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August 6, 1992

Standlee G. Potter
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Re: Petition for Public Records Disclosure Order:
Employment Division Records

Dear Mr. Potter:

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 15, 1992,[1] asks the Attorney General to direct the Employment Division (division) to make available "[a]ll documents relating to Job Order No. 5550232." You sent us a copy of the job order which appeared in the Wall Street Journal on January 17, 1992. For the reasons that follow, we respectfully deny your petition, in part because your request is moot and in part because the information is exempt from disclosure under the Public Records Law.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. If a public record contains 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. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

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[1]We appreciate your extending the time within which the law would have otherwise obligated us to respond.

1. Statutory Confidentiality Exemption

ORS 192.502(8) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." This exemption incorporates into the Public Records Law the provisions of other statutes that restrict disclosure of records or make such records confidential.

ORS 657.665 severely curtails the public's right to inspect records of the division. ORS 657.665(1)(a) provides:

> Information secured from employing units, employees or other individuals pursuant to this chapter:
>
> (a) Shall be confidential and for the exclusive use and information of the assistant director in the discharge of duties and shall not be open to the public [subject to certain exemptions not relevant here].

Information secured from employing units, employees or other individuals pursuant to ORS Chapter 657 includes employment services information under ORS 657.705 et seq, as well as unemployment compensation information. Public access to information concerning private employer job openings is generally restricted. Because there are several different documents in the division records relating to Job Order No. 5550232, we will analyze the types of documents separately to determine whether they are confidential under ORS 667.665 and, therefore, exempt from disclosure under the Public Records Law.

a. The Job Order and Related Information to the Job Order

The job order and related information received from the employer placing the order is information secured from an employing unit pursuant to ORS 657.705 et seq. Accordingly, that information is presumptively within the confidentiality provision of ORS 657.665(1). It may be released only in the discharge of the duties of the division.

Pursuant to agency rules, disclosure of information from the files and records of the division's Employment Service is restricted to "applicants, agencies and employers to the extent necessary for the efficient performance of Employment Service functions." OAR 471-01-052(1). In performing those functions, the division publishes, or provides to the public, employment notices in generic form, including job title, job order number and other descriptive general information as, for example, in the notice that was published in the Wall Street Journal. The Employment Service's Job Bank provides the same type of general employment opportunity information to the public. As in the published notices, employer-identifying information is not included. The division informs us that it will provide you with a copy of the job order as it appeared in the Job Bank.

Employer-identifying information is only provided to applicants, agencies and employers to the extent necessary for the efficient performance of employment service functions. OAR 471-10-052(1). Because you are not an applicant, agency or employer, such information may not be disclosed to you under this provision.

Information from division records is also available to other individuals and organizations "if such disclosure will not impede the operation and is not inconsistent with the purposes of the [division's] Public Employment Service program." OAR 471-10-052(4). Such disclosure must be authorized by the Assistant Director of the division in each case based upon an evaluation of the purposes to which the data would be put. Id. This rule must be interpreted consistent with ORS 657.665(1)(a) to permit release of information only where

such disclosure is in the discharge of duties of the Assistant Director under ORS Chapter 657.

You have informed us, by letter dated July 27, 1992, that your purpose in seeking information relating to Job Order No. 5550232 is "to gather information for a client who owns timberland in Oregon and is interested in gathering all information that might be helpful in connection with the harvesting and exporting of such timber."

Public disclosure of the complete job order or information related to the job order, other than the generic information available through the Job Bank system, would impede the operation of the Employment Service by jeopardizing the agency's relation with the employer community. Disclosure of job order information that identifies the employer and other specific details of the position is limited to qualified applicants. Other employer information, such as proprietary data that is submitted to the division as integral to particular Employment Service programs, is not disclosed even to applicants. Release of any of this information to other persons, particularly those who have an economic interest in the employer's field of business, would violate the employer's expectation of confidentiality, impair the division's control and management of referrals and result in a loss of trust and confidence in the Employment Service program. If employers lose confidence in the confidentiality and efficiency of the Employment Service program, they will use it less, thus causing an erosion in the quality and reliability of the division's job placement service. We conclude, therefore, that disclosure of specific information concerning the job order for the non-job-placement purposes that you have identified would impede the operation of the division's Employment Service program and is not authorized under OAR 471-10-052(4) and is prohibited by ORS 657.665(1)(a).

