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personal privacy
transferred records
jury lists

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

November 8, 1988

F. Douglass Harcleroad
Lane County District Attorney
Lane County District Attorney's Office
400 Lane County Courthouse
125 East Eighth Avenue
Eugene, OR 97401

Re: Petition for Public Records Disclosure Order; State Court Administrator's Office

Dear Mr. Harcleroad:

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 asks the Attorney General to direct the State Court Administrator to disclose "page two of the Security Release Questionnaire and Financial Statement" for all Lane County defendants "who execute such a document for the purpose of reviewing release or requesting a court appointed attorney." Your petition also seeks the disclosure of the "Jury Register" for the Lane County Circuit and District Courts "for the jurors whose term began on October 4, 1988." The State Court Administrator has denied your request to inspect and copy page two of the security release questionnaires. On your second request, for a specific jury register, the local court administrator has suggested that "what you believe to be the court's Jury Register may not in fact be so." The court administrator has not disclosed to you the "jury register" or any other jury list.

For the reasons stated below, we deny your request for disclosure, under the Public Records Law, of the second page of security release questionnaires for all Lane County defendants who submit those questionnaires. However, we conclude that you are entitled, under the Public Records Law, to disclosure of page two of the questionnaire where you have a reasonable basis to believe that a defendant, in requesting a court-appointed attorney, materially has misrepresented his or her financial assets or liabilities.

We share the court administrator's uncertainty as to which jury record you seek. If, as we suspect, the document you desire is, in fact, the "term jury list," ORS 10.225, then we respectfully refuse to order the release of this list. You have specifically asked for the "jury register," ORS 7.070, and this document is subject to disclosure.

The Public Records Law confers the right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. The law is primarily a disclosure law rather than a confidentiality law. The general rule of the records law is that "every person has a right to inspect any public record." ORS 192.420; Turner v. Reed, 22 Or App 177, 181, 585 P2d 373 (1975).

The law applies to the public records of public bodies in this state. ORS 192.420. "Public body" is broadly defined to include "every state officer, agency, department, division, bureau, board and commission." ORS 192.410(1). We conclude that both the State Court Administrator and the local Trial Court Administrator are state officers. See ORS 8.170, 8.235. But cf. State ex rel KOIN-TV v. Olsen, 300 Or 392, 398-400, 711 P2d 966 (1985) (assuming, arguendo, that Public Records Law does not apply to court records). However, we also note that when you invoke the Public Records Law to obtain disclosure of a public record, you stand in the shoes of any member of the public. For purposes of the Public Records Law, your position as District Attorney neither enhances nor diminishes your exercise of a right that " . . . is part of the state's policy of open government and belongs to everyone." State ex rel Frohnmayer v. Oregon State Bar, 91 Or App 690, 694, 696 n.6, ___ P2d ___ (1988), rev. pending.

With these general principles in mind we turn first to your request for the second page of the "Security Release Questionnaire and Financial Statement."

You ask for the disclosure of the second page of this document in all Lane County cases where defendants submit the form "for the purpose of reviewing release or requesting a court appointed attorney." However, and despite the form's name, we are informed that, in Lane County, the questionnaire is not used for release purposes, but only for the appointment of counsel.

The questionnaire is filled out by any defendant who seeks court-appointed counsel. The form serves as the "written and

verified financial statement" required by statute. ORS 135.050(1)(c).[1] In general, the second page of the form contains a listing of a defendant's financial assets and liabilities, and an abbreviated employment history.

The only exemption relevant to your request is ORS 192.502(2), which exempts from disclosure:

> "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."

The Court of Appeals has described the elements of the exemption, and the applicable burdens of proof, as follows:

> "[T]he exemption * * * is applicable if (1) the information requested is within the category, the burden of proof being upon the public body and (2) public disclosure would constitute an unreasonable invasion of privacy, the burden of disproof being on the person requesting the information unless (3) the public interest is shown by clear and convincing evidence to require disclosure [in the particular instance]."

Morrison v. School District No. 48, 53 Or App 148, 154, 631 P2d 784, rev den 298 Or 893 (1981) (Emphasis in original.)

"Information of a personal nature" is that which "'normally would not be shared with strangers.'" Morrison v. School District No. 48, supra, 53 Or App at 155 (quoting from Turner v. Reed, supra, 22 Or App at 192). The exemption might not apply to the bare recitation of biographical facts[2], or to information that is routinely given out in business transactions and which is thus of a less personal nature.[3]

In a letter sent to the State Court Administrator in 1987, an assistant attorney general suggested that, under this analysis, the personal financial information on the questionnaire is exempt, while other information, including the

"type and year of motor vehicles owned" and "the times and addresses of prior employment," was not. (Letter of October 1, 1987, from Robert W. Muir to R. William Linden, Jr., State Court Administrator.)

The conclusions stated in that letter are consistent with our decisions in previous public records orders in which we refused to order disclosure of personal financial information contained in public records. See Public Records Orders dated February 18, 1981 (Zaitz), and March 27, 1981 (Snell). We adhere to those conclusions.

