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October 1, 2010

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David Crosley
PERS Communications Officer
Public Employees Retirement System
11410 SW 68th Parkway
PO Box 23700
Tigard, OR 97281-3700

Re: Petition for Public Records Disclosure Order:
Public Employees Retirement System Records

Dear Mr. Hinkle and Mr. Crosley:

This letter is the Attorney General's order on Mr. Hinkle's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Mr. Hinkle filed the petition on behalf of the Oregonian Publishing Company.[1] The petition seeks disclosure of records requested from the Public Employees Retirement System (PERS) by *The Oregonian* staff reporter Ted Sickinger. Mr. Sickinger, in a letter to PERS dated August 5, 2010, requested

> an electronic copy of records for all PERS covered retirees whose annual retirement benefits exceed $100,000. This request includes but is not limited to PERS records regarding:
>
> * Retiree[']s name
> * Retirement date
> * Employer
> * Years of Service

[1] We received the petition on September 3, and we appreciate Mr. Hinkle allowing us until October 1, 2010, to respond to his petition.

* Job classification or job
* Final average salary
* Regular monthly payment
* Any other monthly benefit
* Any other benefit from PERS, monthly or annual.

PERS provided some aggregate information, but denied Mr. Sickinger's request for individually identifiable information by letter dated August 24 and signed by PERS Communications Officer David Crosley. Mr. Hinkle informs us that, for purposes of this order, we may treat the underlying request as though it sought only the information specifically listed in Mr. Sickinger's request.

The Oregon Public Records Law, ORS 192.410 to 192.505, confers upon any person the right to inspect any public records of a public body in Oregon, subject to express exemptions. ORS 192.420(1). A public body asserting an exemption bears the burden of sustaining its action on appeal to the Attorney General or the courts. ORS 192.450(1); ORS 192.490(1). PERS asserted two exemptions in denying Mr. Sickinger's request: ORS 192.502(2) and ORS 192.502(12). For the reasons that follow, we conclude that the information requested by Mr. Sickinger is not exempt under those provisions. We consequently grant Mr. Hinkle's petition, to the extent that PERS has the information that Mr. Sickinger requests.[2]

Analysis

1. The Privacy Exemption: ORS 192.502(2)

The personal privacy exemption, ORS 192.502(2), exempts from public disclosure requirements

> 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.

This exemption requires a two part analysis.

The first question is whether disclosure of any of the individual information would constitute an unreasonable invasion of privacy. "An invasion of privacy is unreasonable if 'an

[2] PERS states that it does not have information concerning "[j]ob classification or job," though PERS does maintain classifications based on the nature of members' employers. So, for example, a member might be classified as "General Service" or "Police and Fire." To the extent that this information is responsive to the request, this order will treat the information as "[j]ob classification or job." We understand that this is one of the clarifications that PERS will seek from Mr. Sickinger, see page 11, below.

ordinary reasonable person would deem [it] highly offensive.'" MANUAL at section I.E.4.d.(2)(b), http://www.doj.state.or.us/public_records/manual/public_records.shtml#e4d2, quoting *Jordan v. MVD*, 308 Or 433, 442, 781 P2d 1203 (1989). The person seeking access to the records ultimately bears the burden of establishing that disclosure does not constitute an unreasonable invasion of privacy. However, the public body asserting the exemption must make a threshold showing that disclosure would, in fact, work an unreasonable invasion of privacy. *Jordan*, 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").

If disclosure would constitute an unreasonable invasion of privacy, the second question is whether "the public interest by clear and convincing evidence requires disclosure in the particular instance."

a. Retiree Names

Taken alone, we do not think that disclosing the name of a retiree drawing ongoing benefits from PERS constitutes an unreasonable invasion of privacy. Absent further information, such a disclosure makes it known that the individual is alive, that the individual once worked for a PERS employer for a period sufficient to earn retirement benefits, and that the individual has retired and commenced drawing ongoing retirement benefits from the state. In the context of this request, however, disclosing the names of the retirees also discloses that the named individual is receiving more than $100,000 in annual PERS benefits. In light of that reality, whether disclosing retiree names in response to Mr. Sickinger's request constitutes an unreasonable invasion of privacy effectively depends on whether disclosure of the associated financial information constitutes an unreasonable invasion of privacy. We proceed to consider that issue.

