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October 5, 2018

Richard Ellmyer
9124 N. McKenna Avenue
Portland, Oregon 97203

Sarah Stauffer Curtiss
Stoel Rives LLP
760 S.W. Ninth Avenue, Suite 3000
Portland, Oregon 97205

Re: Petition of Richard Ellmyer seeking individual addresses of Section 8 voucher holders in Multnomah County.

Dear Mr. Ellmyer and Ms. Curtiss:

In his public records appeal, dated September 18, 2018, petitioner Richard Ellmyer asks this office to order Home Forward to release records sufficient to identify the individual residential address for clients served by Home Forward who receive Section 8 housing assistance.

Home Forward is the housing authority for Multnomah County and, among other duties, is responsible for administering the federally subsidized Section 8 rental assistance voucher program within the county. Section 8 is the federal government's rent assistance program for assisting very low-income families and individuals to afford housing. A large portion of Section 8 vouchers are "tenant-based" and allow those in need of assistance to reside not just in public housing buildings, but in any qualifying privately owned building. Petitioner is seeking information about the concentration and distribution of subsidized housing in the various portions of the county in reference to a public housing bond measure that goes before the voters in November.

Petitioner has stated that his interest is in categorizing the housing data by neighborhood (e.g. Foster-Powell, Laurelhurst, Portsmouth), but states that he is seeking the individual addresses because he does not believe Home Forward to be in possession of the neighborhood information.

In response, Home Forward has provided petitioner with a total count of Section 8 rental assistance vouchers in the county (9,732) and, because petitioner's interest relates to the geographic distribution, they also provided him with a list breaking down the number of Section 8 tenant-based vouchers (6,642) in the county by ZIP code. Home Forward has denied the request for individual addresses, asserting that release of that information would unreasonably invade their clients' privacy under ORS 192.355(2).

DISCUSSION

A. Information of a Personal Nature – ORS 192.355(2)

ORS 192.355(2) exempts from disclosure:

Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure 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.

A person's home address, although certainly "personal information," is not categorically exempt from disclosure under this section. *Jordan v. MVD*, 308 Or 433, 442 (1989) (a residential address is information of a personal nature); *Guard Publishing v. Lane County School Dist.*, 310 Or 32 (1990) (ordering certain home addresses released despite assertion of this exemption). However, in context here, the address is a proxy for whether or not a particular individual or household is very low-income. It is this information, not an address in and of itself, that we assess here.

i. Unreasonable invasion of privacy

It has generally been recognized, under various statutory schemes, that disclosure of the address of a Section 8 voucher recipient is an unreasonable invasion of privacy. See, e.g., *Jones v. Hous. Auth. of Kan. City*, 174 S.W.3d 594, 597 (Wis. Ct. App. 2005). The United States Department of Housing and Urban Development (HUD) has likewise concluded by rule that release of the addresses of Section 8 recipients would constitute an "unwarranted invasion of privacy" under the federal Freedom of Information Act (FOIA) counterpart to ORS 192.355(2). See, 24 C.F.R. § 15.107(b)(6).

A New York judge considering a similar request for Section 8 recipient addresses (among other information) concluded that:

Where Section 8 housing is identified by an address relating to a single family dwelling, the identity of the tenant would be easily ascertainable. Similarly, where the address relates to a multiple dwelling in which all units are Section 8 units, the identities of the residents are readily available. Only to the extent that the locations of such units and the identities of such tenants not be disclosed would the privacy interests of Section 8 recipients be protected. A hybrid situation exists where a landlord owns one or more multiple dwellings where less than all units in each building are Section 8 units. In such a case it may reasonably be said that a subsidized tenant's identity would not be readily ascertainable.

Tri-State Publishing Co. v. City of Port Jervis, 1992 N.Y. Misc. LEXIS 694 (N.Y. Sup. Ct. 1992). New York's public records law, on which the *Tri-State Publishing* court relied,

contained an exemption for information that would constitute “an unwarranted invasion of personal privacy.” NY Pub. Off. Law § 87(2)(b).

We are, of course, neither bound by FOIA nor any other state’s public records law. However, this is not a unique situation and public interests and privacy interests transcend borders. We find persuasive the consistent conclusions that 1) there is public stigma attached with receiving Section 8 benefits, 2) release of information that could identify a Section 8 recipient is an unwarranted invasion of privacy, and 3) the residential address of a voucher holder is information that could identify the holder.

