



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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September 28, 1999

James F. Peterson
Custom Woodworking
2502 SW Multnomah Blvd
Portland, OR 97219

Thomas Sponsler
County Counsel
1120 SW Fifth Ave
Portland, OR 97204-1977

Re: Petition of James F. Peterson received September 17, 1999, to disclose certain records of the Multnomah County Library

Dear Mr. Peterson and Mr. Sponsler:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner James F. Peterson, Friend of Multnomah Village Library, requests the District Attorney to order the Director of the Multnomah County Library and her employees to produce the following records:

[T]he address list of Patrons of the Hillsdale Library.

Petitioner initially made his request for the above information to Multnomah County Commissioner Diane Linn. Ginnie Cooper, Director of Libraries, denied the request in a letter dated June 23, 1999 by stating "we do not have a list of patrons who use each branch library." Ms. Cooper noted that the library had the capability of providing "a computer disk of addresses of patrons who registered for library cards at Hillsdale Branch" or producing "a disk of people who have in their possession books checked out at Hillsdale Branch during a specified time."

Petitioner was advised by Jeanne Goodrich, Deputy Director of Libraries, in a June 28 letter that patron addresses were not available in any form due to the Library Records exemption. This position was adopted by Multnomah County Commissioner Diane Linn in a letter to

petitioner on June 29, 1999.¹ Petitioner responded to Commissioner Linn by noting that his "information request on June 10, 1999 was for only the address list of patrons of the Hillsdale Library." Petitioner drew a distinction between a request for the "name and address" of a patron and simply the "address" of a patron. Petitioner took the position that the former is exempt but the latter is not.

The final correspondence prior to this petition came from Ramsey Weit, Executive Assistant to Commissioner Linn, in a letter to petitioner dated July 27, 1999. Mr. Weit rejected petitioner's request for the "address" alone of library patrons. "Since names are easily retrievable from addresses, it would seem that an address list alone would be exempt for the same reasons stated earlier."

Thomas Sponsler, Multnomah County Counsel, submitted the attached letter response to the petition on September 22, 1999. Mr. Sponsler pointed out that the library does not have a list of patrons of the Hillsdale Branch or any other branch library.² Mr. Sponsler took the position that whatever circulation records the library does have are exempt from disclosure under ORS 192.502(22). "The identities of library users are not subject to disclosure and we believe this includes their addresses separate from their names." Mr. Sponsler reiterated the argument that disclosure of the addresses of library patrons would lead to disclosure of their names and violate the exemption.

DISCUSSION

ORS 192.502(22) exempts:

The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

Prior to the enactment of the Library Records exemption in 1995, the disclosure of such records was governed by the Personal Privacy exemption under former ORS 192.500(2)(c). In 1981, the Attorney General was asked by a State Representative whether this exemption covered

¹ Commissioner Linn asserted that her office was not the custodian of library records. Petitioner's public record request was properly referred to Ms. Cooper, Director of Libraries, for her consideration and response. The Multnomah County Counsel appropriately provided legal advice to the County agency.

² In an effort to avoid future requests for library patron information that may in fact be available to the Director of Libraries, this petition will not be summarily denied. It must be emphasized, however, that the "Public Records Law does not impose on public bodies the duty to create public records." Attorney General's Public Records Manual, 1997, page 5.

the personal information on applications for public library cards and circulation records. The Attorney General issued an opinion which determined that disclosing the use of specific library materials by named persons was an unreasonable invasion of personal privacy. Unfortunately, the same opinion concluded that "the disclosure of the name and address of a library patron clearly would not unreasonably invade the individual's privacy." 41 Op Atty Gen 435, 436 (1981).

The Attorney General argued forcefully in his 1981 opinion that

the private thoughts of individuals comprise the most sacred bastions of privacy....The knowledge that the disclosure of library circulation records showing the use of specified materials by named persons may occur, may intimidate individuals in the selection of library materials, thereby chilling the obtaining of intellectual stimulation. 41 Op Atty Gen 435, 436 (1981).