b. Financial Information

We have issued three public records orders applying ORS 192.502(2) to PERS retiree benefit information. First, in Public Records Order, November 15, 2002, Jones & Voykto ("Jones & Voykto"), we determined that financial information concerning benefits being received by 32 named retirees was exempt under ORS 192.502(2), but only to the extent that particular benefit information was connected with a particular named retiree. Second, in Public Records Order, May 25, 2004, Schwend ("Schwend"), we considered a request for PERS benefit information pertaining to former Governor Neil Goldschmidt. At the time of the petition, the former Governor was the subject of media reports related to his personal conduct while in public office. However, we adhered to our analysis in Schwend because we did not find any connection between the subject of the media reports and PERS benefits that would require disclosure of his benefit information. More recently, in Public Record Order June 16, 2010, Day & Smith ("Day & Smith"), we concluded that ORS 192.502(2) did not exempt from disclosure PERS retirement benefits being paid to former Governor Kitzhaber.

In concluding that retirement benefit amounts paid to identified retirees are exempt from disclosure, the orders in Schwend and Jones & Voykto noted three considerations. First, disclosing a retirement benefit amount would disclose personal choices made by an individual that are not implicated by disclosure of other aspects of public employee compensation. Second, disclosure could subject a retiree choosing lump-sum payments to uninvited inquiries from persons promoting investments or other items. Finally, the orders found that "other provisions of Oregon law attest that an 'ordinary reasonable person' would deem disclosure by an employer of a former employee's retirement benefits 'highly offensive.'" In support of that finding, the orders cited statutes that forbid financial institutions from disclosing information about account holders, ORS 192.550 to 192.595. Schwend at 2, citing Jones & Voykto at 3. In Day & Smith, we noted that special circumstances were present, namely, former Governor Kitzhaber's current candidacy and the public scrutiny associated with it. We concluded that "[b]y choosing to run for governor, a candidate opens himself or herself to legitimate inquiries that might be unduly invasive if they targeted other retirees. We do not believe that an ordinary reasonable person in Governor Kitzhaber's position would be highly offended by the state's disclosure of the amount of the retirement benefit that PERS currently is paying them."[3] We now conclude that disclosing the identities of PERS retirees receiving more than $100,000 in annual benefits, along with information about the nature of those benefits, would not be "highly offensive" to an "ordinary reasonable person" in that position. In reaching that conclusion, we reconsider and now reject the conclusion in Jones & Voykto and Schwend that disclosing benefit amounts is an unreasonable invasion of privacy that an ordinary person would consider "highly offensive."

The first of the three considerations we described in those previous orders was that it could lead to unwanted solicitations. Jones & Voykto at 3. PERS also suggests that disclosure could result in retirees being targeted by identity thieves, burglars, and others who would harm them. To the extent that these harms are plausible, they could just as easily result from disclosure of employee salaries, or even simply disclosure of the fact of employment. As Mr. Hinkle points out, membership in groups such as the American Association of Retired Persons can also lead to unwanted solicitations. Unwanted solicitations are an annoyance, but hardly "highly offensive" to the ordinary reasonable person. They can be dealt with by hanging up the phone, deleting emails, throwing away letters, and participating in the "no call" list. We are not aware of any empirical evidence correlating disclosure of retiree benefit information with victimization by identity thieves or other criminals, despite the fact that this information is routinely disclosed in other states.

The second consideration was that "disclosure * * * would disclose personal information about a retiree of a nature not involved in the disclosure of an employee's salary." Jones & Voykto at 3. The particular example we relied on was the decision "to receive benefits in a lump-sum, through monthly payments, or in some combination of the two methods." PERS

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[3] We also considered ORS 192.502(2) in Public Record Order October 20, 2009, Re & Smith. In that order, we concluded that disclosure of whether a named individual, former Governor Goldschmidt, was a member of PERS on a particular day in 1989 and whether he remains a PERS member, was not exempt from disclosure under ORS 192.502(2).

points out that benefit amount can also be affected by myriad other factors: the employee's account balance at retirement, final average salary, the extent to which the employee participated in a variable-return account and the performance of the market during those years, the benefit payment option chosen at retirement, whether a beneficiary is named and the age of the beneficiary, the retiree's number of years of service and the retiree's age at retirement. Other factors can also affect benefit amount. For example, if a PERS member is divorced, his or her retirement account may be divided, resulting in a decreased benefit amount. And if a member chooses a lump-sum payout, that choice will obviously affect the PERS member's benefit. Some of these factors are mechanical calculations based on fixed historical facts – account balance at retirement, final average salary, years of service – while others reflect choices made by PERS members or events in members' lives. Some of those choices and events may implicate privacy concerns, to varying degrees.

