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May 21, 2018

VIA EMAIL ONLY: bschmidt@oregonian.com and
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Brad Schmidt (*The Oregonian*)
1500 SW 1st Ave, Suite 400
Portland, OR 97201

Ariel Nelson
Oregon Housing and Community Services
725 Summer St NE, Suite B
Salem, OR 97301

Re: Petition for Public Records Disclosure Order
Oregon Housing and Community Services
DOJ File No. 914001-GA0034-18

Dear Mr. Schmidt and Ms. Nelson:

This letter is the Attorney General's order responding to Mr. Schmidt's petition, on behalf of *The Oregonian*, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478.[1] The petition, which we received May 9, 2018, asks the Attorney General to order Oregon Housing and Community Services (OHCS) to disclose the names and residential addresses of individuals who participated in its Loan Preservation Assistance program (the "program"). The program provides up to $40,000 in mortgage assistance to help certain homeowners avoid foreclosure. The benefit consists of no-interest, five-year forgivable loans for which liens are recorded against the affected properties. For the reasons discussed below, we grant the petition and order OHCS to provide the requested information.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law, and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney

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

General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain any such denial. *Id.*

Mr. Schmidt's initial records request to OHCS sought the following information regarding individuals participating in the program: names, property addresses, loan amounts, loan dates, forgiven loan amounts, and loan payoff amounts. OHCS disclosed all of the information requested, except for names and property addresses which it withheld under the personal privacy exemption. ORS 192.355(2). In support of its denial, OHCS remarked:

> OHCS administers a variety of resources available to Oregonians experiencing the challenges of housing instability and financial hardship, which too often carry social stigma and can result in prejudice from neighbors. OHCS is committed to protecting the privacy of our program participants, and regards the release of data you have requested as an unreasonable invasion of privacy under ORS 192.355(2)(a).

For the personal privacy exemption to apply, a public body must determine on an individualized basis that disclosure would be an unreasonable invasion of privacy in a particular case. See ORS 192.355(2); and *Guard Publishing Co. v. Lane County School Dist.*, 310 Or 32, 40 (1990). An invasion of privacy is unreasonable if "an ordinary reasonable person would deem [it] highly offensive." *Jordan v. Motor Vehicles Division*, 308 Or 433, 442-43 (1989). Blanket policies of nondisclosure based upon the personal privacy exemption are not enforceable. *See Guard Publishing Co.*, 310 Or at 39-40 (blanket policies of nondisclosure are antithetical to the Public Records Law).

We conclude that OHCS has not made the required individualized determination to justify its use of the personal privacy exemption. In other words, OHCS has not connected its general concerns about stigmatization and prejudice with any particular individual. *See Mail Tribune Inc. v. Winters*, 236 Or App 91, 96 (2010) (citing *Guard Publishing Co.*). Although some individual program participants could be offended by disclosure of their names and addresses, that possibility does not permit us to recognize a blanket policy of nondisclosure in this case.

We therefore grant the petition and order OHCS to produce the requested information. Pursuant to ORS 192.411(2), OHCS must produce the information within seven days or issue a notice to the Attorney General and by certified mail to Mr. Schmidt of its intent to institute proceedings for injunctive or declaratory relief.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM8948143