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September 9, 1996

Richard Coreson, Assistant Director
Administrative Services Division
Oregon Department of Fish and Wildlife
2501 S.W. First Ave.
Portland, OR 97207

Justin Burns
1239 State Street NE
Salem, Oregon 97301

Re: *Petition for Public Records Disclosure: Oregon Department of Fish and Wildlife*

Dear Mr. Coreson and Mr. Burns:

This letter is the Attorney General's order on Mr. Burns' petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on August 20, 1996,[1/] asks the Attorney General to direct the Oregon Department of Fish and Wildlife (ODFW) to make available the telephone numbers for 1995 hunting license holders and 1995 combination hunting and fishing license holders. For the reasons that follow, we grant the petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitation. *See* ORS 192.420. If a public record contains 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).

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[1/] We appreciate Mr. Burns' extending the time within which the law would have otherwise obligated us to respond.

We understand from Richard Coreson, Assistant Director of the Administrative Services Division, that ODFW denied Mr. Burns' request because the department determined that the telephone numbers of licensees was private personal information. ORS 192.502(2) exempts private personal information from the disclosure requirements of the Public Records Law. This provision exempts:

> Information of a personal nature such but not limited to that kept in a personal, medical or similar file if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy[.]

The purpose of this exemption is to protect the privacy of individuals from unreasonable invasion. *Jordan v. MVD*, 308 Or 433, 440-42 (1989). The exemption is not intended for the benefit of the public body. Only personal information which would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption. An invasion of privacy would be unreasonable if "an ordinary reasonable person would deem [it] highly offensive." *Id.* at 442-43.

"Personal" information includes a person's home telephone number. *Id.* at 441. Thus, telephone numbers would be subject to the exemption provided that the public disclosure of the numbers would constitute an unreasonable invasion of privacy, i.e., highly offensive to an ordinary reasonable person. That determination must be made on a case-by-case basis. A blanket policy of nondisclosure is not enforceable. *Guard Publishing v. Lane County School Dist.*, 310 Or 32, 39-40, 791 P2d 854 (1990).

In this case, we understand that the department denied Mr. Burns' records request because of a blanket policy of nondisclosure for all telephone numbers. This blanket policy does not meet the requirements of the personal information exemption because the agency has not made a case-by-case determination. Rather, the agency has assumed that release of all of the numbers would be highly offensive. In the absence of any determination that the individual requesting the telephone numbers intends to use the information to harass or otherwise unreasonably invade the privacy of all licensees, the agency does not have a reason to conclude that all licensee telephone numbers are exempt from disclosure. *See* Public Records Order, May 31, 1990 (Heilman).

For these reasons, we conclude that the Public Records Law requires the department to release the requested telephone numbers. The only exception to this requirement is when

an individual's telephone number has been determined to be exempt from disclosure under the personal safety exemption because the individual demonstrated to the satisfaction of the agency that his or her personal safety would be in danger if the number is disclosed. ORS 192.445.

We therefore grant Mr. Burns' petition and order ODFW to disclose the requested telephone numbers, except for those telephone numbers of individuals that the department has determined are exempt under the personal safety exemption, ORS 192.445.[2/] ODFW has seven days from the date of this order in which to comply.[3/] ORS 192.450(2).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

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[2/] We do not believe that the department has any obligation to affirmatively inform all of its licensees that it is required to release telephone numbers, nor must the agency on its own initiative determine whether each licensee may qualify for the exemption. Rather, ODFW may withhold from disclosure those telephone numbers of individuals that the agency has already determined are exempt from disclosure under ORS 192.445.

[3/] ODFW may charge for its actual costs in providing this information to Mr. Burns. ORS 192.440(3). The department may also require prepayment of the estimated charges. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 10-11.