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September 17, 1992

Reba Owen
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Joan Fraser, Manager
Office of Employee Services
Children's Services Division
198 Commercial Street SE
Salem, Oregon 97310

Re: Petition for Public Records Disclosure Order: Children's Services Division Supervisor Layoff List

Dear Ms. Owen and Ms. Fraser:

This letter is the Attorney General's order on Ms. Owen's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Ms. Owen's petition, which we received on September 15, 1992, asks the Attorney General to order Children's Services Division (CSD) to disclose to her a copy of the names and scores for all CSD social service supervisors on the recently compiled service credit list, the performance score list, and the final combined list for layoff. For the reasons stated below, we grant the petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. If a public record contains material that is exempt from disclosure together with non-exempt material, it is the duty of the public body to separate the materials and make the non-exempt 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).

Disclosure, not exemption, is the rule under the Public Records Law. Exemptions from disclosure must be narrowly construed and the burden is on the public body claiming the exemption to demonstrate that the exemption is both legally and factually justified. Guard Publishing Co. v. Lane County School Dist., 310 Or 32, 37, 791 P2d 854 (1990).

Ms. Owen has requested the names and scores contained on the service credit list. This list shows points assigned to individuals based upon the employee's length of employment in state government. Ms. Owen has also requested the names and scores contained on the performance score list and the final combined list. The final combined list is a derivative list formed by melding the score contained on the service credit list with the score on the performance score list. Release of either list would result in release of the numerical score received by each employee during a recent employee performance appraisal. It is necessary to examine whether such scores are exempt from disclosure under the Public Records Law exemption relating to personal privacy.

I. Personal Privacy Exemption

ORS 192.502(2) exempts private personal information from the disclosure requirements of the Public Records Law. The statute 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[.]

ORS 192.502(2).

The purpose of this statute is to protect the privacy of individuals from unreasonable invasion. Jordan v. Motor Vehicles Division, 308 Or 433, 441, 781 P2d 1203 (1989). The exemption is not intended for the benefit of the public body. Only personal information which would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption.

The first determination that must be made is whether the information is of a "personal nature." The test for determining this, established in Jordan, requires determining whether the information sought is specific to one individual. Clearly, the numerical score assigned to an employee as a result of seniority or a performance appraisal is specific to the individual who was evaluated. It therefore is considered information of a "personal nature."

The second determination to be made under the exemption is whether disclosure of those numerical scores for an individual would constitute an unreasonable invasion of privacy. With respect to the service credit list, the score for each employee will reveal the length of that individual's employment in state government. We do not find any unreasonable invasion of privacy in the disclosure of this information.

With respect to the performance score list, the score for each employee is the total number of points that the individual received on an evaluation of ten performance factors, using a five-point rating system ranging from "unacceptable" to "outstanding." The score per se does to some extent reveal how well an employee is doing his or her job. The release of a list of scores with identifying information will tell how well an employee is doing in comparison to other specific employees in the same classification elsewhere in the state. Depending upon the individual employee's score and his or her relative rank in the list, the release of this information could be embarrassing.

Whether disclosure of potentially embarrassing information constitutes an unreasonable invasion or privacy involves an objective test. An invasion of privacy will be unreasonable where "an ordinary reasonable person would deem [it] highly offensive." Jordan, supra, at 442-443.

The public has a clear public interest in citizens knowing how public employees are performing their official duties. See Jensen v. Schiffman, 24 Or App 11, 544 P2d 1048 (1976). We do not believe that the release of the information requested, given the public interest in knowing how public employees are performing, would be highly offensive to an ordinary reasonable person. Therefore, release of such information does not constitute an unreasonable invasion of privacy.

With respect to the final combined list, the information contained therein is merely derivative of information from the service credit list and the performance score list. Having found that it would not constitute an unreasonable invasion of privacy to disclose those two primary lists, we reach the same conclusion with respect to the final combined list.

II. Conclusion

For the reasons stated above, we conclude that in this particular instance, the information requested must be disclosed pursuant to the Public Records Law. We order CSD to disclose the requested information.

A public body may charge for its actual costs of making the records available. ORS 192.440(3). Under OAR 412-02-205, CSD may charge for the actual cost of staff time to search, glean and edit the records. The minimum hourly charge for staff time is $8.00. Copying costs are charged at $.10 per page. Additional charges may be made to cover any Attorney General review or consultation required by CSD.

CSD has seven days from the date of this order in which to comply. ORS 192.450(2).

Sincerely,

Amy Veranth
Opinions Coordinator
General Counsel Division

ALV:cm/jaa008df
c: Mary Greenlee, Personnel Officer, CSD