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March 19, 2024

VIA E-MAIL ONLY: jgoldberg@oregonian.com

Jamie Goldberg
The Oregonian/OregonLive
1500 SW First Ave, Ste 500
Portland, OR 97201

Re: Petition for Public Records Disclosure Order
Oregon Employment Department
DOJ File No.: 471120-GA0027-24

Dear Ms. Goldberg:

This letter is the Attorney General's response to your petition, submitted on behalf of *The Oregonian/OregonLive*, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received March 6, 2024,[1] asks the Attorney General to order the Oregon Employment Department (OED) to produce figures for the total number of applications submitted to Paid Leave Oregon since its inception, broken down by applications that have been through the identity verification process and those that have not been through the identity verification process. For the reasons that follow, 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. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means 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 its actions. ORS 192.411(1).

Your petition explains that you requested these figures from OED on December 13, 2023. OED denied your request on December 21, 2023, asserting that the application figures are

[1] We thank you for granting an extension of time in which to respond.

exempt from disclosure under ORS 657B.400(1). That provision provides in relevant part, and subject to certain exceptions, that "*all information* in the records of the Employment Department * * * pertaining to the administration" of the Paid Family and Medical Leave Insurance program (the "Paid Leave program") is confidential and exempt from disclosure under the Public Records Law. ORS 657B.400(1) (emphasis added).

Your petition asserts that OED's interpretation of the exemption is overly broad. You note that *The Oregonian/OregonLive* is not seeking information about individual applicants, but rather is seeking aggregate figures similar to those reported weekly on OED's website. You argue that the "applications received" figures in OED's weekly report are misleading because OED does not count an application as "received" until it has been screened for fraud, a process that often involves verifying the applicant's identity. You note that *The Oregonian/OregonLive* has reported that the identity verification process has been a significant source of processing delays for eligible applicants. You argue that by not including these delayed applications in its "applications received" figures, Oregonians lack a true picture of how many applications OED has processed in relation to the number of applications that have been submitted.

Your petition asks us to determine whether the requested figures constitute "information in the records of the Employment Department" within the meaning of ORS 657B.400(1). Although the statute does not define "information," we have no trouble concluding that the requested figures constitute "information" within the plain and ordinary meaning of the term. Moreover, those figures are unquestionably "in the records of Employment Department." *Id*. We also note that the statute expressly and broadly encompasses *all* information in OED's records pertaining to the administration of the Paid Leave program. The statute does not specify particular types of information for confidential treatment (e.g., information supplied by applicants), nor does it condition the application of the confidentiality rule upon the nature of the information requested (e.g., de-identified aggregate figures).

Your petition essentially asks us to read the legislatively adopted language more narrowly than its plain meaning suggests because it is not apparent to you why the requested figures should be treated as confidential. Although we are sympathetic to that policy position, we do not think it is plausible to understand the words of the legislative enactment that way. Most pertinently, ORS 657B.400(10) specifically contemplates that aggregated data *can* be compiled from the information in OED's records and disclosed. But that subsection is clear that whether to make such aggregated data available to the public is a decision entrusted to "the discretion of the director" of OED.

For the foregoing reasons, we cannot escape the conclusion that the application figures you seek are in OED's records and that they pertain to its administration of the Paid Leave program. It follows that the statute makes the those figures confidential and exempt from disclosure unless an exception applies. You do not argue that the exceptions to ORS 657B.400 require OED to disclose the figures you seek, and none of those exceptions appear to us to apply to your request. Again, the exception found in ORS 657B.400(10) gives the OED director the discretion to disclose the figures you seek. But it does not *require* OED to aggregate that information and disclose it to the public. *See* Public Records Order, Mar 24, 2020, Schmidt

(discretionary publication of de-identified statistical compilations by the Oregon Health Authority did not compel disclosure of confidential information the Authority decided not to publish). And because the legislature has statutorily entrusted the exercise of this discretion to OED, we lack the authority to compel disclosure in this instance notwithstanding what we perceive to be a real and significant public interest in the figures you seek. We therefore must respectfully deny your petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

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