclosure from DPSST's files suggests that the legislature did not contemplate that officers dates of birth would be withheld. That, in turn, is consistent with our view that an ordinary reasonable person likely would not find the disclosure of a date of birth highly offensive. We conclude that the dates of birth are not exempt from disclosure, and order that they be included in the information provided to the Oregonian.

Pursuant to ORS 192.450(2), DPSST has seven days within which to comply with this order or announce its intention to institute judicial proceedings. Given the unique posture of this matter, DPSST can comply with that statutory timeframe by announcing to the Oregonian, within seven days, whether it will include or exclude the date of birth field from the data it provides and, if DPSST intends to exclude the birth dates, further announcing its intention to seek a declaration that the birth dates are exempt from disclosure.

Sincerely,

MICHAEL C. KRON
Special Counsel for Legal Matters

MCK:tmt/6478615
cc via email only:
Eriks Gabliks, DPSST

[2] For example, proposed Senate Bill 601 significantly expands the types of personal information that ORS 646A.602(11) protects. But it does not protect dates of birth.