But the sheer number of variables makes it unlikely that retiree choices – such as, for example, the choice to name a young beneficiary – will be discernible from disclosure of the benefit amount. The resulting discrepancy between the actual value of the PERS benefit and an expected value could just as well be explained by a divorce settlement, or a decision to take a partial lump-sum payment. It is far from obvious to us that disclosing benefit amounts will reveal the actual explanation. A plausible exception is the choice to take a full lump-sum payment, but we do not see how disclosing the *fact* of such a choice can be considered highly offensive. Such a choice can be made for any number of reasons that may or may not relate to highly private concerns. But the reasons for that choice will not be revealed by simply disclosing the fact of it. Although the prior orders are correct that there are differences between disclosing salary information and disclosing retirement benefit information, we do not think that those differences are sufficient to make disclosure of the latter "highly offensive" to a reasonable person.[4]

Finally, the prior orders relied on the proposition that "other elements of Oregon law" suggest that disclosing PERS benefit information would be "highly offensive." Jones & Votyko at 3. We cited, with little explanation, ORS 192.550 to 192.595. Those statutes generally prohibit financial institutions from disclosing records of their customers. We think that the analogy to disclosing PERS benefit amounts is flawed. The requested information here relates solely to funds being paid directly from a public body to individuals, while a financial institution's records will reflect assets derived from any number of sources. The fact that Oregon law prohibits private financial institutions from disclosing the wide-ranging financial information it may obtain about its customers is not a basis for concluding that reasonable people will be highly offended if a public body paying them publicly-funded benefits discloses the value of those benefits.

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[4] PERS notes that some recipients of benefits may never have been public employees. This could be the case if the recipient is receiving benefits under the terms of a divorce or as a beneficiary named by one or more now-deceased PERS members. The fact that public employee salary information is public is not really relevant in such a case, suggesting that disclosure of benefit information would be slightly more intrusive. But in light of the other factors we note, we do not think that the difference is sufficient to make disclosure of benefit amounts "highly offensive."

In sum, we are not persuaded by the reasoning of Jones & Voykto and Schwend. In addition, two other realities persuades us that disclosure of benefit information does not constitute an unreasonable invasion of privacy.

First, as Mr. Hinkle points out, retiree benefit information is publicly available in a number of states. Petition at 3-7. The fact that retired public employees in other states live with the knowledge that the public can obtain information about their benefits weighs against the conclusion that an ordinary reasonable person would find that disclosure highly offensive.

Second, we cannot ignore the fact that the legislature has expressly exempted from disclosure "***[e]mployee and retiree*** address, telephone number and other ***non-financial membership records*** and ***employee financial records*** maintained by the Public Employees Retirement System pursuant to ORS chapter 238 and 238A." ORS 192.502(12) (emphasis added). There can be no doubt that benefit amounts paid to retirees are retiree financial records, which are conspicuously not exempt under this provision. Indeed, the legislative history of the initial enactment shows that the legislature revised the exemption initially proposed by PERS precisely because of concerns that PERS's proposal would protect benefit amounts from disclosure. See discussion at pp 9-10, below. The exemption was subsequently amended in in 1987 to apply to "employee financial information." Oregon Laws 1987 ch. 898 §§ 26 & 27. During the process of enacting that amendment, the legislature considered – but declined to adopt – an amendment that would have instead exempted "member financial information" and thus covered retirees as well as employees. Salary Subcommittee of the Joint Ways & Means Committee, June 10, 1987, tape 7 side A.

We are reluctant to second-guess the legislature's decision to not provide an exemption for retiree financial information by bringing benefit amounts within the general privacy exemption. For the most part, the identities of individuals who receive public money, and the amount of money they receive, are known. Exceptions such as the identities of public assistance recipients or unemployment claimants are protected by specific statutes. *See, for example*, ORS 411.320 (public assistance); ORS 657.665 (unemployment insurance). Not only is there no such statute with respect to this information, but the legislature has twice declined a clear opportunity to adopt one. It seems extremely unlikely that the legislative bodies that made those decisions believed that disclosing retiree benefit amounts would constitute an unreasonable invasion of privacy. We think that likely legislative view is indicative of the probable views of an ordinary reasonable person.

