



**ROD UNDERHILL**, District Attorney for Multnomah County

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January 8, 2016

Jenny Duchêne  
2411 N.W. Northrup St.  
Portland, Oregon 97210

Tony Garcia  
Deputy City Attorney  
Office of the City Attorney  
1221 S.W. Fourth Ave., Suite 430  
Portland, Oregon 97204

Re: Petition of Jenny Duchêne requesting the identity of the individual who filed a code enforcement complaint against her property.

Dear Ms. Duchêne and Mr. Garcia:

In her public records petition under ORS 192.410 et seq., petitioner Jenny Duchêne appeals the denial of her request for the following documents from the City of Portland:

**the name and address of the person who reported her residence for foliage and sidewalk problems**

The City denied Ms. Duchêne's request in a letter dated November 10, 2015 citing ORS 192.502(4), the confidential submission exemption. Ms. Duchêne filed the present appeal with this office on December 21, 2015, and graciously agreed to extend the statutory timeline for this opinion.

The City has responded and continues to assert ORS 192.502(4) as its basis for withholding the requested information. Along with its response the City has submitted an affidavit from the enforcement program manager at the Bureau of Development Services. The affidavit describes the assurances of confidentiality made to complainants when they file a complaint. The affidavit further includes the observation that many potential complainants have refused to provide information, despite these assurances, upon learning that the City will not accept an anonymous complaint.

### DISCUSSION

After careful consideration, as amplified below, this office agrees with the City that the information requested fits within the scope of ORS 192.502(4) and may be withheld from public inspection.

A. Confidential Submissions – ORS 192.502(4)

ORS 192.502(4) exempts from disclosure under the public records law:

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 statute sets out five elements that must be satisfied in order to withhold records:

- 1) the informant must have submitted the information on the condition that it would be kept confidential;
- 2) the informant must not have been required by law to provide the information;
- 3) the information itself must be of a nature that reasonably should be kept confidential;
- 4) the public body must show that it has obligated itself in good faith not to disclose the information; and
- 5) disclosure of the information must cause harm to the public interest.

The complaint at issue in this case originated from the City of Portland's online reporting form contained on their website. The top of the complaint form states:

Complete information, including your contact information, is required in order to investigate the complaint. Please note that complainant information is confidential and will not be provided to the public.

After completing all the information about the complaint the form concludes by offering the complainant the opportunity to waive confidentiality as to their submission stating:

It is Bureau policy to keep complainant information confidential. Your information will be kept confidential unless you check the box certifying that you do NOT want confidentiality.

In this case the City's supporting affidavit indicates that the informant did not check the box waiving confidentiality. Based on this record it is not a close call to conclude both that the information was submitted confidentially and that the city obliged itself not to disclose the information.

It is likewise clear that the informant was not required by law to file this complaint.

The remaining elements, three and five, pose the same general question: are citizen complaints about code violations the type of information that the public interest requires keeping confidential? We conclude that they are.

Essential to any law enforcement, be it code enforcement or criminal investigation, is the ability to receive information from the public relating to potential violations of the law. In criminal prosecutions the state is not generally required to disclose the identities confidential informants. This is particularly true when the informant only provides preliminary information leading to subsequent independent observation by law enforcement. *State v. Dunning*, 81 Or App 296, 299 (1986). Apart from the clear difference in severity between a sidewalk and foliage violation and a criminal charge, there is not a principled policy distinction between a confidential

informant who provides information to police about criminal conduct and a resident who reports a landlord or neighbor to regulatory authorities for a city code violation.

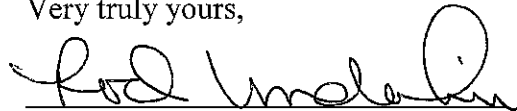
The legislature has recognized the high public interest in the continued confidentiality of informants by enacting OEC 510(2), which privileges the identity of an informant who provides information relating to possible violations of the law.<sup>1</sup> The public has an interest in the effective enforcement of its laws and regulations. The public disclosure of information tending to chill informants' future willingness to come forward would harm the public interest. Releasing the identity and address of an informant would have just such an effect.

Because all five elements of ORS 192.502(4) are satisfied in this case, the information at issue is exempt from disclosure.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

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<sup>1</sup> This office has not previously considered whether the "informant's privilege" created by OEC 510(2) is incorporated into the public records law by operation of ORS 192.502(9). However, given our resolution of the claim of exemption under ORS 192.502(4), we need not reach that issue in this case.