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January 24, 1989

Bonnie Wilson, Administrator
Oregon State Board of
Psychologist Examiners
895 Summer Street, N.E.
Salem, OR 97310

Eleanor J. Parsons, Ph.D.
4023 C Donald Street
Eugene, OR 97405

Re: **Petition for Public Records Disclosure Order; Oregon State Board of Psychologist Examiners Records**

Dear Ms. Wilson and Ms. Parsons:

This letter is the Attorney General's order on Ms. Parsons' petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on January 17, 1989, asks the Attorney General to direct the Oregon State Board of Psychologist Examiners (board) to provide Ms. Parsons with copies of her answers to the test questions in the oral examinations that the board administered to Ms. Parsons on August 2, 1986, October 24, 1987, and June 14, 1988. We understand that the board has tape recordings of Ms. Parsons' oral examinations, and has allowed her to listen to those tapes, but has refused to provide Ms. Parsons with a copy of the portions of the tapes that contain her answers. For the reasons stated below, we grant the petition.

The Public Records Law confers a right to inspect public records of a public body in Oregon, subject to certain exceptions. ORS 192.420. If a public record contains both exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material.

ORS 192.505; Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

ORS 192.501(4) in relevant part conditionally exempts

> "Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again."

In the Attorney General's Public Records and Meetings Manual (1985), we explained the scope of this exemption:

> "The obvious purpose of this exemption is to protect the integrity of tests being administered by various public bodies for licensing, employment and other purposes. Information used to administer the test is confidential until after the test has been given. The information remains confidential for tests which will be reused."

Manual at I-5.

The board has informed us that periodically it reuses the test questions used in its oral examinations. ORS 192.501(4), therefore, conditionally exempts the test questions from disclosure. We are unaware of any facts suggesting that the public interest requires disclosure in this instance. The tapes, therefore, contain at least some exempt material.

The exemption, however, does not cover Ms. Parsons' answers in the oral examinations under the circumstances presented. Most significantly, the board has not asserted that disclosure of Ms. Parsons' answers would threaten the integrity of the board's oral examinations generally by, for instance, indirectly revealing the questions used in its examinations of Ms. Parsons. We also understand that it is reasonably possible to separate the exempt and nonexempt parts of the tapes.

Accordingly, the Attorney General grants the petition. The board must separate the test questions and Ms. Parsons' answers and make copies of the latter available to Ms. Parsons. The board has informed us that its legal counsel will review the tape recordings of Ms. Parsons' oral

examinations to separate the materials in accordance with this order. The board may charge Ms. Parsons for its actual costs in reviewing the tapes and making copies of those portions of the tape recordings that Ms. Parsons has requested. ORS 192.440(2). ORS 192.450(2) affords the board seven days in which to comply with this order.

Very truly yours,

James E. Mountain Jr

JAMES E. MOUNTAIN, JR.
Deputy Attorney General

JEM:WBW:cws/3202G
cc: Courtney Goodmonson, Ph.D., Chair, Oregon State Board of Psychologist Examiners