Further, your purpose in seeking all documents related to the job order is not consistent with purposes of the Employment Service. The division's Employment Service program is the primary job-placement service in the state. Disclosure of specific job order information for the purposes you have identified,

which are not related to the job placement process, would be inconsistent with the mission of the Employment Service to assist Oregonians in finding jobs and, for this reason, is not permitted under OAR 471-10-052(4) and is prohibited by ORS 657.665(1)(a).

Because disclosure of employer-specific information concerning the job order is prohibited by ORS 657.665, the information is exempt from disclosure under the Public Records Law. ORS 192.502(8).

b. Applicant Records

The division's file on Job Order No. 5550232 also contains applicant resumes from persons who applied for the job. These documents are confidential under ORS 657.665(1)(a) as information secured from individuals pursuant to ORS Chapter 657.

For the reasons stated above, OAR 471-10-052(1) does not authorize release of this information to you. We also conclude that these applicant records may not be disclosed to you under OAR 471-10-052(4). Release of information concerning applicants other than to appropriate potential employers would deter candid and complete disclosure of personal information on job applications and interfere with the job placement process. Further, disclosure of applicant information to you for the reasons you have identified is not consistent with the job placement purposes for which the information was provided. Disclosure of these records is prohibited by ORS 656.665(1)(a). These records are exempt from disclosure under the Public Records Law. ORS 192.502(8).

c. Correspondence Between Congressman DeFazio and the Employment Division

The division's file contains three letters between Congressman Peter DeFazio and the division relating to Job Order No. 5550232. This correspondence is not information secured from employing units, employees or other individuals pursuant

to ORS Chapter 657 and, therefore, is not prohibited from disclosure under ORS 657.665. The correspondence is not exempt from disclosure under the Public Records Law. Accordingly, the division will provide you with a copy of each of these letters.[2]

2. Personal Privacy Exemption

Applicant records relating to job orders are also exempt from disclosure under the "personal privacy exemption." ORS 192.502(2). This provision exempts

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

In Guard Publishing v. Lane County School Dist., 310 Or 32, 38 (1990), and Jordan v. MVD, 308 Or 433, 440-42 (1989), the court clarified that: (1) "personal" means information specific to an individual; (2) "unreasonable invasion of privacy" should be understood in its common meaning; and (3) what constitutes unreasonable invasion will be determined by the court objectively on a case by case basis. The burden of proving that disclosure would not constitute

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[2]The name of the employer is mentioned in the letter written by Congressman DeFazio. That information was secured originally by the division from the employer pursuant to ORS Chapter 657 and given to Congressman DeFazio. For the reasons discussed above, the employer's name may not be disclosed to you by the division, ORS 657.665(1)(a), and is exempt from disclosure under the Public Records Law. ORS 192.502(8). The division did not waive the exemption by disclosing this information to Congressman DeFazio. See Letter of Advice dated March 29, 1988, to W.T. Lemman, Executive Vice-Chancellor (OP-6217). Because the employer's name is exempt from disclosure, that information may be redacted from the correspondence. ORS 192.505.

an unreasonable invasion of privacy is on the person seeking disclosure. Guard Publishing, Id. In addition, "[e]ven if the public disclosure of information of a personal nature would constitute an unreasonable invasion of privacy, the information must be disclosed by the public body if the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in the particular instance." Id.

We conclude that personal biographical data found in a job applicant's resume is "personal." The resume contains information revealing an applicant's name, address, telephone number and specific social, educational, professional and other biographical information. The resumes were submitted to the division for the specific purpose of a job application and were not intended for disclosure beyond that purpose. Under these circumstances, we conclude that disclosure of this detailed personal information would constitute an unreasonable invasion of privacy.

ORS 192.502(2) still allows for disclosure of the information if the petitioner is able to show by clear and convincing evidence that there is an overriding public interest in disclosure. You have articulated no such overriding interest. You have informed us that you are seeking the information for a client who owns timberland in Oregon and is interested in gathering all information related to harvesting and exporting timber. This purpose does not relate to a public function, nor would the information be used for a public purpose. Under these circumstances, we can find no overriding public interest in disclosure. We conclude, therefore, that the applicant records are also exempt under the personal privacy exemption, ORS 192.502(2).

Conclusion

The division informs us that it will provide you copies of the Job Bank information and its correspondence with Congressman DeFazio. Therefore, with respect to this information, we respectfully deny your petition as moot. With respect to the remainder of the records you request, your petition is denied

because those records fall within one of the statutory exemptions to disclosure, ORS 192.502(2) or ORS 192.502(8).

Sincerely,

Amy Veranth
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