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Business Oregon
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Re: Petition for Public Records Disclosure Order
Oregon Business Development Department
DOJ File No.: 123886-GA0156-23

Dear Ms. Alexander and Mr. Buehler:

This letter is the Attorney General's response to Ms. Alexander's petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Her petition, which we received October 19, 2023,[1] asks the Attorney General to order the Oregon Business Development Department ("Business Oregon") to disclose certain records she believes it maintains in relation to a loan it granted to the Port of Cascade Locks (the "Port"). For the following reasons, we grant the petition in part and dismiss it in part.

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. Even express exemptions are to be narrowly construed, meaning that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). 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*.

Ms. Alexander's petition stems from a request to Business Oregon in the summer of 2022 for all application materials, memorandums, financial documents, leases, loan applications, material representations, proposal summaries, and meeting materials relating to a $5.7 million

[1] The processing of this petition was delayed due to multiple extensions requested by both this office and Ms. Alexander. We thank Ms. Alexander for her patience.

loan to the Port for the construction of a building to accommodate the expansion of a local business called The Renewal Workshop (the "Workshop"). Business Oregon responded to her initial request on August 1, 2022. In early 2023, Ms. Alexander provided Business Oregon with a list of 15 categories of records that she believed were missing from its initial response. After obtaining clarification and answering her questions about its records, Business Oregon completed its response to her supplemental request in April 2023. Ms. Alexander's petition appeals Business Oregon's response to six categories of records identified in her supplemental request.

The first category of records Ms. Alexander seeks consists of the Workshop's financial statements, which were submitted to Business Oregon by the Port as part of its loan application. Business Oregon denied her request for those financial statements, and she is appealing that denial. In response to Ms. Alexander's petition, Business Oregon explained that the financial statements consist of the Workshop's balance sheets and profit and loss statements from 2016 to 2019. Business Oregon asserts that those records are exempt under ORS 192.355(17)(a)(A) and (17)(a)(B), provisions that exempt "personal financial statements" and "financial statements of applicants" submitted to Business Oregon with applications for various development funds, grants, and loans.

Business Oregon argues that the exemption for "personal financial statements," ORS 192.355(17)(a)(A), encompasses the Workshop's business statements because the Public Records Law defines a "person" to include, in part, "any * * * corporation, partnership, [or] firm." ORS 192.311(3). We are not persuaded by this argument, however, because the terms "person" (a noun) and "personal" (an adjective) are not synonymous in this context. The Oregon Supreme Court has previously recognized that the term "personal" is not defined in the Public Records Law and therefore has relied upon the dictionary definition as records or information "relating to a particular person." *Jordan v. MVD*, 308 Or 433, 441 (1989) (relying on the dictionary definition of "personal" as "of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general." (citation omitted)). Applying that definition here, we conclude that Business Oregon is not permitted to withhold the Workshop's financial statements as "personal financial statements" because they pertain to a business and not to a particular person.

Business Oregon also asserts that the Workshop's financial statements are exempt as "financial statements of applicants" under ORS 192.355(17)(a)(B). Construed narrowly, however, this exemption applies only to the loan *applicant's* financial statements. And because the Port, not the Workshop, was the loan applicant in this instance, we conclude that Business Oregon is not permitted to withhold the Workshop's financial statements under this provision.

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Business Oregon argues, in the alternative, that the Workshop's financial statements are also exempt under ORS 192.355(4),[2] a provision that exempts certain records submitted to an agency in confidence. Five conditions must be met for this exemption to apply:

1. The informant must have submitted the information on the condition that it would be kept confidential.
2. The informant must not have been required by law to provide the information.
3. The information itself must be of a nature that reasonably should be kept confidential.
4. The public body must show that it has obliged itself in good faith not to disclose the information.
5. Disclosure of the information must cause harm to the public interest.