Nonetheless, that point does not settle the inquiry here. Specifically, because the letter did not respond to a particular request for records, the letter did not address whether a member of the public could disprove that disclosure would constitute an unreasonable invasion of privacy or whether "the public interest by clear and convincing evidence requires disclosure in the particular instance." ORS 192.502(2). See Jordan v. Motor Vehicle Division, ___ Or App ___, ___ P2d ___ (November 2, 1988) (slip op at 4).

As we have noted above, the information on the second page of the questionnaire is used in determining whether to appoint counsel at public expense. Your office has informed us that you seek this information because there is no other "check on [its] accuracy." You state that your office "is in a special position to review" the questionnaire because of your access to police records and to other investigatory information, and because of your own investigative resources to check the information in "questionable cases." The court staff does not independently assess the validity of the information contained in the questionnaire, and you describe a particular case in which your office's access to a questionnaire prevented appointment of counsel at public expense for a person with substantial assets.

Although the purpose underlying a request for disclosure under the Public Records Law is not usually determinative, Morrison v. School District No. 48, supra, the Court of Appeals recently observed that "the facts surrounding different requests and cases may be relevant to whether the public interest requires disclosure of information that would otherwise be exempt." Jordan v. Motor Vehicles Division, supra, slip op at 5 n 2.

Your statement of your reasons for seeking disclosure shows that the public has a strong interest in knowing the financial status of defendants who seek and obtain appointed counsel at public expense. See, e.g., ORS 135.050(6) (termination of appointment of counsel when court finds that defendant is financially able to obtain counsel); ORS 135.050(7) (civil proceeding by public body to recover costs of appointed counsel where defendant was not qualified under ORS 135.050(1) for appointed counsel).

However, we conclude that to be entitled to disclosure of personal private information on a financial questionnaire, pursuant to the Public Records Law, a member of the public must clearly and convincingly show that disclosure would not unreasonably invade the privacy of the applicant and that the public interest required disclosure in the particular instance. You could make such a showing for instance, when a court has appointed counsel at public expense, but you reasonably suspect that the defendant has assets that would make him or her financially ineligible for appointed counsel. ORS 192.502(2). We understand that such a belief exists only in a relatively small number of cases. In light of that fact, and of the personal and private nature of the information sought, routine disclosure of all parts of all questionnaires is not clearly and convincingly required by the public interest.

Therefore, we deny your Public Records Law petition for disclosure of the personal financial information on page two of the security release questionnaire for all Lane County defendants who apply for court-appointed counsel. Where you demonstrate a reasonable basis to believe that a defendant materially has misrepresented his or her assets or liabilities, however, you would be entitled to disclosure of page two of that defendant's questionnaire under the Public Records Law.

In closing this first issue, we note that the Public Records Law does not forbid the court administrator making the questionnaire information available for your inspection in your capacity as district attorney. We are aware of no law which provides that the information on page two of the questionnaire must remain confidential. Accordingly, the State Court Administrator, acting to further the public interest in protecting the Indigent Defense Fund from fraud, may choose to provide you with page two of the questionnaire in all cases, outside the context of a Public Records Law proceeding. The exempt information would remain exempt from disclosure while in your possession pursuant to ORS 192.502(9), the exemption for

transferred records. You as the District Attorney are in position effectively to assist the state in detecting fraud in the procurement of court-appointed counsel. Moreover, the knowledge that your office may review specific questionnaires likely would tend to curb the incentive for defendants to submit false answers on the questionnaire, because of the possibility of a prosecution for perjury. See ORS 162.065 (defining crime of perjury).

We turn now to your second disclosure request. As we noted above, in your petition to this office you ask us to order the State Court Administrator to allow the inspection and copying of the "Jury Register for Lane County Circuit and District Courts, for the jurors whose term began on October 4, 1988." You attach certain letters to your petition. In those letters to the local Trial Court Administrator, you also state that you are requesting the disclosure of the "jury register." However, you describe the document you seek as follows:

> "Every four (4) weeks the Court draws names from the master list in order to create a panel for that particular term. That list is kept by the jury assembly clerk. This list is the jury register. See ORS 7.070."

Letter of May 6, 1988, to William H. Meyer, Jr., Trial Court Administrator, Lane County.

ORS 7.07 does describe the "jury register." The statute provides:

> "The jury register is a record wherein the clerk or court administrator shall enter the names of the persons attending upon the court at a particular term as grand or trial jurors, the time of the attendance of each, and when discharged or excused, and the amount of fees and mileage earned by each."

The jury register is part of the "records" of the trial court. ORS 7.010(1). "Whenever requested, the clerk or court administrator shall furnish to any person a certified copy of any portion of the records or files in the custody of the clerk or court administrator * * *." ORS 7.130.

Thus, the jury register is subject to disclosure under the clear terms of ORS 7.130.

However, we doubt that the "jury register" is, in fact, the document which you seek. Your letter to the local Trial Court Administrator appears to describe not the "jury register," but instead the "term jury list." Your office has informed us that you seek this list in order to construct an alphabetical listing of term jurors. We note that the "jury register" described in ORS 7.070 might not exist until the conclusion of a jury term. The statute says that the jury register shall include the date of discharge of jurors, and the amount of fees and mileage earned by each juror. Some of this information is unavailable at the outset of a jury term. In addition, the State Court Administrator's office informs us that the "jury register" in Lane County is not kept by juror name, but rather by juror number. In brief, the jury register might not exist at the time when you seek it, and might not contain the information you seek.

