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January 21, 2011

SENT VIA REGULAR MAIL & EMAIL

David Steves
The Register Guard
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Dear Mr. Steves:

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. We received your petition on December 22, 2010, and we thank you for extending the deadline to respond until January 5, 2011.[1/] Your petition asks the Attorney General to direct the Elections Division of the Office of the Secretary of State to provide copies of the following documents:

> Complaints made to the Oregon Secretary of State Elections Divisions pertaining to the [Oregon Association of Realtors (OAR)].

[1/] We note that you initially made the request for a copy of the complaint in person at the Elections Division on December 22, 2010. Mr. Trout informs us that he spoke with you at that time, and stated that, because he had just received the complaint and had not had time to examine it, he would consider your request and respond accordingly. That same day you filed your petition with our office.

The following day, Mr. Trout sent a letter acknowledging your request for the records and stating that he would respond within seven days of your request. On December 28, 2010, Mr. Trout sent you a letter stating that he was unable to fulfill your request because the complaint was exempt under ORS 192.501(3).

Although this timetable indicates that you filed your petition before the Elections Division had denied your request, we do not believe that this prevents us from responding to your petition. Had you waited to file your petition until after Mr. Trout sent his December 28 letter, our consideration would involve the same complaint and set of operative facts. In general, however, we believe that the Elections Division may legitimately review complaints and solicit input from the Criminal Justice Division of the Department of Justice before deciding whether to assert an exemption for all or any part of an elections complaint.

For the following reasons, we respectfully deny your petition.

The complaints responsive to your request were filed with the Secretary of State Elections Division pursuant to ORS 260.345. That statute allows any elector to file a written complaint with the Secretary of State involving an alleged violation of the election laws. The Secretary of State examines the complaint to determine whether the complaint raises any allegation that requires investigation and conducts any investigation she deems necessary. ORS 260.345(3). If the Secretary of State, after completing her investigation, believes that election laws have been violated and are subject to criminal penalties, she shall refer the matter to the Attorney General and request prosecution. ORS 260.345(4)(a). Thus, with respect to election law violations, any criminal investigation is initially handled by the Secretary of State.

In this case, the complaint that you requested from the Elections Division alleges a violation that could be subject to criminal penalties. ORS 260.715, 260.993. After reviewing the complaint, the Elections Division forwarded it to the Criminal Justice Division of the Oregon Department of Justice for criminal investigation.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. In this case, the Elections Division has not provided the records you requested, because the Division believes that the records are presently exempt from disclosure under ORS 192.501(3).

ORS 192.501(3) conditionally exempts:

> Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
>
> (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
>
> (b) The offense with which the arrested person is charged;
>
> (c) The conditions of release pursuant to ORS 135.230 to 135.290;
>
> (d) The identity of and biographical information concerning both complaining party and victim;
>
> (e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

The complaints that you have requested are part of the criminal investigatory material. Such a report also constitutes the "report of a crime," which is to be disclosed unless there is a "clear need to delay disclosure in the course of a specific investigation." The Elections Division and the Criminal Justice Division of the Department of Justice have now concluded that the [bulk of the] requested reports can be disclosed to you, and the Elections Division will provide them.

However, because the criminal investigation is not concluded, Deputy Chief Counsel Darin Tweedt states that disclosing the identity of the complainants to the media at this time – and thus disclosing their identities to OAR – would compromise the investigation's integrity.

Because ORS 192.502(3) is a conditional exemption, it is necessary to determine whether the public interest nevertheless requires disclosure of the complainants' identities. We have examined your petition and your request. Neither one appears to set forth any reasons why the public interest requires disclosure of the complainants' identities in this particular instance. The governmental interest that weighs against their disclosure at this time is the general public's interest in having violators of the law successfully prosecuted. On balance, we conclude that, at this time, the public interest in successful operation of the criminal justice system outweighs the public interest in disclosure of the complainants' identities. Thus, we conclude that information is exempt from disclosure under ORS 192.501(3).

Because the Elections Division has indicated that it will provide you with the requested complaints, we deny your petition. With respect to the identities of the complainants, which the Elections Division intends to protect through redaction, we respectfully deny your petition because we conclude that the potential damage to the pending criminal investigation establishes a clear need to delay disclosure, and the public interest in preventing such interference outweighs any public interest in knowing the identities of the complainants. at this time would compromise a criminal investigation.

Sincerely,

for MARY H. WILLIAMS
Deputy Attorney General

DM2478145
c: Steven Trout, Director, SOS/Elections Division