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July 28, 1989

Virginia Barton, Administrator
Board of Maritime Pilots
908 State Office Building
Portland, OR 97201

Janet M. Schroer
Schwabe, Williamson & Wyatt
Pacwest Center, Suites 1600-1800
1211 S.W. Fifth Avenue
Portland, OR 97204-3795

Re: **Petition for Public Records Disclosure Order; Oregon Board of Maritime Pilots Records**

Dear Ms. Barton and Ms. Schroer:

This letter is the Attorney General's order on Ms. Schroer's petition (on behalf of her client, Mark Fryburg, of KATU Channel 2 News) for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received July 20, 1989,[1] asks the Attorney General to order the Oregon Board of Maritime Pilots (board) to disclose the name, address and date of birth of each river pilot licensed by the board. We understand that the board has disclosed the names and dates of birth of all river pilot licensees, but has withheld these pilots' home addresses. For the reasons that follow, we grant the petition in part, and deny it in part.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. The board urges that the home address of a licensee pilot is information of a personal nature exempt from disclosure under ORS 192.502(2). That statute exempts:

> "Information of a person 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 Co. v. Lane County School Dist., 96 Or App 463, 774 P2d 494 (1989), the court addressed the application of ORS 192.502(2) to home addresses of replacement coaches during a teachers' strike. The court reaffirmed its earlier statements that personal information is information that "normally would not be shared with strangers." 96 Or App at 469. It also reaffirmed its holding in Jordan v. MVD, 93 Or App 651, 763 P2d 420 (1988), rev allowed 307 Or 571 (1989), that "addresses are not non-personal per se." 96 Or App at 470. The court stated:

> "[I]f an individual reasonably considers his home address to be private and takes steps to ensure that it remain so 'outside the context of and prior to the public records request,' the address may be personal within the meaning of the exemption."

Id. The court quoted with approval from the 1985 Attorney General's Public Records and Meetings Manual I-9 as follows:

> "The cases require us to conclude that home addresses as a class are not personal, and must be disclosed upon request. We nevertheless believe that there are cases in which a public body can establish, as it did not do in Kotulski [v. Mt. Hood Comm. College, 62 Or App 452, 660 P2d 1083 (1983)], that particular addresses are personal such that disclosure would be an unreasonable invasion of privacy. (Citation omitted). A request for nondisclosure by an employe who treats his or her address as private (e.g. by use of an unlisted telephone number), or by employes in 'sensitive' positions such as law enforcement, so that simultaneous identification of the nature of the job and home address could lead to harassment, should be honored." (Emphasis in original.)

Applying these principles, the Guard Publishing Co. court upheld the school district's refusal to disclose replacement coaches' home addresses during the strike. The court observed that the evidence showed that all of the coaches submitted their addresses to the school district in confidence, in reliance on the district's promise of confidentiality.

Additionally, the district treated the addresses as confidential before any public records request and without regard to who made the request. From these facts, the court concluded that the replacement coaches reasonably considered their addresses to be personal information. 96 Or App at 470.

The court further reasoned that, in light of the trial court's finding that several replacement coaches were subjected to harassment, public disclosure of their addresses would constitute an unreasonable invasion of privacy under ORS 192.502(2). 96 Or App at 471. Finally, the court found that the public interest did not require disclosure of the addresses. Accordingly, the court held that the addresses were exempt as records of a personal nature. Id.

The board has informed us that a number of licensed river pilots keep their home address out of the telephone directory, thus attempting to ensure that the address remains private. Motivations for this action include the harassment and threats some pilots have experienced, arising from their pilotage of ships during labor disputes. As to these individuals, we conclude that the home address is personal information. We also conclude that, because of the evidence of harassment and threats that pilots may experience, disclosure of the home addresses of pilots who have tried to keep that information private would constitute an unreasonable invasion of privacy.

ORS 192.502(2) also requires us to determine whether, in this particular instance, the public interest by clear and convincing evidence compels disclosure. In attempting to decide that issue, we have asked the requestor to reveal why her client is seeking the pilots' home addresses. On behalf of her client, the requestor has declined to do so. Although the requestor is under no legal duty at this time to reveal that information, the lack of that information prevents us from finding that the public interest by clear and convincing evidence requires disclosure in this particular instance. In Guard Publishing Co., the court found no strong public interest in the disclosure of public employes' home addresses. Absent any indication to the contrary from the requestor, we are at a loss to understand how the public interest demands the disclosure of home addresses of private citizens whose only connection with the state is their status as licensees of a state agency.

We conclude, therefore, that the home addresses of river pilot licensees whose addresses are unlisted in the telephone directory are exempt from disclosure under ORS 192.502(2).

We reach the contrary conclusion as to those pilots who have not taken steps, such as having an unlisted telephone number or address, to keep their home addresses private. Those pilots have not treated their home addresses as personal. We reach this conclusion despite the board's policy, since 1982, to keep licensees' home addresses confidential. That policy, although known to some pilots, was not systematically disseminated to licensees. Accordingly, we cannot find that in supplying their home address to the board, all pilots relied on this policy of confidentiality. Moreover, even if we treated those addresses as confidential, disclosure of those addresses would not constitute an unreasonable invasion of privacy. It appears that, armed with pilots' names, the requestor can use readily available sources and lawful means to obtain their home addresses in most instances. Thus, even if there is an invasion of privacy it cannot be considered unreasonable.

In sum, the home addresses of pilots whose addresses are unlisted in the telephone directory are exempt from disclosure under ORS 192.502(2). The board, however, must disclose the home addresses of its remaining pilot licensees. ORS 192.450(2) affords the board seven days from the date of this order in which to comply. The board may charge for its actual cost in providing this information to the requestor.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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[1] We appreciate Ms. Schroer's courtesy in allowing us to exceed the statutory deadline for issuing this order.