DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

personnel discipline
public interest

November 26, 1990

Linda Nealy
Personnel Manager
Motor Vehicles Division
1905 Lana Avenue NE
Salem, OR 97314

Dave Hogan
Staff Writer
The Oregonian
1320 S.W. Broadway
Portland, OR 97201

Re: **Petition for Public Records Disclosure Order; Motor Vehicles Division Records**

Dear Ms. Nealy and Mr. Hogan:

This letter is the Attorney General's order on Mr. Hogan's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on November 16, 1990,[1] asks the Attorney General to direct the Motor Vehicles Division (MVD) to produce copies of:

> "1. Any letter or letters notifying Mr. [Enrique Garcia] Bustamante of any suspension or termination of his employment with the Motor Vehicles Division.
>
> "2. Any other documents that state any suspension or termination of Mr. Bustamante's employment and the reason for that action."

For the reasons that follow, we grant the petition.

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. In this context the relevant exemption is ORS 192.501(13).[2]

ORS 192.501(13) provides:

> "The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:
>
> " * * * * *
>
> "(13) A personnel discipline action, or materials or documents supporting that action[.]

This exemption covers completed disciplinary actions where a sanction was imposed. See City of Portland v. Rice, 308 Or 118, 775 P2d 1371 (1989). The requested records fall squarely within this exemption. Accordingly, MVD must allow inspection or copying of those records only if "the public interest requires disclosure in the particular instance."

The only document in question is a November 14, 1990, letter from David Moomaw, MVD Administrator, to Mr. Bustamante. That letter states that Mr. Bustamante has been dismissed from his position with MVD for specified job-related conduct revealed in a criminal investigation. The letter also contains Mr. Moomaw's explanation of why that conduct is just cause for Mr. Bustamante's dismissal. It further states that Mr. Bustamante failed to appear for his scheduled predismissal hearing, and sets forth Mr. Bustamante's appeal rights.

An article in the November 3, 1990, issue of The Oregonian under Mr. Hogan's byline discussed the relationship between Mr. Bustamante's alleged conduct and a criminal investigation of a heroin distribution ring. That article stated in relevant part:

> "[T]hose arrested Friday [November 2, 1990] included Enrique Garcia Bustamante, 45, of Gervais, a Motor Vehicles Division employee since May 1987. He had worked as a driving test examiner at the East Portland Drive Test Center at 8710 S.E. Powell Blvd. since February 1988.
>
> "He was arrested at the Powell Boulevard office Friday afternoon and was suspended with pay from his $1,686-a-month job pending a hearing, said Ann Snyder, a division public affairs manager.
>
> "[Capt. Chuck] Karl alleged that Bustamante supplied 16 false driver's licenses to Orantes and his associates for a price of $300 to $500 per license. Bustamante is not alleged to have participated in the drug transactions, he said.

" * * * * *

" * * * Bustamante [was] being held in the Justice Center Jail on Friday evening and [is] expected to appear in federal court Monday. * * *

" * * * * *

"Those arrested were named in a federal complaint charging them with conspiracy to deliver more than a kilogram of heroin."

Under the circumstances presented here, we conclude that the public interest requires disclosure. This case does not involve a routine instance of employee discipline. Rather, a public employee has been dismissed as a result of a criminal investigation that produced allegations that the employee misused a public office for private financial gain and in furtherance of a criminal conspiracy to distribute large quantities of heroin. We believe that the public has a strong interest in knowing how MVD has handled this matter. The information in the document in question substantially overlaps information already made public through Mr. Hogan's previous article. Consequently, there is little remaining public interest in withholding the document from the public. Nor do we believe that release of Mr. Moomaw's letter will impair Mr. Bustamante's ability to receive a fair trial on any criminal charges that may be brought against him.

For these reasons, we grant Mr. Hogan's petition, and order MVD to release the letter in question. MVD has seven days from the date of this order in which to comply. ORS 192.450(1).

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:JGR:RDW:gcp/2649G

---

[1] We appreciate Mr. Hogan's courtesy in allowing us to exceed the statutory seven-day deadline for issuance of this order.

[2] Mr. Hogan's petition states that in denying disclosure, MVD relied on the "personal privacy exemption," ORS 192.502(2). That exemption does not justify nondisclosure here. ORS 192.502(2) applies only where the release of information "would constitute an unreasonable invasion of privacy." Disclosure of information concerning the manner in which a public officer or employee carries out the duties of the office or employment cannot constitute an unreasonable invasion of privacy, because the public is entitled to know what public employees are doing on the job. Attorney General's Public Records and Meetings Manual 31 (1989); Public Records Order, March 13, 1990 (MacKenzie/Perry/Lipton).