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April 1, 2011

Hamza Chaudary, Esq.
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903

Re: Petition for Public Records Disclosure Order
Oregon Public Health Division Records

Dear Mr. Chaudary:

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. You filed the petition on behalf of your client, Daniele International, Inc., a Rhode Island corporation The petition, which we received on March 2, 2011,[1] asks the Attorney General to direct the Oregon Public Health Division (OPHD) to produce a copy of all records relating to the Salmonella Montevideo outbreak in 2009-2010.

In a letter to OPHD dated January 7, 2011, you requested "all records, regardless of form or format, pertaining to the list below." That list comprised the following:

1. The investigation by [OPHD] of the Salmonella Montevideo Outbreak in the United States that occurred in 2009-2010 (the "Salmonella Outbreak").

2. All testing and testing results pertaining to samples of Daniele pepper-coated salami and specialty meat products or red and black pepper collected by the OPHD in the course of its investigation of the Salmonella Outbreak.

3. All correspondence and communication (**including emails**) between OPHD and United States Department of Agriculture- Food Safety and Inspection Service (USDA-FSIS), the United States Food and Drug Administration (FDA), Center for Disease Control (CDC) and any other state Departments of

[1] Thank you for extending the time within which the law otherwise would have required us to respond to your petition.

Health and/or other governmental entities regarding the investigation of the Salmonella Outbreak.

4. Any internal communications (**including emails**), notes, reports, memorandum, work papers and correspondence of the OPHD created in the course of its investigation of the Salmonella Outbreak.

5. Any reports or conclusions of the OPHD regarding the source(s) of the Salmonella Outbreak.

(Emphases in original.) OPHD denied your request by email dated January 27, 2011, signed by Public Records Officer Keely L. West. The email asserted that the records you requested are exempt from disclosure under ORS 433.008(1), set out below, and incorporated into the Oregon Public Records Law through ORS 192.502(9)(a). The email also advised you that no report was produced in relation to the salmonella outbreak, and invited you to view publicly available records at the CDC website.

In your petition, you assert that the exemption under ORS 433.008(1) does not apply in this case because you and your firm, as the legal representative of Daniele International, Inc., are entitled to the requested records under an exception to that exemption.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions. *See* ORS 192.420. If a public record contains both exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). If a public body denies a request for public records, the requester may petition the Attorney General to determine whether the agency's denial comports with the Public Records Law. ORS 192.450. For the reasons that follow, we respectfully deny your petition.

Under ORS 433.008(1), "information obtained by the Oregon Health Authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak is confidential and is exempt from disclosure under ORS 192.410 to 192.505," unless it falls under one of the enumerated exceptions laid out in ORS 433.008(2). As set out above, your requests appear to seek information provided to or developed by the agency in the course of its investigation, including test results, inter- and intra-agency correspondence, memorandum and work papers. Your petition does not suggest that you dispute that the requested information falls within the general scope of the exemption asserted by OPHD. As noted above, however, you argue that the records at issue should be released pursuant to the exception to the exemption. Specifically, you rely on subsection (f) of ORS 433.008(2), which states:

> The authority or a local public health administrator may release information obtained during an investigation of a reportable disease or disease outbreak to:

(a) State, local or federal agencies authorized to receive the information under state or federal law;

(b) Health care providers if necessary for the evaluation or treatment of a reportable disease;

(c) Law enforcement officials to the extent necessary to carry out the authority granted to the Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131, 433.138 and 433.142;

(d) A person who may have been exposed to a communicable disease;

(e) A person with information necessary to assist the authority or local public health administrator in identifying an individual who may have been exposed to a communicable disease; and

(f) The individual who is the subject of the information or the legal representative of that individual.

(Emphasis added.) Your straightforward argument is that this provision means that Daniele International, Inc. is entitled to any records that concern Daniele International, Inc.

We reject that argument for an equally straightforward reason. ORS 433.001 defines "individual," for purposes of ORS 433.008, as "a natural person." Daniele International, Inc., is not a "natural person." *See, e.g., State v. Oregon City Elks*, 17 Or App 124, 130, 520 P2d 900 (1974) ("Since a corporation is not a natural person, it can, by definition, act only through its officers and agents."); *Liberty Northwest Ins. Corp. v. Oregon Ins. Guarantee Ass'n*, 206 Or App 102, 121, 136 P3d 49 (2006) (Constitutional remedy clause applies to natural persons only and not artificial entities such as corporations). Thus, the exception under ORS 433.001(2)(f) does not apply in this case. Consequently, we must respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Paul Cieslak, DHS