192.502(2) sick leave

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index & summarize, but do not include in text unless many wms wants to also check for outcome of ct. case personal privacy

May 5, 1994

Connie Wright
Council Representative
Oregon AFSCME Council 75
721 SE 3rd Street, Suite 302
Pendleton, OR 97801

Re: Petition for Public Records Disclosure Order: Eastern Oregon Correctional Institution Records

Dear Ms. Wright:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records law, ORS 192.410 to 192.505. Your petition, which we received on April 28, 1994, asks the Attorney General to direct Eastern Oregon Correctional Institution (EOCI) to produce for inspection the following records: "Leave documentation on all security staff dating back to October 2, 1990, and the reason for the leave, i.e., sick leave, vacation, LWP, LWOP, etc."[1/] Because the agency now agrees to release the requested records, we deny your petition as moot.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420.

ORS 192.502(2) exempts certain private personal information from the disclosure requirements of the Public Records Law. This provision exempts:

> Information of a personal nature such as 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 pubic interest by

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[1/] You have informed us that you seek only the date, amount and type of leave and that you are not seeking the reasons given by the employee for the type leave taken or any other documentation supporting the reasons for the leave.

> 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 that 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.

The first determination to be made is whether the information is of a "personal nature." The test for determining this, established in Jordan, requires determining whether the information sought is specific to one individual. Clearly, the information contained in an employee's leave record is specific to the individual being evaluated. It is, therefore, information of a "personal nature."

The second determination to be made under the exemption is whether disclosure of the leave record of an individual would constitute an unreasonable invasion of privacy. The amount and frequency of time an individual takes off work for vacation is evidence of the individual's choices regarding his or her private life. Use of sick leave may reveal information about the individual's personal health. Similarly, the fact that an individual has taken leave without pay may reveal information about the individual's private life. However, the disclosure of such leave information would not constitute an "unreasonable" invasion of the individual's privacy. The information sought is not documentation supporting the particular type of leave taken, such as the reasons why an individual took sick leave or whether a vacation was for purposes of a trip, but only the date, hours and type of leave. Generally, an individual's co-workers are well aware of the general reason that an employee is off from work and the length of time that he or she is gone. This is not the type of information that an ordinary reasonable person would deem highly offensive to disclose.

Because the leave information requested is not the type of information the disclosure of which would constitute an unreasonable invasion of privacy, it is not necessary to reach the issue of whether the public interest by clear and convincing evidence requires disclosure in the particular instance. The information is not exempt from disclosure under ORS 192.502(2).

EOCI has questioned whether inspection of the employee leave records may be permitted in light of Article 49, Section 2, of the current collective bargaining contract for the employees in the bargaining unit, which states: "Any agency file maintained by the

Employer regarding an employee may be inspected by the employee, or any other employee with the written permission of the affected employee."

Although the foregoing language may imply that the employee's permission is required for inspection of personnel information regarding the employee, it does not explicitly require such permission. Even if the language of the collective bargaining contract explicitly prohibited disclosure of employee leave information, the terms of a contractual agreement entered into by the state cannot override the legislative mandate in the Public Records Law that any person has a right to inspect any public record, except as otherwise expressly exempt from disclosure by ORS 192.501 to 192.505.[2/] See ORS 192.420. We find nothing in ORS 192.501 to 192.505 that would exempt the requested records from disclosure.

After discussing these issues with EOCI, the institution has agreed to release the records. Accordingly, we deny your petition as moot.

The institution may charge a fee to reimburse it for its actual cost in making these records available, including its photocopying costs for labor and materials, costs of retrieval of the information from its files or computers and the time spent by agency personnel reviewing the records.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

JSI:AV:clr/JGG09889
c: Brad Heath, Security Manager, Easter Oregon Correctional Institution

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[2/] We understand that you requested the records in this case on behalf of the American Federation of State, County and Municipal Employees (AFSCME). AFSCME was a party to the collective bargaining contract. While we believe that a party to a contract could knowingly waive its right under the Public Records Law to inspect certain public records, we do not interpret the above contract language as having done so.