In light of the above, we cannot conclude that an ordinary reasonable person would deem it highly offensive to disclose the amount of public retirement benefits an individual is receiving.

Even if we could conclude that disclosing the information would unreasonably invade the privacy of recipients, we would nevertheless conclude that "the public interest by clear and convincing evidence requires disclosure." Ultimately, this information explains who is receiving money from a public body and how much money they are receiving. These are traditionally

matters of significant public interest. As noted above, examples of exceptions where such information is not disclosed involve specific statutes where the legislature has made an explicit determination to protect the information. The public interest in knowing who receives state funds is heightened during times of budget crisis, and the current budgetary crisis facing the state is severe. At the time when they are least able to afford it, PERS employers are currently required to cover an unfunded liability for retirees, in addition to contributing toward retirement benefits for current employees.

Moreover, as we have noted, PERS does not have information concerning the jobs or job classifications held by individuals receiving benefits. Thus, even if PERS were to disclose all of the requested information, save information that would identify the recipient, the public would have no clear way to examine whatever connection may exist between the nature and duration of the individual's public service and the amount of retirement benefits the individual is receiving. We think that the public has a substantial interest in being able to examine those connections.

c. Other Information

The other information requested by Mr. Sickinger consists of "[r]etirement date," "[e]mployer," "[y]ears of [s]ervice," and "[j]ob classification or job." PERS does not contend that the personal privacy exemption applies to these other categories of information. All of this information concerns the public service that these retirees, now receiving sizable PERS retirement benefits, once performed on behalf of the State of Oregon. To the extent that PERS has this information about former public service, we do not see how disclosing it could be construed as an unreasonable invasion of privacy.

2. The PERS Exemption: ORS 192.502(12)

ORS 192.502(12) exempts from disclosure "[e]mployee and retiree address, telephone number and other non-financial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapter 238 and 238A." We must determine whether this exemption protects from disclosure any of the information requested by Mr. Sickinger. With regard to some of the information, recent Public Records Orders issued by our office are dispositive. But other aspects of Mr. Sickinger's request require us to examine the scope of the "other non-financial membership records" that are exempt under this provision.

As we have previously observed, that broad category must be interpreted in light of the specific types of information that precede it, a legal principle known as *ejusdem generis*. Public Records Order, October 20, 2009, Re & Cleary ("Re") at 2, citing *Vannatta v. Kiesling*, 324 Or 514, 533 (1997). The application of that rule of statutory construction is particularly appropriate because "[e]xemptions from disclosure are to be narrowly construed." *Guard Publishing Co.*, 310 Or at 37. According to the Court of Appeals:

> A "narrow construction" of a public records exemption is one that favors disclosure. That "narrow construction" rule can be applied to resolve ambiguity

> about the scope of a statutory public records exemption. 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). Our interpretation of the scope of ORS 192.502(12) must be guided by these principles.

a. Retiree Names

After observing the applicability of *ejusdem generis*, Re concludes that the fact of membership in PERS is not, in itself, exempt nonfinancial information. We explained that the absence of the word "name" in a list containing "address and telephone number" was conspicuous, and that we were reluctant to interpret the broad phrase "other nonfinancial membership records" to include what the legislature had apparently omitted. That conclusion, which we adhere to, means that the names of retirees receiving greater than $100,000 in annual benefits are not exempt from disclosure under ORS 192.502(12).

It is true that disclosing the names of retirees in response to this request would disclose more than simply the names of the retirees. Given the nature of the request, the disclosure would also reveal that the named retiree is receiving over $100,000 in annual benefits. However, that additional information is financial information pertaining to retirees. Although ORS 192.502(12) exempts some financial information from disclosure, it is only *employee* – and specifically not *retiree* – financial information. Since neither names nor the amount of an individual's benefit is exempt under ORS 192.502(12), the exemption does not permit PERS to withhold the identity of retirees receiving more than $100,000 in annual benefits. And, as we conclude above, the financial information is not exempt under ORS 192.502(2).

b. Financial Information

In addition to the names of retirees, Mr. Sickinger requested information concerning the retirees' "[r]egular monthly payment," "[a]ny other monthly benefit," and "[a]ny other benefit from PERS, monthly or annual." This benefit information is financial information pertaining to retirees. Similarly, "[f]inal average salary" is retiree financial information that is based on salaries earned while the retiree was employed, adjusted by other factors. Consequently, none of this information is exempt from disclosure under ORS 192.502(12). PERS does not claim that it is.

c. Other Information

The other information requested by Mr. Sickinger consists of "[r]etirement date," "[e]mployer," "[y]ears of [s]ervice," and "[j]ob classification or job." Our previous Public Records Orders do not answer the question whether these types of information are exempt from disclosure under ORS 192.502(12). Nor can this additional information be characterized as retiree financial information that falls clearly beyond the scope of ORS 192.502(12). Instead, we

must determine whether these categories of information fall within the exemption for "retiree address, telephone number and other non-financial membership records."

