



**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

July 30, 2002

Neal Weatherspoon, CPA, CISA
Office of the Secretary of State
Audits Division
255 Capitol Street NE, Suite 500
Salem, OR 97310

Re: Opinion Request OP-2002-6

Dear Mr. Weatherspoon:

You ask whether the Secretary of State, or an auditor selected by the Secretary of State, may obtain and review expunction judgments, which by statute are confidential unless released by order of the issuing court, for purposes of auditing the Juvenile Justice Information System. We conclude that under ORS 419C.001(3), the Secretary need not obtain a court order in order to access and review confidential juvenile court records, including expunction judgments, if the Secretary deems the records necessary to conduct an audit related to the Juvenile Justice System.^{1/}

Background

The Juvenile Justice Information System (JJIS) is an electronic information system established pursuant to ORS 420A.223. This information system is administered by the Oregon Youth Authority (OYA) and contains information concerning youth offenders in Oregon's juvenile justice system.^{2/} OYA has the responsibility to adopt rules governing the administration of this electronic system which must address, among other things, "confidentiality of information," "[s]tate and county roles and costs," and "[c]ounty reporting requirements." ORS 420A.223(1)(a)-(c).

Pursuant to administrative rules adopted by OYA, "[t]he JJIS system shall comply with all federal, state, and local laws regarding public information and confidentiality." OAR 416-180-0050. Such laws include ORS 419A.262, which requires expunction of a record relating to a person's contact with any law enforcement agency, juvenile court or juvenile department when an agency subject to an expunction judgment receives a copy of the judgment from the court. ORS 419A.262(16).^{3/} Thereafter, upon receiving a request for the expunged records, agencies subject to the judgment must indicate that no record of the contact exists and the person whose records have been expunged may lawfully assert that the record never existed and the contact never occurred. ORS 419A.262(19)(20). All juvenile court and juvenile department records

subject to the judgment must be expunged, except for the expunction judgment which is sealed and remains sealed unless released by order of the issuing court. ORS 419A.262(17) and (22). A person who releases a record subject to an expunction judgment or information contained in such a record may be subject to criminal or civil liability and, if a public employee, the release is cause for dismissal. ORS 419A.262(23)-(25).

OYA administrative rules require that expunged electronic information stored on JJIS be sealed. OAR 416-140-0040(2). In this context, sealing the record means that it is electronically deleted from the JJIS system. When OYA receives an expunction judgment, the expunction coordinator logs receipt of the judgment and then locates the record on JJIS. One of the electronic menu items on the screen is a button that says “expunction details.” If that button is selected, another button appears that says “OYA case sealed.” When the coordinator clicks that button, an electronic message is sent to the issuing court that the judgment has been received. When the court electronically verifies the expunction judgment, the record is automatically deleted from the JJIS system.^{4/}

Your question arises in the context of the Secretary’s responsibility under ORS 419C.001(2) to perform effectiveness audits of the “[p]rograms, policies and services” constituting the juvenile justice system. JJIS is a component “program” in that system which has as its goal the promotion of “public safety, youth accountability, and juvenile justice system accountability; and to offer opportunities for rehabilitation to youth.” OAR 416-180-0010. Generally accepted government auditing standards require a determination of whether an agency is in compliance with the laws, regulations and other requirements relevant to the agency’s responsibilities.^{5/} Specifically, in order to determine whether JJIS is meeting its stated goal, particularly in the areas of juvenile justice system accountability and youth rehabilitation, auditing standards require the Secretary to have access to sealed expunction judgments in order to determine if records on JJIS are appropriately being sealed in accordance with the law, including ORS 419A.262 and OYA administrative rules. OAR 162-011-0030(4)(b)(C) and (4)(c)(C)(v). The question is whether applicable law authorizes that access.

Discussion

Your question requires us to analyze the Secretary’s authority to access sealed records for purposes of conducting an audit pursuant to ORS 419C.001(2). The legislature amended ORS 419C.001 in 2001 by adding a new subsection (3).^{6/} These amendments require us to interpret new statutory provisions and to harmonize these new provisions with existing law.

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text of the statute and its context, which includes other provisions of the same statute, related statutes and prior enactments. *Id.* at 610-611. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as the rule that “words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. Another rule of construction that bears directly on the interpretation of statutory provisions in context is that “a particular intent shall control a general one that is

inconsistent with it.” ORS 174.020(2). In applying this rule, the Supreme Court notes that statutes should be read together and harmonized, if possible, while giving effect to a consistent legislative policy. *Fairbanks v. Bureau of Labor and Industries*, 323 Or 88, 94, 913 P2d 703 (1996) (citing *State v. Pearson*, 250 Or 54, 58, 440 P2d 229 (1968)). Accordingly, the new provisions must be harmonized with the confidentiality provisions of ORS 419A.262, which prohibit release of expunged records, including the expunction judgment, except upon order of the court that issued the judgment.⁷¹

If the legislative intent is clear from the text and context, the analysis ends there. Only if the legislative intent is not clear from the text and context of the statute will we look to the legislative history to attempt to discern that intent. *PGE*, 317 Or at 611-612. If, after considering text, context and legislative history, the intent of the legislature remains unclear, we may apply general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

In 2001, the legislature amended ORS 419C.001 “[t]o *facilitate* an audit under subsection (2) of this section.” ORS 419C.001(3) (emphasis added). “Facilitate” means to “make easier or less difficult: free from difficulty or impediment.” WEBSTER’S THIRD INTERNATIONAL DICTIONARY 812 (unabridged 1993) (WEBSTER’S). The plain meaning of this portion of subsection (3) indicates the legislature’s intent to make an audit easier or less difficult for the Secretary to conduct than it was before the amendments.

