

August 31, 2005

Mr. John Canzano  
The Oregonian  
1320 SW Broadway  
Portland, OR 97201

Re: Petition for Public Records Disclosure Order:  
*University of Oregon Records*

Dear Mr. Canzano:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on August 2, 2005,<sup>1</sup> asks the Attorney General to order the University of Oregon (UO) and its employees to "produce an unredacted copy of . . . [t]he University of Oregon cellular phone bill, Account No. 765378310-0001, dated April 3, 2005 for the phone number 541-510-6051 assigned to Ernie Kent."

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n.8, 538 P2d 373 (1975).

You asked the UO to permit you to inspect the April 3<sup>rd</sup> bill for a cellular telephone provided by the UO to its Men's Basketball Coach Ernie Kent. The UO provided you with redacted copies of the bill, deleting certain information about "personal calls that were made or received on Coach Kent's cell phone and the origination location of certain business calls that Coach Kent made during non-business hours, such as vacation or personal leave days." Letter, p. 1, Grier to Canzano (attached as Exhibit A). In addition to reviewing the UO's response and your petition (attached as

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<sup>1</sup> We appreciate your granting us an extension of the time within which the law would have otherwise obligated us to respond to your petition.

Exhibit B), we also spoke with Ms. Grier about your petition. She has informed us that the UO will disclose certain additional information to you from the requested cellular phone bill.

#### Nature Of The Records

The UO provides the cell phone in question to Coach Kent<sup>2</sup> pursuant to a written policy of the Oregon University System.<sup>3</sup> Ms. Grier informed us that the UO determined that the phone had been used by Coach Kent as that policy requires in the performance of his official duties as coach of the men's basketball team. The billing records are in writing and "contain information relating to the conduct of the public's business." ORS 192.410(4). They are, therefore, "public records" for purposes of the Public Records Law.

The original cellular telephone records at issue are arrayed in a matrix on the April 3<sup>rd</sup> bill. Individual calls are listed chronologically down the left side of the page, and thirteen specific types of information (e.g., duration of call, place of origin, number of the other party) are provided for each call in columns running across the page.

To clarify the discussion that follows, we have prepared a chart that replicates the columns in the original bill but that consolidates the individual calls into four mutually exclusive categories (attached as Exhibit C). Those four categories sort out calls based on whether they are identified by Ms. Grier and Coach Kent as "personal" or "business" and whether they were made on Coach Kent's personal time or at some other time.<sup>4</sup>

Starting at the top row of our chart, the first category includes "personal calls" – those calls not related to Coach Kent's official duties – made on Coach Kent's personal time, namely, days claimed by Coach Kent as paid vacation or personal leave days, or weekends and state and federal holidays. The second category includes "personal calls" made at any other time. The third category includes business calls made on Coach Kent's personal time, again, days claimed by Coach Kent as paid vacation or personal leave days-and weekends or holidays. The fourth category includes business calls made at any other time.

Ms. Grier has told us that the UO has provided or will provide you with all of the data corresponding to the areas of the chart marked with a fine grid pattern. The UO

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<sup>2</sup> According to the UO, Coach Kent voluntarily contributes to the cost of the phone service.

<sup>3</sup> Oregon University System IMD 4.021, entitled "Use of Telephones", states:

- (1) System campus and cellular telephones are intended primarily for conducting System business. Notwithstanding, employees may use System telephones for personal calls when that use will be more efficient to the overall conduct of the System's business.
- (2) Employees shall reimburse the System for any direct costs incurred by the System for use of System campus and cellular telephones for personal use, consistent with (1). Any benefit the employee receives because of System rates shall be considered part of the employee's compensation.

<sup>4</sup> For clarity, the columns on our chart appear in a different sequence than on the original records.

declines to provide data corresponding to the areas of the chart filled with a diagonal pattern.

Order On Your Petition

To the extent that your petition seeks an order compelling the UO to disclose portions of the requested records that the UO disclosed or has agreed to disclose – the data marked with a fine grid pattern on our chart – we deny your petition as moot. We respectfully deny your petition for an order compelling the UO to disclose the portion of the records corresponding to the areas of the chart filled with a diagonal pattern.

