

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

MAIL TRIBUNE, INC., a Delaware Corporation,)	
)	
Plaintiff,)	No. 07-4147-E-2
)	
v.)	OPINION
)	
MICHAEL WINTERS, Sheriff of Jackson County, Oregon.)	
)	
Defendant.)	

On August 22, 2007 the plaintiff The Mail Tribune, Inc. (Mail Tribune), a newspaper of general circulation in Jackson County, Oregon, sought a disclosure under the Oregon Public Records law, ORS 192.410 – 192.505, requesting “a copy of a list of all concealed weapons permits issued in Jackson County in 2006 and 2007.” On September 5, 2007 the Mail Tribune submitted a second request for “access to the concealed weapons permit issued to Shirley M. Katz.”¹ Both requests were made to the defendant Michael S. Winters, Sheriff of Jackson County, Oregon (Sheriff Winters), the keeper of the records sought.

¹ Ms. Katz was the plaintiff in *Katz v. Medford School District 549C*, Jackson County Circuit Court No. 07-3765-E-2 (2007) in which she had asserted she possessed a concealed handgun license, issued by the Sheriff of Jackson County, and that she wanted to carry her concealed handgun to the place of her employment with the Medford School District. Sheriff Winters agreed at the trial of this case that because Ms. Katz had publically disclosed the existence of her concealed weapons license she had waived any right to claim her application was subject to any of the exemptions relied on by the defendant and that her application would be delivered to the Mail Tribune immediately. The Court presumes Sheriff Winters has complied and delivered that document.

Essentially the same response was made to the two requests on behalf of Sheriff Winters: The information sought was exempt from disclosure under ORS 192.501(23) which provides “[r]ecords or information that would reveal or otherwise identify [individuals’] security measures” or weaknesses therein are exempt from disclosure. At trial, Sheriff Winters asserted additional grounds for refusing to disclose the documents. He asserted the documents are “confidential and exempt from public inspection” under OAR 257-010-0010 and the records are not subject to disclosure under ORS 192.502(2) which makes information of a personal nature exempt from disclosure.

Oregon Public Records Act

Oregon’s Public Records Act sets out the strong policy in this state for openness in the conduct of the public’s business. To that end, the statute is to be broadly construed in favor of disclosure of public records and exemptions are to be narrowly construed. *Guard Publishing Company v. Lane County School District No. 4J*, 310 Or. 32, 37 (1990). The parties agree in this case, and the Court finds, the requested documents are public records.

OAR 257-010-0010

Sheriff Winters’ reliance on OAR 257-010-0010 merits no discussion as this regulation relates “solely to the Oregon Criminal Offender Information System and the Identification Services Section as maintained by the Oregon State Police.” Concealed handgun licenses have nothing to do with this regulation.

Security Measures Exemption

ORS 192.501 provides, "The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect an individual... ."

A security measure is not defined by statute or anywhere else in state law. Webster's Third New International Dictionary defines a measure as, "an action planned or taken toward the accomplishment of a purpose," and security to mean, "the quality or state of being secure."

One can assume many holders of concealed handgun licenses carry their handguns to assist them in being secure from threat or danger. Yet, nothing in the concealed handgun license statute, ORS 166.291-166.297, requires any assertion by the applicant that the handgun will be a part of a security measure. A person may apply for and receive a concealed handgun license for any personal reason, or no reason at all. All one has to do is meet the requirements of the application, a copy of which is attached to this opinion as Exhibit 1.

While it seems clear ORS 192.501(23) is not a basis for nondisclosure, the nature of the request shows this statute is inapplicable. The Mail Tribune request did not seek any information about anyone's security measures; it sought only a "list of names of the concealed weapons permits issued in Jackson County in 2006 and 2007."

A person's name is not "an action planned or taken toward the accomplishment" of being secure.

ORS 192.501(23) provides no basis for withholding the information sought.

Information of a Personal Nature

ORS 192.502(2) provides an exemption from disclosure of

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.

The statute, perhaps to emphasize, uses two legal terms: "personal nature" and "invasion of privacy." These two terms embody meanings of being "free from unwarranted publicity" and the "publicizing of one's private affairs with which the public had no legitimate concern... ." See, Annotation, Right of Privacy, 14 ALR2d 750 (1950).

In this case, the information sought is of a personal nature, including names and addresses and additional personal information. *Exhibit 1, attached.* The Court in *Guard Publishing*, 310 Or. at 38 n7, referred back to its decision in *Jordan v. MVD*, 308 Or. 433 (1989) for what constitutes "information of a personal nature." The *Jordan* court analyzed the information sought in terms of the protection of privacy:

An address filed with MVD [Motor Vehicles Division] is information that MVD could determine is of a personal nature within the meaning of the exemption statute. ... The purpose of the exemption is not to prevent disclosure of personal information, as such, but rather to protect privacy from unreasonable invasion. ... Additionally, the statutory reference to 'information of a personal nature' refers to information in a public record. The legislature must have contemplated that placing information in a public record would not prevent it from being of a personal nature if it otherwise would fit that classification.

Jordan, 308 Or at 441.

The information sought in this case fits within the Supreme Court's definition and it is information of a personal nature.

The Supreme Court in *Guard Publishing*, 310 Or at 40 made it clear the exemption must be based on "an individualized showing of justification for an exemption." The Court noted while a public body, having reason to believe the privacy exemption could apply, might make a timely and reasonable inquiry into whether the exemption existed, and "[a]n individual claiming an exemption from disclosure must *initially show* a public body that the exemption is legally and factually justified." *Guard Publishing*, 310 Or at 37.