A very strict application of the principle of *ejusdem generis* might lead to the conclusion that *only* contact information is within the scope of this exemption, as both of the specified categories of exempt information are contact information. We are skeptical of that conclusion, because addresses and telephone numbers were the primary means of contacting individuals when the exemption was enacted as 1983 Or Laws c 830 § 9. Thus, if the exemption were intended to reach only contact information, it is difficult to see what additional information would have been exempted by the phrase "and other non-financial membership records."

We do not think that the only similarity between telephone numbers and addresses is that they can be used to contact individuals. Considering all of the types of records that PERS may maintain about its members, address and telephone number have other salient commonalities. First, they both relate to a retiree solely in the retiree's individual capacity. Similarly, they are information that must be provided and kept up-to-date by the retiree personally, rather than information about terms of public employment that public employers can provide. They are not necessary in order to calculate retirement benefits on an account, but are necessarily maintained by PERS because it would otherwise be impossible for PERS to manage the account for the member's benefit.

To further illuminate our understanding of the scope of ORS 192.502(12) in relation to this petition, we have reviewed the legislative history pertaining to its enactment. *See State v. Gaines*, 346 Or 160, 171-172 (2009) (in interpreting statutes, the legislative history can be considered along with the text and context of the statute). As noted above, the exemption for "address, telephone number and other non-financial membership records" was adopted in 1983 as 1983 Oregon Laws c 830 § 9. The bill originated as Senate Bill 137. In its initial form, SB 137 would have exempted from disclosure "Employee and retiree membership records maintained by [PERS] pursuant to ORS 237.001 to 237.320." In testimony to the Senate Commerce, Banking and Public Finance Committee on April 20, 1983, then-Director of PERS Jim McGoffin explained:

> And it was our, it was the Board's desire to include the retirement system with other agencies under the disclosure acts on the matters of employee and retiree membership records. That the individual accounts, the retirement benefits, interest earned and other personal data in the file, including disability, medical records, are a very important part of our records keeping, would not be available to anyone other than the member or under the member's direction.

Senate Commerce, Banking and Public Finance Committee, April 20, 1983, Tape 64, Side A at 200 to 245. That is consistent with written testimony Mr. McGoffin provided to the committee on the same day, in which he stated that the proposed exemption would "place [PERS member] records in an exempt from disclosure status *along with the majority of the agency personal information, the disclosure of which should be considered privileged and highly private and*

personal." Senate Commerce, Banking and Public Finance Committee, April 18, 1983 Exhibit E page 2, and April 20, 1983 Exhibit M page 2 (emphasis added).

On July 6, 1983, the Salary Subcommittee of the Ways and Means Committee voted in favor of completely removing the exemption from SB 137. Kay Hutchinson, of the Legislative Financial Office, inquired whether the existing exemption for personal privacy, now codified at ORS 192.502(2), was insufficient to protect the records about which PERS had expressed concern, and explained the reason for her question:

> I think the question is, are we hampering the right of the public to know a retirement benefit? Salary figures are not confidential. It is through that kind of inquiry sometimes that abuses are brought to life and remedies considered.

In response, Jerry Liebertz (phonetic spelling) of PERS explained:

> Mr. Chairman, this was put in at the advice of the Attorney General who represents Public Employees Retirement System, who felt that the employee and employee membership records that we talk of here are addresses that we have always consistently not given out to vendors who come around asking for mailing lists and for pension payment in the amount we give the people. That's what we're looking for.

After questioning from Senator Meek regarding the potential to use a "narrower brush," and un-attributed comments indicating that benefit amounts were public in California, Mr. Liebertz added "one other thing, the medical records in our files, there's a lot of medical records that I think the Attorney General felt that should not be made public." Following this exchange, the Salary subcommittee voted to completely eliminate the provisions providing for exemption. Salary Subcommittee of the Ways and Means Committee, July 6, 1983, Tape 10, Side B at 180 to 239.