The information withheld by the UO and corresponding to the areas of the chart filled with a diagonal pattern is of a “personal nature,” disclosure of which would constitute an unreasonable invasion of the privacy of Coach Kent, of the other party to the call, or both. You have not demonstrated by clear and convincing evidence that the public interest requires disclosure of the information corresponding to the diagonally filled areas of our chart. ORS 192.502(2) authorizes the UO to withhold this information.

Discussion

ORS 192.502(2) exempts certain personal information from the disclosure requirements of the Public Records Law. Specifically, it 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 to protect the privacy of individuals from unreasonable invasion. *Jordan v. MVD*, 308 Or 433, 440-42, 781 P2d 1203 (1989). Only personal information which would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption. *Id.* at 442-43.

To determine whether information is exempt from disclosure, we must first determine whether it qualifies as “personal” for purposes of ORS 192.502(2). Information is “personal” if it relates to a particular person. ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 59. *See also Jordan*, 308 Or at 441 (“personal” has been defined 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 \*\*\*6: exclusively for a given individual (a *personal letter*)\*\*\*”). If the record, or portion of the record, is “personal” for purposes of ORS 192.502(2), it nevertheless is subject to disclosure unless its release would constitute an unreasonable invasion of privacy. An invasion of privacy would be unreasonable if “an ordinary reasonable person would deem [it] highly offensive.” *Jordan* at 442.

Finally, even though a public record is personal and disclosure of the information would lead to an unreasonable invasion of privacy, disclosure may be required if the “public interest by clear and convincing evidence requires disclosure in the particular instance.” ORS 192.502(2).

Business Calls During Coach Kent’s Personal Time  
(Third Row Of The Chart)

Coach Kent used his UO-provided cell phone for business calls while on vacation, personal leave, holiday, or weekend times. *See, e.g.*, page 26, call # 240. Collectively, these calls appear as the third row on our chart. No personal calls are included in this row. In contrast with calls made on other days, all of the calls in the third category occurred at a time when Coach Kent had no obligation to work or to account to his public employer for any of his time. As shown in our chart, the UO redacted the place of origination but disclosed all other information about those calls. Your petition therefore requires us to determine whether an agency may withhold pursuant to ORS 192.502(2) the place from which a public employee places a business call while the employee is on his or her own time.

The essence of a “day off,” “vacation,” “holiday” or “weekend” is that an employee need not account to his or her employer for the employee’s whereabouts. We think it is self-evident that an employee’s whereabouts on such days is “personal” for purposes of ORS 192.502(2).

We next consider whether release of the contested data would be an unreasonable invasion of Coach Kent’s privacy. In support of your contention that it would not, you assert that Coach Kent “routinely provided his location to others when he was traveling.” You also assert that UO released documents showing the point of origination of “calls” made from “seven other cities” including “a ‘personal’ trip to New Orleans (4/24-4/25) . . .” Petition at p. 3.

Information is not exempt under the personal privacy exemption absent an individualized justification for exemption. *Guard Publishing v. Lane County School Dist.*, 310 Or 32, 39-40, 791 P2d 854 (1990); AG’S MANUAL at 61. We therefore agree with your implicit claim that Coach Kent’s choices about disclosure of his whereabouts are relevant to determining whether release of that information to the public would be an unreasonable invasion of his privacy. As you note, we have opined that a person’s address is generally not exempt because “reasonable persons routinely provide their addresses for a variety of purposes – they are imprinted on checks, placed on outgoing letters and found in telephone directories, land records and voter registration records.” AG’S MANUAL at 63. We think the comparison is inapt. The salient characteristic of the disclosures cited in the AG’S MANUAL is that they are made to strangers or to the public

at large. In contrast, as you have described them in your petition, each of Coach Kent's alleged disclosures was made to persons known to him.<sup>5</sup>

You also rely upon the UO's alleged treatment of Coach Kent's private information. An *employer's* public release of an employee's private information has only marginal logical relevance in the determination of whether an ordinary reasonable person in the *employee's* situation would find the release highly offensive. The logical connection between an employer's disclosure of an employee's private information is particularly weak where, as here, the private information concerns the employee's whereabouts on a day when the employer can make no compulsory claim on any part of the employee's time.

