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March 6, 1996

Darien S. Loiselle
Schwabe Williamson & Wyatt
Pacwest Center, Suites 1600-1800
1211 Southwest Fifth Avenue
Portland, OR 97204

Re: *Petition for Public Records Disclosure Order: Oregon Department of Fish and Wildlife Records*

Dear Mr. Loiselle:

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,[1/] which we received on February 21, 1996,[2/] asks the Attorney General to direct the Oregon Department of Fish and Wildlife (ODFW) to make available the trawling log entries that show the location and time of trawler drops for certain vessels on a particular date. For the reasons that follow, 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. *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, 538 P2d 373 (1975).

[1/] The petition was filed on behalf of your office, Schwabe Williamson & Wyatt, and your client, Teleglobe Canada.

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

Two provisions of the Oregon Public Records Law potentially apply to the information you seek: ORS 192.502(3), confidential information submitted by citizens, and ORS 192.501(5), business records.

1. **Confidential Information Submitted by Citizens**

ORS 192.502(3) exempts confidential information submitted by citizens from disclosure requirements of the Public Records Law. This provision exempts:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

The purpose of this exemption is to encourage citizens to provide relevant information voluntarily to public bodies, with some reasonable assurance that the information will be kept confidential. In order for the exemption to apply, the information must meet five criteria:

1. The exemption applies only to information which is submitted voluntarily when the informant is under no legal obligation, by statute, rule, contract or otherwise, to provide the information.

2. The public body must be in a position to show that the information was of a nature which reasonably should be kept confidential.

3. The public body must show that it has obliged itself in good faith not to disclose the information.

4. Disclosure must cause harm to the public interest.

5. The person must have, in fact, submitted the information in confidence.

In this case, an ODFW administrative rule requires each licensed commercial fishing boat to submit information to department personnel on trawler location and time of drops.[3/]

[3/] ODFW's administrative rule also provides that information received by the agency "shall be considered confidential." OAR 635-04-050. ORS 192.502(8) exempts:

(continued...)

OAR 635-04-050. Because the information is required to be submitted, it does not meet the first criterion. Therefore, the information you seek does not fall within this exemption.

2. **Business Records**

We also considered whether this information would be an exempt business record under ORS 192.501(5). This provision exempts from disclosure:

> Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding[.]

This exemption is limited to information furnished to allow the governmental agency "to determine fees or assessments payable and to establish production quotas." We understand that ODFW currently does not use the information on trawler location and time of drops

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[3/] (...continued)

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

This exemption applies only if the records are protected by a statute outside the Public Records Law. In this case, the statutes governing the records of commercial fishing vessels do not address the confidentiality of information on trawler location and time of drops. *See* ORS chapters 506, 507 and 508. Absent a specific statutory provision making the records confidential (or authorizing the department to do so), the department's administrative rule would not trigger the exemption in ORS 192.502(8).

either to determine assessments or to establish production quotas for commercial fishing vessels. Therefore, this exemption would not apply.[4/]

Accordingly, we conclude that the information you seek is not exempt from disclosure under the Public Records Law; we grant your petition and order ODFW to disclose the requested information.[5/] ODFW has seven days from the date of this order in which to comply. ORS 192.450(2).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:BJA:AV:JAA01C79:
c: Jerry Butler, ODFW
Kay Brown, ODFW

[4/] We understand the department has other records that it uses to determine assessments. We specifically do not address whether the business record exemption applies to those other records.

[5/] You state explicitly in your petition that you do not seek the "catch statistics" for any vessel. Therefore, ODFW may redact any "catch statistics" from the records the department provides to you.