It will be assumed that the legislature adopted this analysis and expanded its rationale to include more than simply the use of specific library materials. The Library Records exemption is not a conditional exemption subject to any balancing of factors or weighing of the public interest. Attorney General's Public Records Manual, 1997, page 39. "The exemption now clearly permits libraries to shield directory information (i.e., addresses or telephone numbers linked with names) about their patrons." Attorney General's Public Records Manual, 1997, page 68.

The clear intent of the Library Records Exemption is to protect the privacy of library patrons to the extent possible. Applications for library cards or privileges typically contain the name, address and telephone number of the applicant. Circulation records typically show the actual use of specific library materials by named individuals and may contain the address or telephone number of the patron. In either case, the exemption is intended to protect from disclosure at least the following categories: 1) the name of the applicant or patron, 2) the address of the applicant or patron, or 3) the specific materials used by the applicant or patron.

Petitioner has taken the position that he has not asked for the combination of the "name and address" of the Hillsdale Library patrons but only seeks the addresses. Petitioner may only "need" the addresses for his particular purposes. Under the Public Records Law, the motive or need of the person requesting access to public records is irrelevant. Attorney General's Public Records Manual, 1997, page 1.

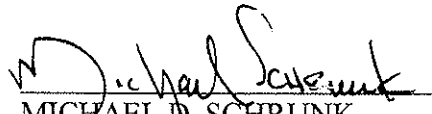
Petitioner is apparently arguing that only the combination of the name and address is exempt. We conclude that petitioner misreads both the letter and intent of the exemption. The legislature has determined that the name, the address, and/or materials used by a library patron are unconditionally exempt from public disclosure. The protection is absolute and the Director of Libraries has no discretion to provide any details of her patrons identities.

Page 4
September 28, 1999
Petition o James Peterson

ORDER

Accordingly, it is ordered that the petition of James F. Peterson to disclose certain records of the Multnomah County Library is denied.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County

Cc: Ginnie Cooper, Director of Libraries
Diane Linn, Multnomah County Commissioner

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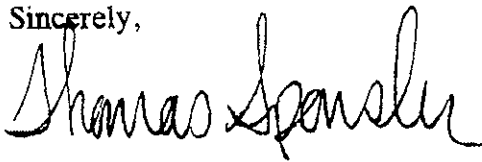
John K. Hoover
September 22, 1999
Page 2

includes their addresses separate from their names. Disclosure of the addresses of library patrons would lead to disclosure of their names and violate the 1995 legislation.

As explained in the June 22, 1999 letter from Director of Libraries Ginnie Cooper to Mr. Peterson, the records he requests do not exist. He requested the addresses of patrons of the Hillsdale Branch Library. The library does not have a list of patrons of that or any other branch.

Please let me know if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "Thomas Sponsler". The signature is written in a cursive style with a large, prominent initial 'T'.

Thomas Sponsler
County Counsel

cc Ginnie Cooper



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September 22, 1999

Via Fax: 248-3643

John K. Hoover
Deputy District Attorney
600 County Courthouse
Portland, OR 97204

Re: James F. Petersen Public Record Petition

Dear Mr. Hoover:

Your September 20, 1999 letter requested a response to the above petition for disclosure of certain Multnomah County Public Library records. As stated in correspondence between the County and Mr. Petersen, we believe ORS 192.502(22) exempts the records from disclosure.

Before 1995, the Attorney General concluded that disclosure of library records would ordinarily be an unreasonable invasion of privacy and exempt under former ORS 192.500(2)(C), the personal privacy exemption. 41 Op Atty Gen 435 (1981). However, the Attorney General determined that disclosure of names and addresses of library patrons may not be an unreasonable invasion of privacy.

In 1995, the legislature broadened the exemption for library circulation records and moved it from ORS 192.501 to 192.502. As you know, ORS 192.501 exemptions are subject to the condition "unless the public interest requires disclosure in the particular instance". As part of ORS 192.502, the subsection (22) library record exemption is not subject to any balancing of factors or weighing of the public interest in disclosure.

The clear purpose of the ORS 192.502(22) exemption is to protect the privacy of library patrons. It continues to prevent disclosures showing use of specific library material by named persons. It now also exempts the names of and addresses of library patrons. The identities of library users are not subject to disclosure and we believe this