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JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

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Noelle Crombie
c/o The Oregonian
1320 SW Broadway
Portland, OR 97201

Cecily Brown
Criminal Investigation Division
Oregon State Department of Police
817 SE 13th Street
Pendleton, OR 97801

Re: Petition for Public Records Disclosure Order:
Oregon State Police records

Dear Ms. Crombie and Ms. Brown:

This letter is the Attorney General's order in response to a petition filed by Ms. Crombie challenging certain redactions made by the Oregon State Police (OSP) to public records requested by Ms. Crombie and disclosed by OSP. The redactions are found over 42 pages of investigative records, all of which pertain to marijuana-related criminal accusations brought against Daniel Lawrence, of Williams, Oregon. Mr. Lawrence, who was a registered grower with the Oregon Medical Marijuana Program (OMMP) at the time, subsequently pleaded guilty to charges stemming from the investigation at issue.

In correspondence with our office, Ms. Crombie has clarified that she is seeking to compel OSP to disclose the following information:

- The street address of the incident location;
- Locations on the property where cash was found by OSP;
- An unredacted copy of Mr. Lawrence's OMMP application;

- The identities of card-holding medical marijuana patients for whom Mr. Lawrence and another individual (identified in the redacted documents as Laura Leonard) were registered growers; and
- Information OSP sought and obtained from OMMP during the course of its investigation.

For the reasons that follow, we grant Ms. Crombie's petition with respect to the first two items. We partly grant Ms. Crombie's petition with respect to the fifth item. We otherwise respectfully deny Ms. Crombie's petition.

Analysis

Under Oregon's Public Records Law, "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by [statutory exemption]." ORS 192.420(1). Because the Public Records Law is a disclosure law, rather than a confidentiality law, exemptions from disclosure are construed narrowly. Exemptions must be express and will not be inferred. *See generally, Colby v. Gunson*, 224 Or App 666, 676 (2008) (explaining how Oregon courts approach exemptions to the public records law).

OSP generally bases its redactions on the exemption provided by ORS 192.502(2), which exempts from disclosure "[i]nformation 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." We believe that, under the facts of this case, OSP has a valid concern about personal privacy. Oregon has approved the use of marijuana for medical purposes under state law and established a cardholder system to track approved marijuana users and growers. ORS 475.300 to 475.342. Individual medical information is widely regarded as highly private, and Oregon's Medical Marijuana Act contains confidentiality provisions that are consistent with that pervasive view. ORS 475.331(1). And indeed, the "personal privacy" exemption of ORS 192.502(2) expressly includes "medical" information among the examples of materials that are covered by the exemption.

Moreover, as THE OREGONIAN has reported, medical marijuana users and growers who can be identified have often become victims of crime, including violent crime.[1] Thus, in

[1] See, e.g., "Armed robbery of Beaverton medical marijuana supplier sends two Tigard men to prison," May 25, 2011, http://www.oregonlive.com/beaverton/index.ssf/2011/05/armed_robbery_of_beaverton_medical_marijuana_supplier_sends_two_tigard_men_to_prison.html; "Mastermind of medical marijuana robbery in Oregon City gets 15 years," February 25, 2011, http://www.oregonlive.com/Oregon_city/index.ssf/2011/02/mastermind_of_medical_marijuana_robbery_in_oregon_city_gets_15_years.html; "Worried by thieves, medical marijuana growers protect crops with booby traps and weapons," November 8, 2010, http://www.oregonlive.com/portland/index.ssf/2010/ 11/medical_marijuana_growers_prot.html; "Arrests of four kids in violent Rockwood home invasion-medical marijuana robbery," March 10, 201, http://blog.oregonlive.com/nwheadlines/2010/03/arrests_of_four_kids_in_violen.html (reporting on story by KATU).

addition to the privacy that society generally attaches to individual medical information, the medical marijuana context gives OSP yet another reason to be concerned with individual privacy. *See, Jordan v. Motor Vehicles Division*, 308 Or 433, (1989) (fact that disclosure of a person's address reasonably likely to lead to unreasonable harassment of the individual relevant to assessing the application of the personal privacy exemption to an address).

