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June 15, 2017

VIA EMAIL ONLY: kim.w.ledbetter@gmail.com

Kim W. Ledbetter
5413 Westfield Ct.
Lake Oswego, OR 97035

Re: Petition for Public Records Disclosure Order
Oregon Department of Consumer and Business Services
DOJ File No.: 440030-GA0097-17

Dear Mr. Ledbetter:

This letter is the Attorney General's order responding to your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on June 1, 2017, asks the Attorney General to order the Division of Financial Regulation (DFR), part of the Department of Consumer and Business Services (DCBS), to produce a legal review done by Standard Insurance Company that was provided to DCBS on or about February 17, 2017.[1]

We respectfully deny your petition as this record was gathered pursuant to an investigation conducted by DCBS in response to your complaint about The Standard, and is therefore exempt from disclosure under ORS 731.264(2).

Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions contained in ORS 192.501 to 192.505. ORS 192.420(1). In addition to the express exemptions contained in those sections, any other information that is confidential, privileged, or prohibited from being disclosed under other Oregon laws is also exempt from disclosure. ORS 192.502(9)(a). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The agency carries the burden to sustain any such denial. *Id.*

[1] Thank you for granting an extension on the deadline to issue an order.

Your petition explains that you are seeking a legal review done by Standard Insurance Company on the issue of employee benefits, which was provided to DCBS after you alleged that The Standard was not complying with its acquisition agreement with Meiji Yasuda. We spoke to Ryan Keeling, DFR's chief financial analyst and assistant manager of insurance institutions. He told us that after receiving your complaint, DCBS began an investigation and obtained this legal review as part of that investigation. DCBS therefore asserts that this record is exempt from disclosure under ORS 731.264(2)[2], which provides that subject to exceptions "[d]ata gathered pursuant to an investigation . . . of a complaint is confidential [and] may not be disclosed."[3] As context, ORS 731.264(1) provides that "[a] complaint made to [DCBS] against any person regulated by the Insurance Code . . . is confidential and may not be disclosed" again subject to certain exceptions. That is, when a complaint is made against a person subject to the Insurance Code, both the complaint and the data gathered pursuant to the subsequent investigation are confidential.

In previous public records orders, we have interpreted ORS 731.264(2) to apply to all information gathered pursuant to a complaint, including correspondence. Public Records Order, Aug 1, 2008, Troyer (all records in the complaint file are exempt, including correspondence between complainant and agency); Nov 6, 1992, Ostrander (all information gathered is exempt); Sept 25, 1991, Tozer (interoffice memoranda during course of an investigation are exempt).[4] We think that this is reasoning is consistent with the statutory text, which applies to any "data" gathered in the investigation. The dictionary defines "datum," in part, as "detailed information of any kind," and as "material serving as basis for discussion, inference, or determination of policy." *Webster's Third New Int'l Dictionary* 577 (unabridged ed 2002); *see also Black's Law Dictionary* (10th ed 2014) (defining "datum" as "a piece of information"). After reviewing the record at issue, we conclude that it contains only information or materials gathered pursuant to the investigation of a complaint, is confidential under ORS 731.264(2), and is therefore exempt under ORS 192.502(9)(a). While ORS 705.137 contains exceptions to this prohibition against disclosure, none of those exceptions apply here to disclosure to you.

In a supplemental petition you submitted, you argue for a narrower reading of "data," noting that the legislature could have chosen a broader term to describe the records protected from disclosure. For example, you note that ORS 731.312(6) makes confidential "[a]ll work papers, recorded information, documents and copies thereof" obtained by DCBS in the course of certain examinations and analyses of insurers. However, there are contextual reasons that ORS 731.312(6) contains different terms: that exemption should be read together with ORS 731.308(2), which provides that any person being examined by DCBS "shall produce all books, records, accounts, papers, documents and computer and other recordings in its possession

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[2] ORS 731.264(1) and (2) were amended by Oregon Laws 2016, chapter 62, section 1.

[3] DCBS also asserts that this record is exempt from disclosure under ORS 731.312(6), which, as relevant here, makes confidential certain records obtained in the course of an examination or in the course of analysis of the market conduct of an insurer, and under ORS 192.501(2) as a trade secret. Because we conclude that this record is exempt under ORS 731.264(2), we don't address these other exemptions.

[4] These public records orders are available from the State of Oregon Law Library at http://cdm17027.contentdm.oclc.org/cdm/landingpage/collection/p17027coll2.

or control." There is no similar statute listing the type of information or records that DCBS gathers in the course of an investigation of a complaint. Thus, we cannot conclude from the legislature's use of the word "data" that the legislature intended to exempt only certain types of information gathered during an investigation.

In addition, although you argue that "data" should be interpreted as encompassing only numerical data, such as actuarial data on claim incidence and severity rates, "data" did not carry so narrow a connotation when ORS 731.264 was enacted in 1967 (in chapter 359, section 59).[5] Instead, "data" was defined as "material serving as a basis for discussion and inference." *Webster's New Int'l Dictionary* 670 (2d ed 1959); *see also Black's Law Dictionary* 472 (4th ed 1968) (defining "data" as "facts from which to draw a conclusion" and "datum," as relevant here, as "a thing given."). Given these broad definitions, it is unlikely that the legislature intended "data" to be interpreted so narrowly.

Because the requested record is exempt from disclosure under ORS 713.264(2) as data gathered pursuant to a complaint, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM8325067
c via email only: Ryan Keeling, DCBS

[5] ORS 731.264(2) initially applied to "preliminary data" gathered during an investigation, but was amended by Oregon Laws 1971, chapter 231, section 11, to apply to any "data" gathered.