Petitioner argues that the Oregon Health Authority’s (OHA) publication of a list of addresses where affordable housing may be found indicates that release of such information must not constitute an unreasonable invasion of privacy.¹ We respectfully disagree with petitioner’s characterization of the OHA list. The OHA list is an inventory of properties, compiled from a number of sources, deemed “affordable.” As of today, there are 21,665 units listed in the OHA inventory for Multnomah County alone. Home Forward reports that there are only 9,732 Section 8 subsidized units in Multnomah County.

It may well be that there is substantial overlap between the OHA inventory and the residential addresses of Section 8 recipients, but the fact that a building is in the OHA inventory does not indicate whether or not the occupant of any particular unit in that building is a Section 8 recipient or not. Properties in the OHA inventory range in size from three to 539 units. Even assuming that every single Section 8 recipient in Multnomah County lives in a building on the OHA inventory, this would mean that they account for only 45% of those units. And, from reviewing the data provided to this office by Home Forward, it is apparent the number is lower than that. In short, the publication of building addresses deemed “affordable” by OHA is of no precedential significance in assessing whether or not the release of individual addresses of Section 8 voucher holders would unreasonably invade their privacy.

We agree with the preponderance of authority and find that release of the individual address of a Section 8 voucher holder would constitute an unreasonable invasion of his or her privacy.

ii. The public interest

ORS 192.355(2) then requires a determination whether or not, by clear and convincing evidence, the public interest nonetheless requires disclosure.

From petitioner’s perspective the data he has received, broken out by ZIP code, has no political significance because it will not reveal any patterns that would suggest a preference for avoiding politicians’ neighborhoods when locating publicly subsidized housing. Accordingly he urges a finding that, in order to be fully informed about the relevant public housing issues ahead

¹ See, Oregon Health Authority : Affordable Housing (<https://www.oregon.gov/OHA/HSD/AMH/Pages/Affordable-Housing.aspx>)

of a vote on a large public housing bond measure in November, the public needs granular detail as to which specific neighborhoods have high concentrations of publicly subsidized tenants.

Based on the information submitted, we do not find by clear and convincing evidence that the interests articulated by petitioner outweigh the privacy interests of Section 8 recipients.

iii. Individualized basis to exempt records

Although we have concluded in the abstract that release of information that could identify Section 8 recipients with relative ease would unreasonably invade their privacy, Home Forward may not claim a blanket exemption for all addresses without some individualized analysis as to whether or not the release of any particular address would in fact identify a Section 8 recipient. See, *Mail Tribune v. Winters*, 236 Or App 91 (2010).

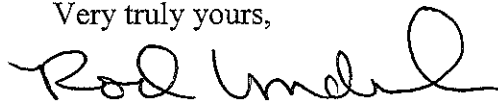
As discussed above, we find that they have made sufficient showing as to any individual who could be identified as a Section 8 recipient by release of their building's address. However, we also agree with the reasoning in *Tri-State Publishing* that release of building addresses where not all tenants are Section 8 recipients would neither identify nor unreasonably invade the privacy of any tenants who happen to be Section 8 recipients. This is, in practical effect, what much of the already published OHA inventory is.

The data provided to this office for our review pursuant to ORS 192.422(2) categorizes the properties that have Section 8 tenants as "Single," "Semi-detached," "Rowhouse," "Low-rise," "High-rise," and "Manufactured." The first three categories predominantly have individualized addresses or would otherwise be readily identifiable. For the low-rise and high-rise buildings, and the few manufactured home complexes, where not all units are Section 8 subsidized, the street address alone (with unit number redacted) is not exempt from disclosure.²

ORDER

Accordingly, the petition is denied in part and granted in part. Subject to the payment of fees, not to exceed its actual costs in preparing and producing the records, Home Forward is ordered to provide petitioner with the entries in the list for any unit in either a high-rise or low-rise where Home Forward can determine that not all units of the building are occupied by Section 8 recipients.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

² A small number of the units designated "low-rise" or "manufactured" have individualized street addresses rather than unit numbers appended to a common street address. These few units may be redacted in their entirety.

Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

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