The legislature then specifically describes how it will facilitate an audit. First, in ORS 419C.001(3)(a), the Secretary is authorized to “subpoena witnesses,” “require the production of books and papers and the rendering of reports” and to “do all things necessary to secure a full and thorough investigation.” “Require” means “to impose a compulsion or command upon (as a person) to do something: demand of (one) that something be done or some action taken: enjoin, command, or authoritatively insist (that someone do something).” WEBSTER’S at 1929. On its face, this subsection imposes no restrictions on the Secretary’s access to confidential information.

Subsection (3)(b) goes on to require that the custodian of information the Secretary “deems necessary” to conduct the audit provide “access to the information *notwithstanding the fact* that the information may be made confidential or access restricted by ORS 419A.255 or another law.” ORS 419C.001(3)(b)(emphasis added). As the Supreme Court stated in *O’Mara v. Douglas County*, 318 Or 72, 76, 862 P2d 499 (1993), “[t]he function of a ‘notwithstanding’ clause in the statute is to except the remainder of the sentence containing the clause from other provisions of a law that is referenced in that particular notwithstanding clause.” In ORS 419C.001(3)(b), the remainder of the sentence requires the custodian to provide the Secretary access to information the Secretary deems necessary for an audit. The notwithstanding clause creates an exception to the confidentiality or limited access restrictions of ORS 419A.255 or *another law*.

This requires us to determine whether ORS 419A.262 is *another law* as that term is used in ORS 419C.001(3)(b). First, to qualify as “another law” in the context in which that phrase is used in subsection (3)(b), ORS 419A.262 must make information confidential or it must restrict access to information. The statute does both by requiring destruction or sealing of certain juvenile records and by limiting access to those records except by court order. What is not clear is whether the term “another law” applies broadly to any statute or administrative rule that makes information confidential or restricts access to information – *see e.g.*, ORS 137.225 (statutory action to seal adult conviction records) – or if it should be more narrowly construed. Under the doctrine of *ejusdem generis*, when the legislature uses both a general standard and a list of specifics, the specifics may narrow the scope of the general standard to matters of the same type. *State v. K.P.*, 324 Or 1, 11 n 6, 921 P2d 380 (1996) (citing *Bellikka v. Green*, 306 Or 630, 636, 762 P.2d 997 (1988)). In the context of the laws at issue here, this doctrine would narrow the meaning of “another law” to one in which the confidential information is of the same kind as the information referred to in ORS 419A.255. On the other hand, where specifics are included by way of example, the general proposition controls and is not narrowed by the examples. *See Quintero v. Board of Parole and Post-Prison Supervision*, 329 Or 319, 325, 986 P2d 575 (1999).

For purposes of this analysis, it is unnecessary to determine whether “another law” has a broader meaning because we conclude that the information referred to in ORS 419A.262 is the same kind as that referred to in ORS 419A.255. ORS 419A.255 generally makes the information in juvenile records confidential, with certain narrow exceptions. It also limits access to juvenile records to those persons designated by statute or by the court. ORS 419A.262 also relates to the confidentiality of juvenile records. It establishes a process for making certain juvenile records even more confidential by expunging or sealing them, and then limits access to such records. Because both statutes relate to the confidentiality of and access to juvenile records, they relate to the same kind of information and under the doctrine of *ejusdem generis*, ORS 419A.262 is “another law” as that term is used in ORS 419C.001(3)(b).

We also note that in keeping with the confidentiality requirements of ORS 419A.255 and 419A.262, the legislature has strictly limited the use and disclosure of confidential information obtained by the Secretary under ORS 419C.001(3). The information may be used *solely* for the purpose of performing the audit and may not be used or disclosed for any other purpose. This further supports a conclusion that in order to facilitate an audit of a program related to the Juvenile Justice System, the legislature created an exception to the confidentiality restrictions for obtaining access to juvenile records, but set strict restrictions on the use and disclosure of the information in order to protect its confidential status.

ORS 419A.262 was in effect when the legislature amended ORS 419C.001.^{8/} The legislature is presumed to know of existing law when it enacts new legislation. *See City of Salem v. Salisbury*, 168 Or App 14, 34, 5 P3d 1131 (2000), *rev den* 331 Or 633 (2001). We conclude from review of the statute’s text and context that, in order to facilitate the Secretary’s ability to perform audits of all the programs, policies and services of the juvenile justice system, the legislature intended to include ORS 419A.262 as “another law” under ORS 419C.001(3)(b).^{9/} This interpretation harmonizes ORS 419A.262 and ORS 419C.001 and gives effect to both by

requiring the custodian of confidential records to provide information to the Secretary for the limited purpose of conducting an audit, while still protecting the confidentiality of the records from use for any other purpose.

