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November 13, 2023

VIA E-MAIL ONLY: dhefflinger@hotmail.com

Donald Hefflinger
16032 SE Chelsea Morning Drive
Happy Valley, OR 97086

Re: Petition for Public Records Disclosure Order
Department of Consumer and Business Services
DOJ File No.: 440040-GA0155-23

Dear Mr. Hefflinger:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Department of Consumer and Business Services (DCBS) to disclose an unredacted version of an e-mail disclosed to you in response to a public records request. For the following reasons, we respectfully deny your 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. 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*.

Your petition relates to an internal e-mail documenting a telephone call that a DCBS employee received regarding you in March 2022. DCBS redacted material from the version of the e-mail furnished to you to obscure the caller's identity. Your petition explains your belief that the caller provided DCBS with false information about you. Your petition also explains that you were terminated from your position in a bank after DCBS forwarded this allegedly false information to your employer. You claim that public needs to know who made these false statements to DCBS.

We contacted Gail Gage, a DCBS compliance specialist, regarding your petition. She explained DCBS' position that disclosing the caller's identifying information to you will constitute an unreasonable invasion of privacy. DCBS therefore asserts that it is permitted to

withhold that information under ORS 192.355(2). That provision permits agencies to withhold information of a personal nature if disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. *Id*. It also provides that the person seeking disclosure has the burden of showing that disclosure would not constitute an unreasonable invasion of privacy. *Id*.

In support of DCBS' position, Ms. Gage explained that after a lengthy investigation and administrative review, DCBS revoked your mortgage broker license in July 2021 based upon multiple instances of fraud and dishonesty involving several victims. She indicated that the caller identified in the e-mail at issue was one of your victims and that they called DCBS in March 2022 to inquire about the status of the investigation. According to Ms. Gage, when the caller was informed that your mortgage broker license was revoked in 2021, they expressed surprise because you were currently employed at a local bank. Ms. Gage also acknowledged that after receiving this information from the caller, DCBS confirmed that you were working in a bank and notified your employer that your mortgage broker license had been revoked in 2021. She informed us that DCBS has previously provided you with an unredacted copy of the notice that DCBS provided to your employer. She also expressed DCBS' position that notwithstanding your claims, DCBS' notice to your employer does not contain any false information.

Ms. Gage also provided us with a copy of the final order revoking your mortgage license in 2021. She explained DCBS' position that the final order details past behavior by you, including fraud, forgery, dishonesty, and harassment, which supports its determination that disclosing the caller's identity to you will create an unacceptable risk of harassment or other material adverse consequences to the caller. She also indicated that in response to your petition, DCBS contacted the caller to determine whether they objected to disclosing their identity in this instance. According to Ms. Gage, the caller strongly objects to disclosure and expressed fear for their privacy and safety if their identity is disclosed to you. Finally, citing *Jordan v. Motor Vehicles Division*, 308 Or 433 (1989) and Public Records Order, April 25, 2014, Young, Ms. Gage asserted that (1) DCBS has satisfied the threshold requirement of showing that disclosure will constitute an unreasonable invasion privacy; (2) there is no clear and convincing evidence that the public interest requires disclosure in this instance; and (3) you have not met your burden of showing that disclosure to you would not constitute an unreasonable invasion of privacy.

For DCBS to rely upon ORS 192.355(2) in this instance, it must make two threshold showings. First, it must demonstrate that the information withheld is information "of a personal nature." We find that this requirement is satisfied in this instance based upon our prior determination that such personal identifying information is information "of a personal nature" within the meaning of the statute. *See* Public Records Order, April 25, 2014, Young (personal identifying information, including e-mail addresses, constitutes information "of a personal nature") (citing *Jordan*, 308 Or at 441).

Next, although ORS 192.355(2) provides that "[t]he party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy," agencies asserting the exemption "must first show that disclosure will unreasonably invade an individual's privacy." *Attorney General's Public Records and Meetings Manual* at 92

(2019) (citing *Jordan*, 308 Or at 443). An invasion of privacy will be unreasonable where "an ordinary reasonable person would deem [disclosure] highly offensive." *Jordan*, 308 Or at 441. In this case, the available record demonstrates that you have previously subjected the caller to conduct that an ordinary reasonable person would undoubtedly consider to be highly offensive. The caller has also informed DCBS that they fear for their privacy and safety if their identity is disclosed to you in this instance. The caller's apprehension appears reasonable and compelling to us in light of their past interactions with you and concerns that you may retaliate against them for supplying information to DCBS that ultimately led to your employer to terminate you. On balance, we find that DCBS has made the requisite showing that an ordinary reasonable person would find disclosing the caller's identity in this instance to be highly offensive.

For the reasons discussed above, we find that DCBS has satisfied both threshold requirements for redacting the caller's identifying information. It is therefore permitted to withhold that information until either you demonstrate that disclosure would not constitute an unreasonable invasion of privacy, or there is a showing that the public interest requires disclosure in this instance by clear and convincing evidence. ORS 192.355(2). In response to our invitation to you to address these remaining factors, you responded that DCBS' claim that disclosure to you will constitute an unreasonable invasion of privacy is "meritless" because the final order revoking your license is already a matter of public record. You also asserted that "it is in the public's interest to find out who called in a falsified complaint to [DCBS] against me which led to my termination."

On this record, we cannot conclude that you have met your burden of showing that public disclosure would not constitute an unreasonable invasion of privacy. Although DCBS' final order is a matter of public record, that fact does not persuade us that an ordinary reasonable person would find disclosing the caller's identity in this instance NOT to be highly offensive. To the contrary, we find the conduct detailed in the final order demonstrates that the caller's concerns about their safety and privacy are well-founded, and not merely speculative. *Cf. Jordan*, 308 Or at 442-43 (individual's address was exempt from disclosure where disclosure would allow the requester to "harry [the individual] incessantly"); and Public Records Order, April 25, 2014, Young (disclosing employees' personal identifying information, including e-mail addresses, would be an unreasonable invasion of privacy where it would create unacceptable risk that their employers may fire or otherwise punish them).

We also find that there is not clear and convincing evidence that the public interest compels disclosure in this instance. First, we cannot accept the premise of your public interest argument that the caller filed a false complaint against you to DCBS. As detailed in other materials disclosed to you, we understand that the caller contacted DCBS to inquire about the status of its investigation against you, not to submit a complaint. Your petition also fails to explain what information the caller provided to DCBS that you believe was false. Instead, our review of the record suggests there was no dispute over whether you were working in a bank approximately nine months after your license was revoked. It is also apparent to us that you seek the caller's identity primarily for personal reasons and you have not identified any broad or heighted interest in this information among the general public that would compel us to order disclosure in this instance. We therefore conclude that the public interest does not require disclosure in this instance.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Gail Gage (DFR)