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VIA EMAIL ONLY: troy@salemreporter.com and jeannine.beatrice@state.or.us

Troy Brynelson
2925 River Road S. Suite 280
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Jeannine Beatrice
Department of Human Services
500 Summer Street NE
Salem, OR 97301

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No. 100001-GA0015-19

Dear Mr. Brynelson and Ms. Beatrice:

This letter is the Attorney General's order responding to Mr. Brynelson's petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478.[1] His petition asks the Attorney General to order the Department of Human Services to disclose the names of two DHS employees who were placed on administrative leave in November 2018. For the reasons discussed below, we grant the petition.

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. Even express exemptions are to be narrowly construed, meaning that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). 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 192.411(1). The agency carries the burden to sustain any such denial. *Id.*

[1] We thank Mr. Brynelson for granting an extension on the deadline to issue this order.

Mr. Brynelson's petition explains on that on January 30, 2019, he requested DHS provide copies of the notices DHS issued to the employees that placed them on administrative leave. DHS provided copies of the notices to him on February 7, 2019, but redacted certain information, to include the employees' names and home addresses. In its response to Mr. Brynelson, DHS explained that "[s]ome content was identified as protected personal information and has been redacted pursuant to ORS 192.355(3)." Mr. Brynelson now asks the Attorney General to order DHS to disclose the employee names because they are not exempt under ORS 192.355(3).[2]

In light of Mr. Brynelson's petition, DHS no longer asserts that the employee names are exempt under ORS 192.355(3). However, DHS argues the names are exempt under ORS 192.355(2) because disclosure under the circumstances would be an unreasonable invasion of the employees' privacy.

ORS 192.355(2) exempts from disclosure:

> (2)(a) Information 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.

The purpose of this exemption is to protect the privacy of individuals from unreasonable invasion. *Jordan v. MVD*, 308 Or 433, 440-42 (1989). An invasion of privacy would be unreasonable if "an ordinary reasonable person would deem [it] highly offensive." *Id.* at 442-43. We have also concluded that in assessing whether an invasion of privacy is unreasonable, we may consider not only the nature of the records requested, but other circumstances as well, such as why the records are being sought and how they relate to the public interest. *See* Public Records Order, Jul 14, 2015, Baker and Allen.

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[2] ORS 192.355(3) states in relevant part:

> **192.355 Public records exempt from disclosure.** The following public records are exempt from disclosure under ORS 192.311 to 192.478:
> ***
> (3) Upon compliance with ORS 192.363, public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.

We begin by noting that the names of public employees are generally a matter of public record. It follows that the disclosure of a particular public employee's name, in itself, would not constitute an unreasonable invasion of privacy. We have also observed that the disclosure of a public employee's leave status would not constitute an unreasonable invasion of the employee's privacy. *See* Public Records Order, May 5, 1994, Wright (disclosing leave status would not be highly offensive because an employee's co-workers are generally aware of the general reason that the employee is on leave). Consistent with this rationale, we generally do not believe that disclosing the identity of a public employee who is on administrative leave would result in an unreasonable invasion of privacy.

In this case, DHS has already disclosed the substance of the notices to Mr. Brynelson. The notices do not reveal the specific reason why the employees were placed on administrative leave. Nor do they contain any sensitive personal information. We also observe that the final paragraph of the notices states "[t]his duty stationing at home is non-disciplinary in nature." Under the circumstances, we cannot conclude that associating the employee names with the substance of the notices would be highly offensive to an ordinary reasonable person.

DHS contends that even if the names themselves are not exempt, the association of the names with other publicly available information would result in an unreasonable invasion of the employees' privacy in this case. We are not persuaded by this argument. We recognize that when combined, information in the public domain and information contained in public records can implicate privacy interests. However, DHS has not provided convincing evidence of how those interests would be *unreasonably* implicated in this instance. We therefore conclude the employee names are not exempt under ORS 192.355(2).

For the reasons discussed above, we grant Mr. Brynelson's petition and order DHS to disclose copies of the notices with the employee names unredacted. DHS has seven days within which comply or to announce its intention to seek judicial review. ORS 192.411(2).

Sincerely,

Frederick M. Boss

Frederick M. Boss
Deputy Attorney General

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