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July 13, 1992

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Coordinator
Friends of the Greensprings
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State Forester
Oregon Department of Forestry
2600 State Street
Salem, OR 97310

Re: Petition for Public Records Disclosure Order: Department of Forestry Forest Practices Records
DOJ File No. 629-001-0093

Dear Ms. Giacomini and Mr. Brown:

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, which we received on July 6, 1992, asks the Attorney General to direct the Department of Forestry (DOF) to make available for inspection and copying certain categories of documents related to two forest operations by Nathaniel Masters. For the reasons that follow, we grant your request in part and deny it in part.

The Public Records Law confirms a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. Some of the records you wish to inspect fall within an exemption to the general rule of public accessibility to government records.

Two exemptions are relevant to your request. ORS 192.501(3) conditionally exempts:

> Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph

> shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:
>
> (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
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> (b) The offense with which the arrested person is charged;
>
> (c) The conditions of release pursuant to ORS 135.230 to 135.290;
>
> (d) The identity of and biographical information concerning both complaining party and victim;
>
> (e) The identity of the investigating and arresting agency and the length of the investigation;
>
> (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
>
> (g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice[.] (Emphasis added.)

This exemption applies to a DOF investigation of potential criminal charges unless the public interest requires disclosure in the particular instance. ORS 192.501. We find that the public interest in this instance does not favor disclosure, because at this point confidentiality is crucial to a full and accurate investigation and possible prosecution of criminal charges against this operator.

ORS 192.502(1) exempts:

> Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure[.]

This exemption is designed to encourage frankness and candor in communications within or between governmental agencies. DOF informs us that its analysis of civil remedies is inextricably

tied at this point to the criminal investigation and that no decision will be made on those remedies until the criminal investigation is complete. In this particular instance, the public interest in encouraging frank communication between officials and employees of the public bodies involved in this matter clearly outweighs the public interest in disclosure, because the success of any criminal or civil remedies that may be sought depends upon accurate and realistic analysis of the violation. Thus, we conclude that those communications within DOF or between DOF and another public body or that cover other than purely factual material and are of an advisory nature preliminary to the final DOF determination of civil remedies are exempt from disclosure under ORS 192.502(1).

The following outlines our response to your request, using the categories you requested in your letter. As to each category of request, we give our response and, where relevant, cite the particular exemption(s) upon which we deny parts of your request.

CATEGORY 1: "All notification documents, required written plans and any other related documents."

RESPONSE: Granted.

CATEGORY 2: "Any inspection reports that may exist and have been filed by ODF personnel."

RESPONSE: Granted as to routine inspection reports, denied as to inspection reports compiled for the purpose of criminal investigation (criminal investigation, internal advisory communication).

CATEGORY 3: "Any existing maps of the operation."

RESPONSE: Granted, except as to any maps prepared as part of a criminal investigation.

CATEGORY 4: "Any correspondence received from other agencies, from or to the operator or land owner, or sent by ODF personnel."

RESPONSE: Granted, except as to any correspondence with legal counsel or agency staff as part of a criminal investigation or analysis of civil remedies (criminal investigation, internal advisory communication).

CATEGORY 5: "Documents describing any violations, potential violations or citations, issued."

RESPONSE: Granted, except as to any description or discussion of violations, potential violations or citations as part of a criminal investigation or analysis of civil remedies (criminal investigation, internal agency communication).

CATEGORY 6: "Any documents indicating that there may be an application by the land owner to Jackson County for a Land Use Change."

RESPONSE: Granted, to the extent that any such documents may exist in Department of Forestry files.

CATEGORY 7: "Any other documents, memos or notes that may exist in the file and can be released to the public. While we realize that some documents may be exempt from Oregon Public Records law, we request all non-exempt documents and a full explanation of which documents are exempt and why."

RESPONSE: Granted, except as to materials compiled as part of criminal investigation or analysis of civil remedies (criminal investigation, internal agency communication).

For the reasons stated above, we grant your petition to compel disclosure in part and deny your petition in part. The Department of Forestry has seven days from the date of this order in which to comply. See ORS 192.450(2).

Sincerely,

/s/ AMY VERANTH

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