



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

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January 24, 2003

Cascade Anderson Geller  
1934 SE 56<sup>th</sup> Avenue  
Portland, OR 97215

Terence Thatcher  
City Attorney's Office  
1221 SW 4<sup>th</sup> Avenue Suite 430  
Portland, OR 97204

Re: Petition of Cascade Anderson Geller and Floy Jones received January 15, 2003,  
to disclose certain records of the City of Portland.

Dear Ms. Geller and Mr. Thatcher,

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Cascade Anderson Geller and Floy Jones request the District Attorney to order the City of Portland and its employees to produce the following records:

#### **Veridian, HDR, and all other security reports pertaining to the Open Reservoir Project.**

Petitioner Geller made her written request for the above information to the City of Portland Bureau of Water Works on January 14, 2003. The City denied the request for the water security assessments in a memorandum on the same date. Matthew Grumm, Staff Assistant to Commissioner Dan Saltzman, said the Commissioner's Office would not be providing the documents "due to the sensitive nature of these assessments and potential threats to Portland's water quality if the findings in these assessments were made public."

Petitioners, members of Friends of the Reservoirs, are particularly concerned with Mt. Tabor Park and the \$76 million City project to bury the open reservoirs and build reflecting ponds or other park uses above the buried reservoirs. As stated in the petition: "We are currently working on an open public process regarding a decision that was made without any public comment or public council comment."

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Terence Thatcher, Deputy City Attorney, responded to the petition by letter to this office on January 17, 2003. Exemption was claimed under ORS 192.501(22), Interference with Public Services, and ORS 192.501(23), Security Measures. Mr. Thatcher stated that the City "possesses one draft report assessing vulnerability of the City's open reservoirs to sabotage or terrorism, produced by Veridian. HDR is conducting an additional assessment of system-wide security but the City has yet received no written report."

The 19-page report, according to Mr. Thatcher, "identifies 'threat considerations,' the ease or difficulty of executing an assault (either physical or chemical) on the reservoirs, the potential consequences of such an assault, the nature of current security measures, and potential security improvements." Mr. Thatcher contends the exemptions apply because the purpose of the Veridian report was to "assess vulnerabilities and discuss security measures."

#### DISCUSSION

ORS 192.501(22) conditionally exempts:

Records or information that, if disclosed, would allow a person to:

- (a) Gain unauthorized access to buildings or other property used or owned by a public body;
- (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a public body; or
- (c) \*\*\*\*\*

According to the Attorney General's Public Records Manual, 2001, p. 47, the purpose of this exemption is to "protect the delivery of the state's public services. It exempts from disclosure information that would allow a person to gain unauthorized access to buildings, public funds or information processing systems, or to identify areas of vulnerability that would permit unlawful disruption to or interference with public services or a public body's information processing systems."

ORS 192.501 (23) conditionally exempts from disclosure:

Records or information that would reveal the security measures taken or recommended to be taken to protect:

- (a) \*\*\*\*\*
- (b) Buildings or other property used or owned by a public body;
- (c) \*\*\*\*\*

According to the Attorney General's Public Records Manual, 2001, p. 47, this provision is also intended to "protect the delivery of the state's public services by exempting from disclosure information that would reveal the security measures taken to protect public employees, buildings and information processing systems."

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The conditional exemptions of ORS 192.501 exempt a specific type of record or information “unless the public interest requires disclosure in the particular instance.” Deputy City Attorney Thatcher acknowledges “this report might be of some benefit to them in judging the propriety of City policy decisions.” He argues, however, that the public interest “weighs in favor of confidentiality, not disclosure.” The report “documents specific vulnerabilities of the City’s water system,” “discusses in some detail the strengths and weakness of current security measures,” and goes on to “discuss ways to address potential threats and improve security.”

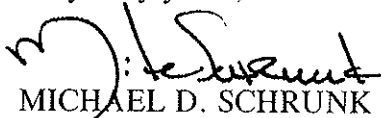
This office was given full access to the Veridian report<sup>1</sup> and it can fairly be argued that the exemptions apply to all of its contents. The report evaluates both potential vulnerabilities of the open reservoirs and options for improvement in security. There are numerous pages and passages that contain extremely sensitive information that should not be made public.

The question remains whether the public interest requires disclosure in the particular instance. The Friends of the Reservoirs, made up of Mt. Tabor neighbors, have a legitimate concern about the process engaged in by the City that has led to the possibility of spending \$76 million to dig up the existing reservoirs and replace them with buried tanks. A careful reading of each page of the Veridian report reveals several pages and sections that can and should be disclosed to further the public debate. The information includes most of the Executive Summary, a description of the open water reservoirs, the methodology of the study, and biographies of the two writers.

#### ORDER

Accordingly, it is ordered that the City of Portland promptly disclose the records sought in the above petition as follows: The Veridian study pages 1, 2, 4 (except the last sentence of the third paragraph and the first sentence of the fourth paragraph), pages 5 and 6 (sections 2.1, 2.2, 2.3, and 3), page 8 (section 5.1.1), page 10 (section 5.2.1), page 18 and page 19. Disclosure of the documents ordered is subject to payment of the City of Portland’s fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440 and this order.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney

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<sup>1</sup> The City also provided for our review the December 18, 2001 report by Black and Veatch that is described by Mr. Thatcher as a “system-wide security assessment” of the City water supply. This document does not relate to the Open Reservoir Project and falls outside the public records request here. We would note, however, that the 2001 study appears to be covered by the same exemptions cited by the City.

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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 court action within 7 additional days thereafter.

Cc: Floy Jones

03-03