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January 13, 2004

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Re: Petition of Robert E. Babcock on behalf of Gail R. O'Connell-Babcock, PhD received January 2, 2004, to disclose certain records of Multnomah County Animal Services

Dear Mr. Babcock and Ms. Morf:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Robert E. Babcock requests the District Attorney to order Multnomah County Animal Services (MCAS) and its employees to produce "unredacted" copies of the following records:

The OAR required log.

Petitioner made his request for the above information in correspondence (not included with the petition) to Assistant County attorney Jenny Morf. She replied by letter on November 19 and 21, 2003. The logs were provided by MCAS to Dr. O'Connell-Babcock with limited deletions. The redactions consisted of the initials of individual MCAS employees who made certain log entries related to euthanasia. Ms. Morf advised petitioner that the "redactions are considered necessary in light of requests by the employees who believe it is reasonably foreseeable that disclosure of their personal information would lead to an unreasonable invasion of privacy." Ms. Morf noted that the County "finds that protecting the personal privacy and safety of County employees outweighs any p[ublic interest in knowing *who* made euthanasia determinations."

Petitioner submitted this petition and argued that he had reviewed all available Attorney General Orders referencing the statutory sections and that "none support the contention that the names/initials of government employees may be deleted from public records." Petitioner included no arguments about the public interest although invited to do so in a telephone message on January 2, 2004.

Assistant County Attorney Morf has advised this office that Dr. O'Connell-Babcock is already in possession of the names of the various individuals whose initials have been redacted. The question, therefore, is whether the association of a name with a particular log entry is personal information the disclosure of which would constitute an unreasonable invasion of privacy?

DISCUSSION

ORS 192.502(2) conditionally exempts:

> Information 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.

"The purpose of this exemption is not to prevent disclosure of personal information, as such, but rather to protect privacy from unreasonable invasion." Jordan v. MVD, 308 Or 433, 441 (1989). Only personal information that would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption. In Jordan, 308 Or at 442, the court noted that the trial court found that the affidavit filed in the trial court

> ...sufficiently established that disclosure to the requester would more likely than not unreasonably invade her privacy because providing the information would allow Jordan to harry her incessantly to the extent than an ordinary reasonable person would deem highly offensive.

"[T]he information is not exempt absent an individualized justification for exemption." Attorney General's Public Records Manual, 2001, p. 58. This determination must be made on a case-by-case basis. A blanket policy of nondisclosure is not enforceable. Guard Publishing v. Lane County School Dist, 310 Or 32, 38-40 (1990).

Personal information is not defined in the exemption. In Jordan v. MVD, supra at 441, the Supreme Court cited Webster's Third New International Dictionary definition of "personal" as meaning "1. of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general***(personal baggage):***6: exclusively for a given individual (a personal letter)***."

In Guard Publishing Co. v. Lane School Dist., 310 Or 32 (1990), the Supreme Court commented on the Court of Appeal's position that the test for whether information is personal under ORS 192.502(2) is "whether it normally would not be shared with strangers." The Court of Appeals had applied that test in Guard Publishing Co. v. Lane School Dist., 96 Or App 463, 467 (1981) and held that one's name is unquestionably information normally shared with strangers. In a footnote to its opinion, the Supreme Court noted:

> In Jordan v. MVD, *supra*, we implicitly rejected this Court of Appeals test. The District Court did not seek review of the lower courts' conclusion that it must disclose the replacement coaches' names. However, because we hold that the District's 1984 policy is not compatible with the disclosure statutes, we do not here decide whether a person's name could ever be exempt from disclosure under ORS 192.502(2). 310 Or at 36, n4.

The Attorney General has taken the position that "[g[enerally, disclosure of a name itself would not constitute an unreasonable invasion of privacy." Attorney General's Public Records Manual, 2001, p. 59. However, the identities of candidates for university president were not disclosed in a 1988 Letter of Advice. "[A] person's name may be exempt in certain contexts, due to a person's desire for confidentiality to avoid stigmatizing or other undesired effect." Attorney General's Public Records Manual, 2001, E-6. In a 1995 order, a CSD list of employees involved in the Whitehead case was found not exempt "because disclosure would not likely lead to harassment or physical harm of individuals named on the list." Attorney General's Public Records Manual, 2001, F-31. In a March 20, 2003 order (attached), the Attorney General denied a petition for the names of individuals giving confidential information to DMV:

> This office has concluded that normally, neither the name, home address nor telephone number of an individual is exempt on the basis of personal privacy because a person generally shares such information with other members of the public. However, we have also concluded that there are situations in which it can be established that such information is covered by this exemption.

It is a close question, but we agree with the Attorney General that a name, no less than a home address or telephone number, is theoretically covered by the exemption. We are mindful of the admonition in Jensen v. Schiffman, 24 Or App 11, 17 (1976) that "any privacy rights that

public officials have as to the performance of their public duties must generally be subordinated to the right of the citizens to monitor what elected and appointed officials are doing on the job."

The County has determined that production of employee names connected with euthanasia decisions is reasonably likely to result in harassment of those employees. We agree. An identified group of MCAS employees provided anecdotal information that they are in fear for their personal safety from the conduct of Dr. O'Connell-Babcock. This office is not in a position to second guess the determination of the County that disclosure of the initials would allow the continued "harassment" of the MCAS employees. Unfortunately, public employees must expect and absorb a certain amount of harsh criticism and even condemnation of their work product.

In two instances, however, the attacks are not only personal but threaten the safety and security of the MCAS employees.[1] The continued disclosure of the initials of these employees next to decisions on euthanasia would be an unreasonable invasion of their privacy. Petitioner has presented no arguments that disclosure of the redacted information would not constitute an unreasonable invasion of privacy. Petitioner has asserted no public interest rationale for the disclosure of the employee initials. We conclude that the initials of the first two employees on the list provided by Ms. Morf were appropriately redacted from the log entries given to petitioner.

ORDER

Accordingly, it is ordered that Multnomah County Animal Services promptly disclose the records sought in the above petition subject to redaction of the initials of the first two names provided by Assistant County Attorney Morf in her confidential letter of January 8, 2004. Disclosure of the documents ordered is subject to payment of Multnomah County Animal Services' fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

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[1] The County provided information on the other employees that could be interpreted as a prelude to threats to their safety and security. We are not prepared at this time to accept the County's position that it is foreseeable that Dr. O'Connell-Babcock will continue to escalate her personal attacks on other MCAS employees. However, the matter may be revisited by MCAS if it determines that redaction is necessary to provide a safe work environment for any employee.

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.