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November 19, 1999

Michael Jacobs
Executive Director
Board of Investigators
445 State Office Building
800 NE Oregon, #33
Portland, Oregon 97232

William Joseph Birhanzl
475 N.W. Glisan
Portland, Oregon 97209

Re: *Petition for Public Records Disclosure Order: Board of Investigators*

Dear Mr. Jacobs and Mr. Birhanzl:

This letter is the Attorney General's order on Mr. Birhanzl's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on November 12, 1999, asks the Attorney General to direct the Board of Investigators (board) to make available for inspection records pertaining to the complete application filed with the board pertaining to David A. Campbell and Kathleen M. Brock. For the reasons that follow, we grant part of the petition and respectfully deny part of 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. 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).

In a letter dated November 6, 1999, Michael Jacobs, the board's Executive Director, informed Mr. Birhanzl that the board would provide copies to him of the records he asked to

inspect, and informed Mr. Birhanzl of the cost that would be incurred in making copies of the requested files. The letter further informed Mr. Birhanzl that the personal residence address and telephone numbers of the individuals would be redacted and that photographs and exam materials would not be released.

ORS 193.445(1) provides that a public body "shall not disclose" the home address or personal telephone number of an individual

> If the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

We are informed by Ginger Simmons, Licensing Specialist for the board, that the home addresses and telephone numbers of Ms. Brock and Mr. Campbell are unlisted. Both individuals have also submitted a request for nondisclosure to the board based upon concerns relating to their personal safety due to their involvement in law enforcement related activities. In addition, Ms. Brock and Mr. Campbell have filed affidavits with the board, each stating particularized concerns as to why their personal safety would be in danger if their home address or personal telephone number were subject to disclosure. Each licensee included examples of personal threats they have received arising from the performance of their official duties.

Mr. Jacobs informs us that the board has reviewed Ms. Brock's and Mr. Campbell's requests for non-disclosure and has determined that the personal safety of each individual would be in danger if the home address or telephone number were made available for inspection. *See* OAR 137-04-100(1). We will not substitute our judgment for the board in making this determination.

We conclude therefore, that in this case, the licensees' personal residence addresses and telephone numbers are exempt from disclosure under ORS 192.445. Because these home addresses and personal telephone numbers are exempt under ORS 192.445, we need not address whether the exemption under ORS 192.502(2) could apply.

Neither ORS 192.445 nor 192.502(2) apply to the personal photograph contained in the file. The photographs of each licensee in their files are subject to inspection.

The records at issue in the petition also contain examination material completed by the licensees as part of the application process. ORS 192.501(4) exempts from disclosure

> Test questions, scoring keys, and other data used to administer a licensing examination * * * before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedures are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

The examination material in the records consists of an answer sheet completed by the respective licensees as part of the application process. Ms. Simmons informs us that inspection of this answer sheet would not compromise the integrity of the examination. Accordingly, we conclude that it is not exempt from disclosure under ORS 192.501(4) and that Mr. Birhanzl may inspect this document.

Finally, the record pertaining to Mr. Campbell also contains a personnel discipline action from a previous employment. This personnel discipline action and materials or documents supporting that action are exempt from disclosure, unless the public interest requires disclosure in the particular instance, ORS 192.501(12). We have not identified any public interest that would require disclosure of this discipline material. Therefore, the documents received from the former employer concerning that employer's discipline action are exempt from disclosure under ORS 192.501(12). To the extent the licensee in his application material voluntarily discloses the fact that discipline occurred, however, that information is not protected by the exemption.

In conclusion, we deny the petition as to the information in the licensees' records consisting of their home addresses and personal telephone numbers. We also deny the petition as to the record of personnel discipline. As to the remaining records, we grant the petition. The Board of Investigators has seven days from the date of this order in which to comply, ORS 192.450(2).

The Public Records Law authorizes a public body to take reasonable measures to preserve the integrity of its records and to maintain office efficiency and order, ORS 192.430(2). The right to inspect public records does not require inspection of an original document, which contains some information that is exempt from disclosure. In such a case, a public body acts reasonably if it furnishes a copy of the original, with the exempt material blanked out. *See* ORS 192.505; ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997) at 10.

Because the requested records are original documents, the agency may include the cost of having a person present when Mr. Birhanzl inspects any non-redacted records subject to inspection. The agency may charge a fee to reimburse it for its actual cost in providing Mr. Birhanzl an opportunity to inspect the records, and the costs incurred in providing redacted copies of records, including the time spent by agency personnel in reviewing the records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

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