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February 2, 2015/16

SENT VIA EMAIL ONLY
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Jill Gibson
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1500 SW Taylor Street
Portland OR, 97205

Re: Petition for Public Records Disclosure Order
Oregon Department of Human Services
DOJ File No. 100001-GA0022-16

Dear Ms. Gibson:

This letter is the Attorney General's order in response to your petition for public records disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which was submitted on January 22, 2016, asks our office to order the Oregon Department of Human Services (DHS) to disclose information that your client, Anne Marie Gurney, requested. Specifically, Ms. Gurney seeks any and all residential addresses, telephone numbers, personal electronic mail addresses, and personal cellular telephone numbers for home care worker Deanna Cox. For the reasons that follow, we respectfully deny your petition.

As you observe in your petition, because Ms. Cox is a home care worker, provisions of HB 3037 (2015) and HB 3557 (2015), which have been codified at ORS 192.435 and ORS 192.437, govern the availability of this information.

ORS 192.435 requires a party seeking disclosure of a home care worker's residential addresses, telephone numbers, personal electronic mail addresses, and personal cellular telephone to comply with ORS 192.437. ORS 192.437 in turn requires the party seeking disclosure to include within the request (1) the names of workers for whom personal information is sought; (2) a statement describing what information is sought, and (3) a statement showing by clear and convincing evidence that the public interest requires disclosure in a particular

instance. ORS 192.437(1), (2). Before any disclosure can be made, the public body must forward the request to the individual whose information is being sought. ORS 192.437(3). The public body must then "consider all information submitted under this section," and disclose the requested information only if it "determines that the party seeking disclosure has demonstrated by clear and convincing evidence that the public interest requires disclosure in a particular instance." ORS 192.437(6).

You acknowledge in your petition, and we agree, that the information requested falls squarely under ORS 192.435. You also acknowledge, and we agree, that the dispositive issue here is whether, as required by ORS 192.437(6), you have "demonstrated by clear and convincing evidence that the public interest requires disclosure in [this] particular instance." You indicate in your petition that the reason for seeking this information is to contact individuals to notify them of their rights under *Harris v. Quinn*, 573 U.S. ___ (2014). You contend generally that "the public has an interest in its citizens knowing their First Amendment rights."

Under the circumstances, we are not persuaded that the evidence is clear or convincing that your client's ability to obtain personal contact information from DHS to contact them overrides the interests served by confidentiality pursuant to the relevant statutes. The statute recognizes an interest in privacy and being free from uninvited contact, and provides that it should prevail absent "clear and convincing evidence that the public interest requires disclosure." Thus we must determine whether your client's stated purpose—namely, to educate citizens of their rights under *Harris v. Quinn*—constitutes "clear and convincing evidence" that disclosure is required.

We conclude that disclosure is not required in order to serve the interest you identify. DHS forwarded your client's request to Ms. Cox. The request included the information that you state that your client is seeking to provide to Ms. Cox, specifically:

> [I]n June 2014, the United State[s] Supreme Court held that partial public employees, such as Deanna Cox, could not be forced to be (sic) join or financially support a union. The Supreme Court held that requiring a partial public employee to do so violates the First Amendment. * * * Petitioner seeks to use this information to contact Deanna Cox and inform her that the First Amendment allows her to leave the union.

The fact that DHS sent this request to Ms. Cox means that the specific interest you have identified has, in fact, already been served. Moreover, it has been served in a way that did not require DHS to provide Ms. Cox's contact information to your client. If Ms. Cox is interested in more information from your client, she has been provided with the information necessary to make contact of her own volition.

In addition to your arguments about the interests affirmatively favoring disclosure, you argue that the type of information requested usually is not considered confidential and that people often provide it to strangers. *Compare* ATTORNEY GENERAL'S PUBLIC RECORDS AND

MEETINGS MANUAL (2014) AT 77-78 (noting that addresses and other types of contact information are generally not treated as private, but routinely shared with strangers). By these arguments you suggest that there is little interest in withholding this information. But accepting your position would effectively override the legislative judgment that disclosure is inappropriate unless there is "clear and convincing evidence" that it is "require[d]" in the particular circumstances.

In sum, we cannot conclude that disclosure is "clear[ly]" or "convincing[ly]" necessary in this instance to serve the particular interest you identify, because that interest has effectively been served without disclosing the requested address to you. And we cannot eliminate or weaken the legislative exemption based on your general arguments that the information the exemption protects is not particularly sensitive. Under ORS 192.450, it is not our role to second guess legislative policy choices. We must respectfully deny your petition.

Sincerely,

FREDERICK M BOSS
Deputy Attorney General

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cc via email only:
Gene Evans, DHS