1. Address of marijuana grow site; locations on property where cash found by OSP

We nevertheless conclude that the address of the marijuana grow site and locations on the property where cash was recovered are not exempt from disclosure under the Public Records Law. Mr. Lawrence pleaded guilty to criminal charges related to his production of marijuana. Mr. Lawrence may have enjoyed a significant amount of privacy with respect to lawful marijuana growing activities,[2] but that privacy simply cannot extend to criminal conduct. Indeed, much of that privacy was necessarily lost when Mr. Lawrence was identified as the defendant in criminal charges relating to his marijuana-growing activities. OSP rightly recognized as much by releasing Mr. Lawrence's name. Given that Mr. Lawrence's identity is not secret, redactions to mask the address of the grow site, and the locations on the property, appear to be motivated primarily by concerns about the possibility that disclosure could lead to crimes at the property. We observe, however, that Mr. Lawrence is now statutorily disqualified from participating in Oregon's medical marijuana program. ORS 475.304(6). Thus, even if the law should otherwise recognize that a convicted person has a privacy interest in minimizing the possibility of future criminal victimization, the reality is that Mr. Lawrence cannot lawfully conduct the marijuana growing activities that might subject him to unreasonable risk of victimization. We acknowledge that the redacted documents establish that Laura Leonard was also registered as a grower at the address in question. But the redacted documents also establish that Ms. Leonard was not actually engaged in growing activities at the address. Instead, she relied on Mr. Lawrence to actually grow the marijuana. Under the circumstances, we conclude that the address of the marijuana grow site are not exempt from disclosure. We reach the same conclusion with respect the locations on the property where cash was recovered. Ms. Crombie's petition is granted with respect to these pieces of information.

2. Unredacted copy of Mr. Lawrence's Medical Marijuana Program application

After reviewing the documents redacted by OSP, we have determined that none of them is Mr. Lawrence's application to the Medical Marijuana Program. OSP informs us that it does not have any additional documents. Because OSP does not have the document she is seeking, we respectfully deny Ms. Crombie's petition with respect to this item.

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[2] We need not, and do not, express any view with respect to this issue.

3. Identities of card-holding medical marijuana patients for whom Mr. Lawrence and Ms. Leonard were registered growers

As explained above, individual medical information is generally regarded as highly private, and the medical marijuana context provides additional reasons to be protective of personal privacy. Although Mr. Lawrence's criminal activities have necessarily compromised the privacy he might otherwise have enjoyed as a grower,[3/] we perceive no reason to extend that analysis to pierce the privacy of the patients for whom Mr. Lawrence (and Ms. Leonard) are registered growers. By way of analogy, if a pharmacist were convicted for crimes relating to the unlawful manufacture or distribution of prescription medications, we do not think that conviction would provide a legitimate basis for requiring the disclosure of the identities and prescriptions of the legitimate patients whose prescriptions the pharmacist filled. Without a reason to believe that the patients were complicit in the unlawful activity, such a disclosure would not seem to serve any compelling public interest. The fact that the medicine at issue here is marijuana does not support any inference that would make the personal privacy exemption unavailable. Ms. Crombie's petition is denied with respect to the identities of the patients from whom Mr. Lawrence and Ms. Leonard were registered growers.

4. Information OSP sought and obtained from OMMP during the course of its investigation

OSP redacted three paragraphs in the middle of page 7 of an investigative report prepared by OSP Detective Brandon L. Boice. Those paragraphs describe confirmations that OSP sought from OMMP as to the status of multiple individuals who purported to hold medical marijuana cards, and the responses OSP received. Under ORS 475.331(2), OMMP is authorized to provide such information to law enforcement. But law enforcement agencies who receive such information from the program

> may not release or use the information for any purpose other than verification that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

ORS 475.331(3). We conclude that this provision prohibits OSP from disclosing to Ms. Crombie the information it *obtained from* OMMP.

But this provision does not prevent OSP from disclosing to Ms. Crombie the questions that law enforcement *posed to* OMMP. Such questions simply are not information that law enforcement obtained from OMMP. With respect to OSP's inquiries about specific patients for whom Mr. Lawrence was a registered grower, however, we conclude that the information is

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[3] *See* footnote 2.

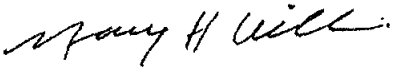
exempt under the personal privacy exemption, for the same reasons that we have upheld other redactions protecting their identities.

To the extent that these redactions both (a) cover information other than patient information, and (b) cover only questions posed by OSP, and not answers provided by OMMP, we conclude that the information is not exempt from disclosure. Specifically, we conclude that the first sentence of the first redacted paragraph on page 7 of Detective Boice's report, and the first sentence of the second redacted paragraph on the same page, are subject to disclosure.

Conclusion

For the foregoing reasons, we conclude that much, but not all, of the information redacted by OSP is exempt from disclosure under the circumstances. We order OSP to disclose to Ms. Crombie the address of the marijuana grow site, the locations on the property where OSP found cash, and two specific sentences that describe inquiries OSP made to OMMP without disclosing either OMMP's response to OSP's inquiries nor the identities of patients for whom Mr. Lawrence and Ms. Leonard were registered growers. OSP has seven days within which to comply with this portion of our order or announce its intention to file court proceedings. ORS 192.450(2). We respectfully deny the remainder of Ms. Crombie's petition.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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