The document that you describe, listing juror names at the outset of a jury term, apparently is the "term jury list." ORS 10.225(1) provides:

> "Not less than ten days before the commencement of a jury service term in a county, a term jury list containing names selected at random from the master jury list shall be prepared at the direction of the presiding judge of the circuit court for the county or clerk of court." (Emphasis added.)

The "term jury list" is not subject to disclosure.

ORS 192.502(8) exempts from disclosure under the Public Records Law:

> "Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."

ORS 10.215(1) restricts the disclosure of a term jury list. The statute provides:

> "Upon written order of the presiding judge of the circuit court for a county, the clerk of court shall cause to be prepared at least once each year a master jury list containing names selected at random from the source lists. The source lists are the most recent lists of

> electors of the county[4] and any other sources that will furnish a fair cross-section of the citizens of the county. Any source list obtained from a public or private entity and any jury list containing names selected from a source list shall not be used for any purpose other than the selection and summoning of persons for service as jurors and the drawing of names of jurors." (Emphasis added.)

By the express terms of this statute, any jury list containing names selected from a source list "shall not be used" for any purpose other than the selection and summoning of persons for service as jurors. The master jury list is prepared from a source list. ORS 10.215(1). In turn, a term jury list is prepared from the master jury list. ORS 10.225(1), quoted supra. Thus, a term jury list is a jury list containing names selected from a source list. In a 1987 opinion, we analyzed the restriction set out in ORS 10.215(1). As we noted there, "[a]lthough the specific provision uses the phrase 'not be used' rather than 'not be disclosed' we are unable to envision any disclosure which would prevent use for other purposes." 45 Op Atty Gen 185, 186 n 1 (1987) (emphasis in original). In sum, a term jury list is exempt from disclosure pursuant to ORS 192.502(8) and ORS 10.215(1). If the document that you seek is, in fact, the term jury list, then this list need not be disclosed.

Nonetheless, you have specifically petitioned for the disclosure of the "jury register." Neither the State Court Administrator nor the local court administrator has given you the jury register. The jury register is subject to disclosure under the terms of ORS 7.130, supra. If the "jury register" is the document which you seek, then the State Court Administrator must disclose it to you.

In conclusion, we deny your petition to order the State Court Administrator to disclose page two of the security release questionnaire of all Lane County defendants who seek court-appointed counsel. You are entitled to disclosure in those cases in which you have a reasonable basis to believe that a defendant materially has misrepresented his or her assets or liabilities. The term jury list is exempt from

disclosure. ORS 192.502(8); ORS 10.215(1). The jury register, however, is not exempt from disclosure. ORS 7.130.

Respectfully submitted,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: R. William Linden, Jr., State Court Administrator

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[1] ORS 135.050(1) provides that suitable counsel shall be appointed for a defendant if, in addition to certain other conditions,

> "(c) The defendant provides to the court a written and verified financial statement; and
>
> "(d) It appears to the court that the defendant is financially unable to retain adequate representation without substantial hardship in providing necessities to the defendant or the defendant's family."

[2] In Turner v. Reed, supra, 22 Or App at 192, the Court of Appeals said:

> "We do not mean to exempt all references to a persons's family life. Factual information, for example that a person is married or a parent, is subject to disclosure. Although the line may be difficult to draw, we only intend to exempt information that is normally regarded as personal in nature."

See also Simpson v. Vance, 648 F2d 10, 13-14 (DC Cir 1980) which, under the federal Freedom of Information Act, 5 USC § 552(b)(6), distinguished between "basic biographical facts which are objective in nature," and which are subject to disclosure under the Act, and "intimate details" about an individual, which are not.

[3] In Kotulski v. Mt. Hood Comm. College, 62 Or App 452, 660 P2d 1083 (1983) the Court of Appeals held that the

statute did not exempt the disclosure of the addresses of part-time community college instructors. The court said:

> "We cannot say that one's address is information that 'normally would not be shared with strangers.' Addresses are commonly listed in telephone directories, printed on checks and provided to merchants. They appear on driver's licenses and other identification that is routinely shown to strangers."

62 Or App at 457. See also Lane County School District v. Parks, 55 Or App 416, 637 P2d 1383 (1981), rev den 293 Or 103 (1982). However, Jordan v. Motor Vehicles Div., ____ Or App ____, ____ P2d _____ (November 2, 1988), clarified that even addresses and telephone numbers may fall within this exemption in certain circumstances.

[4] The 1987 legislature altered the description of the source lists which is contained in ORS 10.215(1). Effective January 1, 1989, the "source lists are the most recent list of electors of the county, the records furnished by the Motor Vehicles Division as provided in ORS 802.260(2) and any other sources approved by the Chief Justice of the Supreme Court that will furnish a fair cross-section of the citizens of the county." See Or Laws 1987, ch 681, § 5.