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February 2, 2016

SENT VIA EMAIL ONLY
nema@iehinc.com

Nema Koohmaraie
Institute for Environmental Health, Inc.
15300 Bothell Way NE
Lake Forest Park, WA 98155

Re: Request for Public Records Disclosure Order
Oregon Health Authority, Public Health Division
DOJ File No. 443470-GA0020-16

Dear Ms. Koohmaraie,

This letter is the Attorney General's order in response to your petition asking our office to direct the Oregon Health Authority, Public Health Division (OHA) to disclose certain records to you under the Oregon Public Records Law, ORS 192.410 to 192.505. You are seeking records pertaining to multiple outbreaks of *E.coli* associated with Chipotle Mexican Grill locations in several states. For the reasons that follow, we respectfully deny your petition.

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); ORS 192.490(1).

Initially your petition focused on eight categories of documents:

1. All communications, including notes/memos/emails/faxes, both internal or interdepartmental regarding the above mentioned outbreak; [1]
2. All epidemiological investigation documents from the relevant outbreak investigation department(s) in your agency regarding the above-mentioned outbreak including, but not limited, to formal findings/investigation notes/memos/emails/faxes, both internal and interagency;
3. If any samples were taken in the above-mentioned outbreak, chain of custody for any samples taken in the above mentioned outbreak;
4. If any samples were taken in the above-mentioned outbreak, lab notebooks/records regarding the above mentioned outbreak;
5. Electronic images/genetic fingerprinting (PFGE or MALVA patterns)/TIF files regarding the above mentioned outbreak;
6. Any isolate/bacterial strains from a patient and/or food sample taken in regard to the above mentioned outbreak; and
7. Any other additional relevant records/information regarding the above mentioned outbreak.

OHA denied your request citing ORS 433.008. That statute, which is incorporated into the Oregon Public Records Law by ORS 192.502(9)(a), provides that, with specific exemptions that do not apply to your request, "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."[2] In a recent public records order, we analyzed the current language of ORS 433.008 and were "not persuaded that the context or legislative history of ORS 433.008 compel a reading that is at odds with the plain meaning of the text." Public Records Order, November 14, 2014, Terry at p 4. "[T]he text clearly indicates that legislators intended to make confidential 'information obtained * * * in the course of an investigation.'" *Id.*

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[1] OHA has informed us that it is possible that they possess some records meeting this description that were not obtained in the course of the investigation. If you are interested in such records, OHA will prepare an estimate of the cost of identifying and providing them.

[2] In your petition, you observe that Appendix G of the ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2014) describes ORS 433.008 only as protecting the "[i]dentity of person with communicable/reportable disease." This entry describes the statute's coverage before the legislature amended it in 2009 to more generally cover "information obtained * * * in the course of an investigation." Or Laws 2009, ch 268, § 2. Thank you for bringing this to our attention. We will correct it in the next edition of the manual.

The categories of records you have requested are, on their face, records OHA would have obtained as part of the investigation of these outbreaks. Because we are unable to give the broad language of ORS 433.008 a narrowing construction, we must respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

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cc via email only:
Jonathan Modie, OHA