Attorney General's Public Records and Meetings Manual at 103 (2019) (citation omitted). In this case, Business Oregon argues that the Port submitted the Workshop's financial statements in confidence, that the Port was not required by law to include the statements with its loan application, and that the statements should reasonably be considered confidential in Business Oregon's economic development practices.

Assuming for the sake of argument that Business Oregon has met its burden with respect to the first four conditions, it has proffered no explanation for how disclosing the Workshop's financial statements at this time will cause harm to the public interest. And there is nothing in the available record from which we can independently conclude that the public interest would suffer by disclosure in this instance. We understand that the Workshop was purchased by a Dutch company in 2022 and closed its Oregon operations shortly thereafter. This means the financial statements at issue, which date from 2016 to 2019, relate to the past operations of a company that ceased to exist as a local business in 2022. Under the circumstances, we cannot conclude that disclosure at this time will cause any meaningful harm to the public interest, which is a necessary condition for the exemption to apply. We therefore conclude that Business Oregon is not permitted to withhold the Workshop's financial statements under ORS 192.355(4).

The second part of Ms. Alexander's petition relates to her request for the Workshop's business plan, which Business Oregon initially denied under ORS 192.355(17). After receiving the petition, however, Business Oregon informs us that its previous denial was erroneous because after further review, it has determined that it does not possess a copy of the Workshop's business plan. We have no reason to second guess Business Oregon's representation in this instance and we cannot order an agency to disclose records that it does not possess. We therefore respectfully dismiss this part of the petition.

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[2] ORS 192.355(4) exempts:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

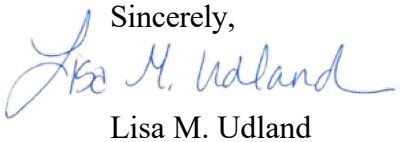
The next three parts of Ms. Alexander's petition ask us to order Business Oregon to disclose the following records: (1) the pre-lease Memorandum of Understanding (MOU) between the Port and the Workshop; (2) documents submitted by the Port certifying the number of jobs created by the Workshop; and (3) documentation relating to the termination of the Workshop's lease. Business Oregon's response to Ms. Alexander indicated that the agency did not possess any records responsive to these parts of her request. Ms. Alexander's petition explains why she believes Business Oregon should possess these records.

Business Oregon continues to assert that it is not the custodian of records responsive to these parts of the petition. Regarding item (1), Business Oregon explained that it provided Ms. Alexander a copy of the final lease between the Port and the Workshop, but that it never received a copy of the pre-lease MOU from the Port. For item (2), Business Oregon explained that there are no records because the loan terms did not include a job reporting requirement and the loan's approval was not conditioned upon job creation. Regarding item (3), Business Oregon explained that although it met with the Port regarding the termination of the Workshop's lease, it does not possess any records or notes from that meeting other than the meeting notice, which was previously provided to Ms. Alexander. We find that Business Oregon has adequately explained why it does not possess records responsive to these categories of records and therefore respectfully dismiss these parts of the petition.

The final part of Ms. Alexander's petition seeks documentation evidencing loan payments made by the Port to Business Oregon. Business Oregon explained that it did not have any responsive records at the time of Ms. Alexander's request or of her petition because the project had not yet entered the loan repayment phase. Business Oregon informs us that the Port did begin making loan payments subsequent to the petition and that the related loan payment documents have been disclosed to Ms. Alexander. Because Business Oregon has already furnished those records to her, we respectfully dismiss the remainder of the petition as moot.

In conclusion, we find that Business Oregon is not permitted to withhold the Workshop's financial statements under ORS 192.355(4) or 192.355(17). We therefore grant the first part of the petition and order Business Oregon to disclose those financial statements to Ms. Alexander. Business Oregon has seven days within which to comply with this portion of the order or to announce its intention to seek judicial review. ORS 192.411(2). We respectfully dismiss the remainder of Ms. Alexander's petition for the reasons discussed above.

Sincerely,



Lisa M. Udland
Deputy Attorney General

ACF:pjn