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Peg Ralston
Assistant Commissioner
Public and Personnel Services
Public Utility Commission
Labor & Industries Building
Salem, OR 97310-0335

Re: Petition for Public Records Disclosure Order: Public Utility Commission

Dear Mr. Leighty and Ms. Ralston:

This letter is the Attorney General's order on Mr. Leighty's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on March 20, 1992, asks the Attorney General to direct the Public Utility Commission (Commission) to produce copies of records which would reveal the following information: (1) the "gross pay" of Commission employee Darla Monroe for the "past 4 months [DEC -'91 - FEB '92];" (2) the number of years Ms. Monroe has worked for the Commission; and (3) whether Ms. Monroe is providing insurance through a payroll deduction for a named minor child. For the reasons that follow, we grant Mr. Leighty's petition as to the first two items of information requested and deny the petition as to the third.

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. The records Mr. Leighty asks the Commission to produce fall within ORS 192.502(2). This statute provides a conditional exemption referred to as the "personal privacy exemption." The statute provides:

> "The following public records are exempt from disclosure under ORS 192.410 to 192.505:
>
> "* * * * *
>
> "(2) 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 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)

The purpose of this statute is to protect the privacy of individuals from unreasonable invasion. Jordan v. Motor Vehicles Division, 308 Or 433, 441, 781 P2d 1203 (1989). We conclude that while all of the items of information requested involve personal information, the disclosure of the first two items would not constitute an unreasonable invasion of privacy, but that disclosure of the third would unreasonably invade Ms. Monroe's privacy.

As to the first item requested, wage level information, we begin our analysis by observing that "personal" information is information "specific to one individual." Jordan, supra, at 441. Under this definition, salary information is personal. Whether disclosure of the personal information constitutes an "unreasonable invasion of privacy" depends upon whether, under the facts presented, an ordinary person would deem disclosure "highly offensive." Id. 308 Or at 442-3.

A public employee does not have a reasonable expectation that information concerning their salary will not be subject to public scrutiny. The public has an important interest in knowing the amount that a public servant is compensated for her services. Cf., Jensen v. Schiffman, 24 Or App 11, 17, 544 P2d 1048 (1981) (privacy right of public officials must be subordinated to the right of citizens to monitor how they are doing on the job). Accordingly, every public employee should recognize that the amount she is paid may become public knowledge should the public ask. This rationale applies to past compensation as well as to current salary information. Thus, information concerning a public employee's salary is not exempt from disclosure under the Public

Records Law because the disclosure of this information does not constitute an unreasonable invasion of the employee's privacy.

The second request is for information on how long Ms. Monroe has worked for the Commission. The length of time a person has worked in a position is personal because it is information unique to that individual. For reasons similar to those discussed above, we conclude that a public employee does not have a reasonable expectation that her date of hire with the state will not be disclosed to the public. Accordingly, release of that information is not "highly offensive" and the length of time Ms. Monroe has worked for the Commission is not exempt from disclosure.

The third request is for information which would show whether Ms. Monroe has a payroll deduction for insurance for a particular minor child. While it is not clear, we assume Mr. Leighty's request concerns information about medical and dental insurance for the child.

We conclude initially that whether a person has chosen to purchase health insurance for a third person is "personal" information. However, unlike the first two requests, we conclude further that a public employee has a reasonable expectation that the public is not entitled to know whether she has purchased medical insurance for a third person by means of a payroll deduction. While the public has a right to know how much its public employees are paid, it does not have a legitimate interest in knowing how the public employee spends her paycheck. In other words, Ms. Monroe may reasonably believe that it would be an invasion of her privacy to reveal this information.

Moreover, the Supreme Court has stated

> [A] disclosure constitutes an unreasonable invasion of privacy if the agency's act of releasing the information, or the acts of those to whom the information is released, are reasonably anticipated by the agency to lead to an invasion of privacy.

Id. at 444 (Gillette, J., concurring) (emphasis in original). Here, Mr. Leighty states that he wants the information for use in a child support dispute. While we do not know the precise nature of that dispute, the fact that the information is to be used in an adversary context adds weight to the conclusion that Ms. Monroe would reasonably find disclosure highly offensive under the circumstances.

ORS 192.502(2) still allows for disclosure of the information if the petitioner is able to show that there is an overriding public interest in disclosure. Mr. Leighty has articulated no such overriding interest. As stated, he wants the information for a personal reason -- to use in a child support case involving the named child. The information does not relate to a public employee's performance of a public function nor will it be used for a public purpose. Under these circumstances, we can find no overriding public interest in disclosure.

For the above reasons, we grant Mr. Leighty's petition as to Ms. Monroe's gross pay and length of employment, and order the Commission to provide him with copies of documents which show that information. If necessary, the Commission may separate and disclose only the information that we have discussed. See ORS 192.505. However, we deny Mr. Leighty's petition as to the insurance information; the Commission need not release that information. The Commission has seven days from the date of this order in which to comply. See ORS 192.450(2).

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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