There is no information about Coach Kent's performance as a public employee to be gleaned from his location when engaged in business calls while on vacation or otherwise on a day when he is not scheduled to work. Disclosure of this information would tell the public nothing about Coach Kent's job performance. On the other hand, it would inform the public about where Coach Kent spends his vacation or other days when he is not working, personal information the disclosure of which we believe an ordinary reasonable person would find highly offensive.

Finally, you implicitly claim a "clear and convincing" public interest in disclosure of the place from which Coach Kent placed business calls while on his own time. We disagree that the public has an interest in knowing the places to which a public employee travels on his or her own time. As already discussed, the locations to which an employee travels on his or her own time would generally reveal nothing about the performance of any official duty, and you have not provided a clear and convincing reason to think otherwise here.

Personal Calls On Work Days  
(Second Row Of The Chart)

Coach Kent used his UO-provided cell phone for personal calls while on other than vacation, personal leave, holiday, or weekend days. *See, e.g.*, page 26, call # 287. Collectively, these calls appear as the second row on our chart. The UO has disclosed or agreed to disclose seven columns of data about each call in the second row. Your petition demands "unredacted" records for these calls. Therefore, we must evaluate whether the UO is authorized by ORS 192.502(2) to redact the seven types of information so identified in row two of our chart, namely, the duration of personal call,

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<sup>5</sup> We acknowledge that you have alleged that Coach Kent told you "and others that he was in Belize and Mexico during the periods in question." The records you seek include a long period of time; we are unable to match the "periods in question" that Coach Kent allegedly discussed with you to any segment of the period of time encompassed by your request. Therefore, even though disclosure to a reporter such as yourself might ordinarily be understood as a willingness to make public the disclosed data, here we cannot reach such a conclusion.

time of day of the personal call, rate period applicable to the personal call,<sup>6</sup> place of origination of the personal call, phone number of the other party to the personal call, destination of the personal call and usage type of the personal call.

According to the UO, Coach Kent is a salaried employee whose duties are not confined to specified times of a given week day. In exchange for his salary, Coach Kent is required to expend such time as is necessary to meet the requirements of his contract of employment regardless of the number of hours per day worked or the time of day.

The duration of the call, time of day, rate period, place of origination, phone number, destination and usage type each reveal information about how Coach Kent chose to spend the “personal” part of days that also included work. These elements are, therefore, “personal” for purposes of ORS 192.502(2).

Moreover, we conclude that their disclosure would constitute an unreasonable invasion of privacy because it would reveal information about a purely personal activity while telling the public nothing meaningful about what you describe in your petition as his “public duties of recruiting and fundraising during the offseason.” The UO has informed us that none of these calls pertain to his official duties. The calls to recruits or prospective donors that you hypothesize in your petition are classified in rows three and four of our chart. According to the UO, no such call is included in rows one or two of our chart.

Because you have not shown either why disclosure would not constitute an unreasonable invasion of Coach Kent’s privacy or that there is clear and convincing evidence of a public interest requiring disclosure, we conclude that the seven identified categories are exempt from disclosure under ORS 192.502(2).

Personal Calls During Coach Kent’s Personal Time  
(First Row Of The Chart)

Coach Kent used his UO-provided cell phone for personal calls while on vacation, personal leave, holiday, or weekend days. *See, e.g.*, page 26, call # 249. Collectively, these calls appear as the first row on our chart. From this category, and for the same reasons, the UO redacted the same elements redacted from the second row and for which we conclude that you have not carried your burden so as to require disclosure.

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<sup>6</sup> Page 49 of the telephone bill dated April 3, 2005 bears a legend for the columns in the bill. The “rate period” codes are surrogates for the time on which the call was made. The “usage type” codes reveal information about whether the caller conducted a conference call or forwarded a call to another number.

Conclusion

To summarize, in addition to disclosures already made, the UO has agreed to disclose to you the “# of Call” and “Date” for the first row of calls in our chart. With these exceptions, we conclude that the information the UO redacted from the requested records are exempt from disclosure under ORS 192.502(2). Therefore, we deny your petition.

Sincerely,

PETER D. SHEPHERD  
Deputy Attorney General

Encl. Exhibit A (Letter, p. 1, Grier to Canzano)

Exhibit B (Petition)

Exhibit C (Chart)

c: Melinda Grier, General Counsel, University of Oregon