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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 25, 1995

Jim Scheppke
State Librarian
Oregon State Library
250 Winter Street, N.E.
Salem, OR 97301-0640

Re: SB 157; DOJ File No. 543010-GEC0111-95

Dear Jim:

The 1995 Legislative Assembly enacted Senate Bill 157 which becomes effective on September 9, 1995, and amends the Oregon Public Records Law as it relates to certain library records. Senate Bill 157 deleted a "conditional" exemption^{1/} under ORS 192.501 for certain circulation records of a public library, and established a new exemption without conditions under a different section of the Public Records Law for:

The records of a library, including circulation records, showing use of specific library materials 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.

Or Law 1993, ch 604, § 1(19), to be codified as ORS 192.502(4922).

You have asked me to answer certain questions concerning the effect of Senate Bill 157. I will list your questions followed by my answers and a short discussion.

1. What is the applicability of this law? Are all types of libraries covered (e.g., public, academic, school, corporate, etc.)?

The Public Records Law applies only to "public bodies." A public body is defined as follows:

"Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

ORS 192.410(3)

Note: While the original letter referred to ORS 192.502(19), amendments to the Public Records Law in 1997 changed subsection 19 to 22.

Under this definition, the Public Records Law and the provisions of Senate Bill 157 apply to all libraries operated by public entities such as cities, counties, school districts and special districts. The law does not apply to private entities such as private corporations, private schools or privately operated libraries.

2. Are there circumstances in which a public library may disclose library records identified under SB 157?

Your question requires some general discussion of the Public Records Law and its application. The law defines “public records” very broadly to include virtually all government records of any kind.^{2/} Circulation records of a public library are clearly public records subject to the provisions of the Public Records Law. A public library must disclose any public record unless the record is subject to a specific exemption. However, the fact that a particular record falls under one of the exemptions does not, in most cases, mean that the public agency is prohibited from disclosing the record; rather it means that the agency may use the exemption as a basis to refuse to disclose the record. The principle is discussed in the following excerpt from the Attorney General’s Public Records and Meetings Manual, 1993 edition:

There are only a few instances in which a public body is barred from disclosing information that is exempt from inspection under the Public Records Law. ORS 192.445 *prohibits* a public body from disclosing a home address or personal telephone number if the requirements of that section are met. And the “catch-all” exemption in ORS 192.502(8) incorporates some Oregon statutes, outside the records law, that prohibit the public release of certain types of information. * * * And because outright release of personal privacy information, exempt under ORS 192.501(2), or trade secret information, exempt under ORS 192.501(2), is likely to result in claims of liability for damages, a public body should consult its lawyer before disclosing these types of information.

Nevertheless, the guiding principle is: *Exemptions do not prohibit disclosure*. Records custodians presented with a records disclosure request first should ask themselves whether disclosure is prohibited by ORS 192.445 or by a law outside the Public Records Law. If not, the question should be: Is there any good reason not to disclosure [sic] the requested record? Only if the answer is yes, is it necessary to inquire whether the Public Records Law allows nondisclosure.

Page 14 (emphasis in original).

In summary, the emphasis of the Public Records Law is to require disclosure. Except under ORS 192.445, none of the Public Records Law exemptions *prohibit* disclosure. Instead, the exemptions give the public body discretion not to disclose specifically identified records.

Senate Bill 157 adds subsection (4922) to the list of exemptions under ORS 192.502. By its terms, subsection (4922) does not prohibit disclosure. Thus, public libraries are permitted but not required to refuse to disclose the types of circulation records identified under subsection (4922) of ORS 192.502.

Note: While the original letter referred to ORS 192.502(19), the Public Records Law in 1997 changed subsection 19 to section 22.

Public libraries probably should adopt policies to define those circumstances in which subsection (1922) circulation records can be disclosed. For example, a library's policies should probably provide for disclosure of circulation records in response to a court order or a request from a law enforcement agency. To the extent a library adopts policies that permit disclosure under some circumstances, these policies should be tailored to avoid disclosure of information in a context that could subject the library to liability for violation of an individual's privacy rights.

A public library's policies must also comply with ORS 192.445. This section of the Public Records Law *prohibits* the disclosure of a person's home address and telephone number if the person requests that the information in question not be disclosed and demonstrates that disclosure could endanger the person or a family member.

3. Does the law allow an exemption for the name of a library patron if the patron's name is not accompanied by an address or telephone number or both? What other information, such as date of birth, is subject to disclosure?

Subsection (1922) exempts "[t]he records of a library, * * * consisting of the name of a library patron together with the address or telephone number, or both, of the patron."

Records showing the name of a patron are exempt only if they are accompanied by the patron's address or telephone number. So a library is still required to disclose records that show whether a named individual is a patron of the library so long as the disclosure does not include the individual's address or telephone number.

Other personal information, such as a person's date of birth, is not subject to the subsection (1922) exemption.^{3/}

4. If a child has his or her own library card, would the law restrict the ability of a parent or guardian to obtain information about the books or materials that the child has checked out?

As stated above, the exemption under Senate Bill 157 permits but does not *prohibit* a public library to withhold disclosure of information showing the use of specific library material by a named person. Thus a public library could adopt policies that limit disclosure of circulation records to the general public but permit disclosure to the parent or guardian of a child under age 18.

5. Does the law prevent a public library from using records under subsection (1922) for its own purposes? For example, could a library use its patron list to mail out a newsletter or conduct a market survey? What if this process involves release of the names and addresses of library patrons to an independent contractor?

Senate Bill 157 does not prevent a library from using a patron list to mail out a newsletter, market survey or similar information. Such uses would not constitute a disclosure of information. A library could use an independent contractor for these purposes under an agreement that the contractor shall keep the list confidential and use it for no other purpose.

Note: While the original letter referred to ORS 192.502(19), the Public Records Law in 1997 changed subsection 19 to section 22.

The Department of Justice provides legal advice and assistance to state agencies. We are not authorized to advise other units of government. Public libraries may wish to consult their own legal counsel for advice on these matters.

Sincerely,

Joe Gordon McKeever
Assistant Attorney General
Education Section

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^{1/} The exemptions under ORS 192.501 have been labeled “conditional” because they apply “unless the public interest requires disclosure in the particular instance.” This condition requires the agency to balance the reasons for confidentiality against the public interest in disclosure. Most of the “nonconditional” exemptions under ORS 192.502, including one for library records under Senate Bill 157, do not require the agency to conduct a balancing process. But as discussed below, the fact that records fall under a nonconditional exemption does not mean the custodian is prohibited from disclosing them.

^{2/} ORS 192.410 states:

(4) “Public record” includes any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

^{3/} There might be unusual instances in which disclosure of personal information would fall under the personal privacy exemption under ORS 192.502(2). See e.g., Jordan v. Motor Vehicles Div., 308 OR 433 (1989) (Motor vehicles owner’s home address was subject to personal privacy exemption when the owner had requested that the information be withheld, and the agency had knowledge of facts from which it could reasonably anticipate that disclosure of the information could lead to harassment or physical harm. The Jordan case preceded enactment of ORS 192.445.) Federal laws also restrict both the solicitation and disclosure of personal social security numbers by public agencies. See ____ Atty Gen Op ____, August 4, 1993, No. 8226.