Conclusion

We conclude from its text and context that ORS 419C.001(3)(a) authorizes the Secretary to command production of books and papers that are otherwise made confidential and to which access is otherwise restricted under ORS 419A.262, including expunction judgments. ORS 419C.001(3)(b) further requires the custodian of such information to comply with that command without a court order, by both acknowledging the existence of an expunction judgment and by allowing access to the judgment.

Sincerely,

Donald C. Arnold
Chief Counsel
General Counsel Division

DCA:DNH:SC:naw/GENC1590

^{1/} In using the phrase “the Secretary” we refer both to the Secretary of State or an auditor appointed by the Secretary of State to perform an audit.

^{2/} ORS 419A.004(33) defines a “youth offender” as “a person at least 12 years of age who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.”

^{3/} “Expunction” as defined in ORS 419A.260(1)(b), means the destruction or sealing of all records, references, judgments or orders related to a contact. For records kept by OYA, expunction means the record is sealed, not destroyed, or if the record is contained in a multi-person file, the outside of the file is marked with information concerning the expunction judgment. ORS 419A.260(1)(b)(B). A “contact” includes any act or behavior of a person under the age of 18 that comes to the attention of law enforcement, a juvenile court or department, or a state agency and could result in juvenile court jurisdiction for behavior that endangers the person or others, or for an act that if committed by an adult would be a crime. ORS 419A.260(1)(a). For purposes of expunction, ORS 419A.260(1)(d) defines “record” to include “a fingerprint or photograph file, report, exhibit or other material which contains information relating to a person’s *contact* with any law enforcement agency or juvenile court or juvenile department * * *.” The definition specifically excludes certain records such as an academic transcript, medical records, traffic or wildlife offense convictions, and records related to certain types of offenses. ORS 419A.260(1)(d)(A) to (L).

^{4/} When paper records are expunged, OYA seals but does not destroy the records and keeps the file in a secure facility. OYA will respond to inquiries about an expunged record by saying that “No record of contacts exists” unless ordered by a court to release the information or unless the information is

needed for administrative purposes such as an audit or preparation for legal action and lawfully may be used for those purposes. OAR 416-140-0010(2)(a) and 416-110-0000(5)(a).

^{5/} *Government Auditing Standards*, often referred to as generally accepted government auditing standards (GAGAS), are issued by the Comptroller of the United States. The Secretary has adopted GAGAS field work and reporting standards for governmental performance audits. OAR 162-011-0030.

^{6/} As enacted by Oregon Laws 2001, Chapter 904, section 16 (SB 384), section (3) of ORS 419C.001 provides:

(3) To facilitate an audit under subsection (2) of this section:

(a) The Secretary of State may subpoena witnesses, require the production of books and papers and the rendering of reports in such manner and form as the Secretary of State requires and may do all things necessary to secure a full and thorough investigation.

(b) The custodian of information that the Secretary of State deems necessary to conduct the audit shall provide the Secretary of State or the auditor selected by the Secretary of State access to the information notwithstanding the fact that the information may be made confidential or access to the information restricted by ORS 419A.255 or another law. Information obtained by the Secretary of State or the auditor pursuant to this paragraph and made confidential by ORS 419A.255 or another law may be used by the Secretary of State, the officers and employees of the Secretary of State or the auditor solely for the purpose of performing the audit required by subsection (2) of this section and may not be used or disclosed for any other purpose.

^{7/} The relevant confidentiality provisions of ORS 419A.262 provide:

(19) Upon entry of an expunction judgment, the contact which is the subject of the expunged record shall not be disclosed by any agency. An agency that is subject to an expunction judgment shall respond to any inquiry about the contact by indicating that no record or reference concerning the contact exists.

* * * *

(22) An expunction judgment and list of complying and noncomplying agencies shall be released from confidentiality only on order of the court originating the expunction judgment, based on a finding that review of a particular case furthers compliance with the expunction provisions of this chapter.

^{8/} Prior to the amendments to ORS 419C.001, the Secretary was authorized to obtain access to sealed expunction judgments by obtaining a court order. Under ORS 419A.262(22), expunction judgments can be released from confidentiality upon order of the originating court. But this is a cumbersome process and may require the Secretary to obtain a court order for each individual expunction judgment he wants to review. The Secretary, through legal counsel, would be required to file the appropriate legal documents, provide notice to the affected person, and appear for hearing if the person objects. ORS 419C.001(3) facilitates the audit process by

enabling the Secretary to obtain this information without the cost, in time and money, of seeking court orders.

^{9/} ORS 419C.001(3)(b) also creates an exception to the imposition of civil or criminal penalties under ORS 419A.262(23) to (25) for release of expunged records or confidential information concerning expunged records, including a sealed expunction judgment. A custodian who complies with a command from the Secretary to produce information concerning expunged records or a sealed expunction judgment is not subject to civil or criminal liability because the custodian is authorized by ORS 419C.001(3)(b) to release confidential records or information to the Secretary.