

The Honorable Ellen F. Rosenblum
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301

March 4, 2013

Dear Attorney General Rosenblum,

Thank you for the opportunity to provide our perspective on an additional line of argument made by the Oregon Business Development Department (OBDD) regarding our Petition for Public Records Order.

To recap relevant events to date: On January 16, 2013, OSPIRG requested the Annual Employment Reports for the Strategic Investment Program for 2011 and 2012 from the Oregon Business Development Department (OBDD). Paul Grove, the Government Relations Manager at OBDD responded on February 7, 2013 and indicated that the bulk of the information provided on the report are trade secrets and would need to be redacted, per ORS 192.501(2). OSPIRG filed a Petition for Public Records Order to the Department of Justice on February 19. On March 1, Mr. Kron notified us via email that OBDD “offered ORS 285C.615 as a basis for confidentiality of this information,” and invited us to respond.

First, we reiterate the premise for which we believe this information should be made public. When tax dollars are given to private companies to achieve certain outcomes, the public has a right to know the recipients of public dollars, amounts received, deliverables required in exchange for public dollars, and actual outcomes. As stated in our petition, this principle extends only to deliverables and outcomes directly related to the public expenditure. Our request should not be mistaken to mean that companies must disclose any information about activities unrelated to public dollars.

It appears that the applicable portion of ORS 285C.615 is as follows:

- “(4) Information collected under this section may be used by the department to make aggregate figures and analyses of activity under the strategic investment program publicly available.*
- (5) Specific data concerning the financial performance of individual firms collected under this section is exempt from public disclosure under ORS chapter 192.”*

Our perspective is that ORS 285C.615 is not an adequate basis for suppressing the Annual Employment Reports requested, for the following reasons:

1. None of the information we seek could be even remotely construed as “financial performance of individual firms.” Financial performance is exactly that: the sum value of factors such as income, expenses, profits and net assets. None of the information requested on the Annual Employment Report is related to financial performance. The report, in a nutshell, quantifies the amount of tax dollars an applicant is eligible for (in the form of a property tax deduction), the investment made and jobs created as a result of the subsidy, and the average compensation of those additional jobs.

2. The choice of the term “financial performance” makes it clear that the statute is not intended to exempt the Annual Employment Report carte blanche from public disclosure, but rather a specific data set that could potentially fall within the reporting rubric. Otherwise, the exempting clause would likely say “annual participant report” or “report” as it does elsewhere in the statute when referencing the report. This point is reinforced by our earlier point—that the current Annual Employment Report requests no “financial performance” information.

3. We imagine that OBDD might argue that the presence of ORS 285C.615(4) implies that the Legislature intended only for aggregate information to be publicly disclosed. We reject that argument, as section four in no way limits OBDD to provide more robust information sets beyond what is referenced in section four.

4. Finally, we raise the possibility that ORS 285C.615(5) conflicts with ORS Chapter 192, in that the latter statute does not provide for the exemption outlined in the former. To the extent that ORS Chapter 192 is intended to be the defining law regarding public records, and it is silent on the specific exemption in ORS 285C.615, we posit that ORS Chapter 192 is the controlling statute. Should that be the case, then the Legislature would need to amend Chapter 192 for ORS 285C.615(5) to be enforceable. We do not rest our petition on this point, but merely raise it for consideration on its own merits.

Thank you again for considering our petition.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Rosenfeld". The signature is fluid and cursive, with the first name "David" being the most prominent.

David J. Rosenfeld
Executive Director