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February 20, 1990

Nick Nathe
Probation and Parole Officers
Corrections Division
1415-B SE 122nd Ave.
Portland, OR 97233

Leslie A. Whaley
Box 52947
2605 State Street
Salem, OR 97310

Re: **Petition For Public Records Disclosure Order; Department of Corrections Records**

Dear Mr. Nathe and Mr. Whaley:

This letter is the Attorney General's order on Mr. Whaley's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on February 12, 1990, asks the Attorney General to direct the Department of Corrections (DOC) to disclose copies of all records in Mr. Whaley's probation file. DOC has declined to provide any of the requested information. Mr. Whaley's parole has been revoked and he is currently in the DOC's custody. 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 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). Although most of the requested material must be disclosed, certain portions fall within exemptions under the law.

1. Chronological Logs and Polygraph Examiner Evaluations

Included among the documents at issue are chronological logs covering petitioner's period of probation, a psychiatric evaluation which is part of a presentence investigation, and evaluations of polygraph examinations administered to petitioner. DOC has denied disclosure of these documents on the grounds that disclosure would interfere with petitioner's rehabilitation and substantially prejudice DOC in carrying out its functions. See ORS 192.502(4). For the reasons that follow, we agree that the logs and the psychiatric and polygraphic evaluations are exempt from disclosure.

ORS 192.502(4) exempts from disclosure

> "[i]nformation or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure[.]"

For records to fall within this exemption, the disclosure must either interfere with rehabilitation or substantially prejudice or prevent carrying out department functions. In either case, the public interest in confidentiality must clearly outweigh the public interest in disclosure. See Attorney General's Public Records and Meetings Manual 34 (1989) (Manual).

Here, DOC asserts that disclosure of the chronological logs and psychiatric and polygraphic evaluations would both interfere with Mr. Whaley's rehabilitation and substantially prejudice or prevent DOC from carrying out its functions. This assertion rests on the view that disclosure would allow Mr. Whaley to learn techniques of surveillance (from the chronological logs) and evaluation (from the psychiatric and polygraph records) and thereby manipulate to his advantage future periods of probation and psychiatric and polygraphic examinations. DOC thus argues that disclosure would decrease the chances that Mr. Whaley will achieve any sort of

constructive rehabilitation. Mr. Whaley has not identified why he needs these specific documents and, in fact, has simply made a blanket request for everything in his file. We find DOC's contentions on these points persuasive.

We also must balance the public interest in disclosure versus the public interest in confidentiality. Here, Mr. Whaley has shown no public interest in disclosure, and we are aware of none. Rather, as noted above disclosure likely would interfere with Mr. Whaley's rehabilitation and substantially interfere with DOC's ability to carry out its functions, contrary to the public interest. We find that the public's interest in maintaining confidentiality clearly outweighs any public interest in disclosure. We conclude, therefore, that the chronological logs, psychiatric evaluation and polygraph examiner evaluations are exempt from disclosure under ORS 192.502(4).

2. Personal Information Related to Witnesses

Also included in the records covered by Mr. Whaley's request are computer printouts generated from the records of Portland area law enforcement agencies. Most of these computer printouts contain factual information related to Mr. Whaley, such as his name, age, residence, and other biographical information, the offense with which he was charged, the circumstances of arrest and similar criminal investigatory information for which there is no longer a clear need to delay disclosure. See ORS 192.501(3). These portions of the records must be released. However, the records also contain personal information concerning witnesses, including a medical record. DOC may withhold this information under ORS 192.502(2).

ORS 192.502(2) exempts from disclosure

> "[i]nformation 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[.]"

Witnesses' home addresses and telephone numbers are "personal" information within the scope of this exemption. Jordan v. Motor Vehicles Division, 308 Or 433, 441, ____ P2d ____ (1989). We conclude that disclosure of this information would constitute an unreasonable invasion of the witnesses' privacy, because DOC reasonably could anticipate that disclosure would enable Mr. Whaley to contact and harass the witnesses. Similarly, the medical information in the file is "personal," and disclosure would constitute unreasonable invasion of privacy. Manual at 30-31. We are unaware of any public interest that requires disclosure of this personal information in this instance. We conclude, therefore, that the personal information relating to witnesses on the law enforcement computer printouts is exempt from disclosure under ORS 192.502(2).

3. Summary

DOC must disclose all of the records in Mr. Whaley's probation file with the exception of the chronological logs, polygraph examiner evaluations, psychiatric evaluation and personal information related to witnesses. Under ORS 192.450(2), DOC has seven days from the date of this order in which to comply. However, DOC may require Mr. Whaley to prepay its cost of gathering and copying the requested information. Upon payment, Mr. Whaley will be entitled to disclosure of the nonexempt documents. We recommend that DOC calculate its charges and inform Mr. Whaley of the required prepayment within seven days, so that Mr. Whaley then may elect how to proceed.

Sincerely,

James E. Mountain Jr.

for PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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