On July 9, the Salary Subcommittee adopted an amendment reinstating the exemption but limiting it to "address, telephone number and other nonfinancial membership records." The committee chair indicated that this "alternate proposal" was intended to effectuate "what [PERS's] original intent appears to have been, and the bill opened the door too wide, was to protect the name, I mean the phone numbers and addresses and other nonfinancial things." Salary Subcommittee of the Ways and Means Committee, July 9, 1983, Tape 13 Side A at 336 to 362.

From this history, it appears that PERS was concerned about disclosure of contact information that would allow vendors to approach retirees, retiree benefit information, and "other personal data in the file" with examples given such as medical records and disability records. The Salary subcommittee appears to have rejected the proposed exemption for financial benefit information, and adopted an approach intended to protect the other types of information PERS was concerned about.

We think that this history is largely consistent with the broader commonalities we have noted between addresses and telephone numbers. It further suggests 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.

In simpler terms, we believe that the "other nonfinancial membership records" protected by ORS 192.502(12) are nonfinancial records the disclosure of which would intrude on a member's privacy. We reach this conclusion based on our application of the principle of *ejusdem generis* and the principle that exemptions are construed narrowly, along with our review of the legislative history. This interpretation creates some overlap with the personal privacy exemption of ORS 192.502(2), as the Salary Subcommittee seemed to recognize. However, ORS 192.502(12) does not contain a public interest balancing requirement like the one appearing in ORS 192.502(2). Nor is it apparent that this exemption requires showing that disclosure would be an "unreasonable" invasion of privacy, as ORS 192.502(2) does. And this exemption expressly reaches contact information that is generally not protected by the privacy exemption. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) (MANUAL) at section I.E.4.d.(2)(d), http://www.doj.state.or.us/public_records/manual/public_records.shtml#e4d2 (noting that telephone numbers, email addresses and addresses are generally not exempt under the personal privacy exemption).

It does not appear that Mr. Sickinger's requests for "[r]etirement date," "[e]mployer," "[y]ears of [s]ervice," or "[j]ob classification or job" implicate any privacy concern. All of the requested information concerns the public service that these retirees, now receiving sizable PERS benefits, once performed on behalf of the State of Oregon. Consequently, we conclude that the information is not exempt from disclosure under ORS 192.502(12).

Conclusion and Order

For the reasons described above, we conclude that the information requested by Mr. Sickinger is not exempt from disclosure under ORS 192.502(2) or ORS 192.502(12). We therefore grant Mr. Hinkle's petition, except to the extent that PERS does not maintain the requested information.

ORS 192.450 provides PERS with seven days to comply with an order of the Attorney General or announce its intention to seek judicial review. PERS believes that it will require significant clarification from Mr. Sickinger regarding the nature of the information that he is seeking. PERS also informs us that, although information about benefits paid in recent calendar years is fairly readily accessible, compiling the other information requested by Mr. Sickinger will require substantially more work. And PERS is entitled to establish a fee reasonably

calculated to reimburse it for the actual cost of complying with this order. ORS 192.440(4). We understand that PERS will do so.

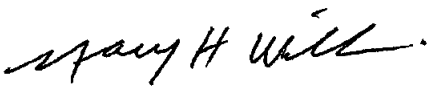
We think it is appropriate to frame our order in a way that reflects these realities. We therefore order as follows:

(1) PERS will seek the clarification it requires from Mr. Sickinger and provide Mr. Sickinger with its fee estimate.

(2) PERS shall begin compiling the information, shall provide any information that PERS reasonably can provide within seven days, and shall continue to compile and disclose any remaining information after the conclusion of the seven day period as promptly as PERS reasonably can.

The second part of this order is contingent on Mr. Sickinger either agreeing to pay the requisite fees or establishing that he is entitled to a waiver of those fees. The time for compliance with this order will be tolled during any period while PERS is waiting for clarification that has been requested from Mr. Sickinger in good faith, and during any period while PERS is waiting for Mr. Sickinger to either confirm his willingness to pay fees associated with his request or establish his entitlement to a waiver of those fees. In complying with this order, PERS is not precluded from removing other information appearing in its records, such as social security numbers, that PERS concludes may be exempt, subject to Mr. Sickinger's right of petition. But the information specifically requested by Mr. Sickinger is not exempt and must be disclosed to the extent that PERS maintains it.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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