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September 27, 2010

Daniel Re
747 SW Mill View Way
Bend, OR 97702

Alan Smith, Records Officer
Public Employees Retirement System
11410 SW 68th Parkway
Tigard, OR 97223

Re: Public Records Disclosure Order
Public Employees Retirement System Records

Dear Mr. Re and Mr. Smith:

This letter is the Attorney General's order on Mr. Re's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on September 13, 2010,[1] asks the Attorney General to direct the Public Employees Retirement System (PERS) to produce a copy of records showing the date that Oregon Representative Judy Stiegler joined PERS.

In a letter dated September 7, 2010, PERS confirmed to Mr. Re that Representative Steigler is a member of PERS. However, PERS advised Mr. Re that the "information you are requesting as to a specific date is exempt under ORS 192.502(12) and OAR 459-060-0020." For the reasons that follow, we grant Mr. Re's petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions. *See* ORS 192.420. If a public record contains both 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). If a public body denies a request for public records, the requester may petition the Attorney General to determine whether the agency's denial comports with the Public Records Law. ORS 192.450.

[1] We appreciate Mr. Re allowing us until September 27, 2010 to respond to his petition.

ORS 192.502(12) unconditionally exempts from disclosure:

> Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

Under this exemption, all "employee financial records" maintained by PERS are exempt from disclosure. A record of when a member became a member is not a financial record. Consequently, ORS 192.502(12) exempts records showing the date a member became a member only if that is exempt nonfinancial information.

ORS 192.502(12) does not require disclosure of all nonfinancial membership records. Instead, the statute provides that "address, telephone number *and other nonfinancial membership records*" are exempt. The phrase "other nonfinancial membership records" is a catch-all phrase that appears at the end of a list. A catch-all phrase at the end of a list is limited by the specific types of items that precede it. In other words, the catch-all includes only items that are similar in kind to the items listed *prior* to the catch-all. ***Vannatta v. Kiesling***, 324 Or 514, 533, 931 P2d 770 (1997) ("Under the doctrine of *ejusdem generis*, a nonspecific or general phrase that appears at the end of a list of items in a statute is to be read as referring only to other items of the same kind"). ***Cf. King Estate Winery, Inc., v. Department of Revenue***, 329 Or 414, 422-23, 988 P2d 369 (1999) (rejecting contention that a non-specific phrase at the end of a list modifies items earlier in the list); ***Quintero v. Board of Parole and Post-Prison Supervision***, 329 Or 319, 324-25, 986 P2d 575 (1999) (general statement preceding a list is not limited by the items following the general statement).

Thus, in this case, only nonfinancial membership records that are similar in kind to a person's address and telephone number are exempt. For the reasons that follow, we are satisfied that the date a legislator became a member of PERS is not exempt from disclosure.

First, we previously have taken the position that ORS 192.502(12) does not exempt from disclosure a member's name, *i.e.*, the fact of that person's membership. Public Record Order October 20, 2009, Re & Cleary (Re & Cleary). In that order, we concluded that, in order to confirm PERS membership on a given date, PERS need only disclose whether an individual's name appears in PERS records surrounding the date in question. Here, the request does not ask whether Rep. Stiegler was a member on a particular date; rather, the request is for the date on which she became a member of PERS. We do not believe there is a material difference between this request and the one considered in Re & Cleary. If the legislature did not intend to exempt the *fact* of membership from disclosure, we are hesitant to interpret ORS 192.502(12) as exempting from disclosure the date that a specified member became a member. In other words, if a person's name is not sufficiently akin to the person's address or telephone number to be exempt from disclosure, we find it unlikely that the legislature would exempt the date that the member became a member.

Second, the evolution of ORS 192.502(12) over time is consistent with our understanding. The exemption was initially enacted as 1983 Oregon Laws chapter 830 section 9. As enacted, it exempted from disclosure "[e]mployee and retiree address, telephone number and

other nonfinancial membership records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320." Notably, this exemption did not reach employee financial records.

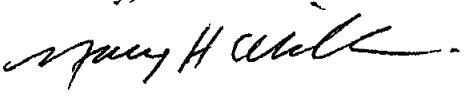
Another exemption potentially applicable to records maintained by PERS is ORS 192.502(2), the "personal privacy" exemption. It conditionally exempts from disclosure

> [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. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

ORS 192.502(2). To conclude that the date a legislator became a member of PERS is exempt from disclosure under ORS 192.502(2), we would have to conclude that that information is "personal" and that "an ordinary reasonable person would deem [disclosure] highly offensive." *See* ***Jordan v. Motor Vehicles Division***, 308 Or 433, 442-43, 781 P2d 1203 (1989). The Oregon Supreme Court has interpreted "personal" in this context to reach all information "relating to a particular person." *Id.* at 441 (concluding that certain information is personal because it "is information specific to one individual"). The date a specific person became a member of PERS is information that falls within that broad definition of "personal." However, we think it unlikely that disclosure of information confirming the date that a known PERS member became a member would be "highly offensive" to an "ordinary reasonable person."

For those reasons, we grant Mr. Re's petition. If Mr. Re would be satisfied with a simple verbal response to his question, or a letter stating the date, PERS has indicated that it is willing to provide that response at no cost to Mr. Re. If that is acceptable, Mr. Re should let PERS know as soon as possible. Otherwise, Mr. Re is entitled to obtain documentation from PERS showing the date on which Representative Steigler became a PERS member, assuming that PERS has such documentation. Such a document may contain additional information that is exempt from disclosure, such as Representative Steigler's address or telephone number. PERS may redact other information that it reasonably believes is exempt, subject to Mr. Re's right to seek review by petition to our office. PERS has seven days to comply with this order, and may charge Mr. Re the actual cost of its compliance.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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