In this case Sheriff Winters asserted in court that several unnamed licensees had expressed to him they did not want their names publically disclosed, but no effort was made to actually allow or assist those persons to assert their individual showing to preserve their claim.

In his post hearing memorandum Sheriff Winters cited to a persuasive case from Michigan, *Mager v. Dept. of State Police*, 460 Mich 134, 595 NW2d 142 (1999) which held identities of concealed handgun permit holders is information of a personal nature. Under Michigan law the public body may assert the privacy claim for individuals. However, Oregon law is clear; the "individual" must assert his/her own claim of a privacy exemption. *Guard Publishing*, 310 Or at 37.

Sheriff Winters' post hearing memorandum claimed individual permit holders could not present evidence to substantiate their privacy claims because such evidence would reveal the individual permit holders' identities. This assertion is legally wrong and ignores procedures utilized by the law every day. Names of informants and of those

reporting child abuse are kept confidential, but known to officials and sometimes by Courts. Courts routinely protect the confidentiality of trade secrets, customer lists, medical records and other confidential information through a variety of methods which verify the validity of the confidential material while allowing legal claims to be tested. One can easily envision a procedure for the submission of a confidential list of names under court seal, while the individuals' affidavits, without names, are utilized to assert the privacy exemption.

The procedure set forth in ORS 192.502(2) allows the claim of privacy exemption to be tested. Once the claim is made, the "party seeking disclosure shall have the burden of showing [by clear and convincing evidence] that public disclosure would not constitute an unreasonable invasion of privacy." Because no individualized claims have been asserted, the Mail Tribune has not needed to present any such showing.

A significant period of time has passed during which individual claims of exemption could have been made. The original request was made by the Mail Tribune on August 29, 2007. Sheriff Winters did not initially assert the issue of a privacy exemption, waiting to do so until the hearing on February 8, 2008. Sheriff Winters was under no obligation to assert the privacy exemption, even then. "If the public body is satisfied that a claimed exemption from disclosure is justified, it may, *but is not required to, withhold disclosure of the information.*" *Guard Publishing*, 310 Or at 37-38 (emphasis in original).

Perhaps all those who would assert the privacy exemption have personally communicated their wishes to Sheriff Winters and have relied on that action. On the other hand, it was acknowledged in open Court by Sheriff Winters' attorney that some


permit holders would proudly acknowledge the existence of their permits. Obviously, Ms. Katz, mentioned above, has been very public about the existence of her permit. Perhaps the current permit holders did not view their applications as exempt from disclosure because the application, *Exhibit 1, attached*, required the applicant to attest to and sign, "I further understand Oregon Law considers this application public information." ²

This Court must base its decision on the evidence presented: Speculation cannot form the basis of a legal decision. The permit holders in this case are in the same legal posture as were the strike replacement teachers and coaches in *Guard Publishing*. In that case, the Supreme Court held "individuals" must assert the exemption. To apply Oregon law, this Court must do the same.

Conclusion

For the reasons stated herein, the defendant must comply with the request submitted by the plaintiff. Plaintiff is entitled to the relief sought in its complaint, including an injunction. The attorney for the plaintiff shall submit an appropriate injunction document and General Judgment to the Court.

Dated: April 25, 2008



G. Philip Arnold, Circuit Judge

cc: Lewis W. Dahlin
Benjamin Bloom

² This clause has been removed from Jackson County forms used after approximately January 1, 2008.

CONCEALED HANDGUN LICENSE APPLICATION
APPLICATION HOURS ARE MONDAY - THURSDAY 9:00 AM - 3:00 PM

PLEASE TYPE OR PRINT YOUR LEGAL NAME:

Date: _____

I, _____ hereby declare as follows:

(Last name) (First name) (Full middle name)

Maiden, Nickname or Previous Names: _____

IMPORTANT INFORMATION PLEASE READ:

I am a citizen of the United States. (If you were not born in the U.S. please refer to page 3 for details.) If I am NOT a U.S. citizen, I am a legal resident alien who can document continuous residency in Jackson County for at least six months and have declared in writing to the Immigration and Naturalization Service my intention to become a citizen and can present proof of the written declaration to the Sheriff at the time of this application.

I am at least 21 years of age.

I have been discharged from the jurisdiction of the juvenile court for more than four years, if while I was a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470.

I have NEVER been convicted of a felony. This includes being found guilty of a felony by reason of insanity under ORS 161.295, in the state of Oregon or elsewhere. (See page 2 for more details.)

I have NOT been convicted of a misdemeanor within the last four years from the date of this application. This includes being found guilty of a misdemeanor by reason of insanity under ORS 161.295 in the State of Oregon or elsewhere. (See page 2 for more details.)

I have NEVER been convicted of a misdemeanor crime of domestic violence, as defined in the Gun Control Act of 1968.

There are no outstanding warrants for my arrest AND I am not free on any form of pre-trial release (See page 2 for more details.)

I have NOT been committed to the Mental Health and Developmental Disabilities Services Division under ORS 426.130, nor have I been found mentally ill and been prohibited from possessing a firearm because of mental illness.

For those previous criminal or mental health conditions that do apply to me, I have been granted relief from the disability under ORS 166.274 or 18 U.S.C. 925(c). Proof of the relief must be attached to this application.

I meet the requirements of ORS 166.291 (f) (A) to (G) of competency with a handgun, AND I know I must bring documentation or my application will not be approved. (See page 3 for more details.)

I understand that I will be fingerprinted (new applicants only) and photographed (all applicants).

OREGON DRIVER'S LICENSE MUST REFLECT YOUR CURRENT JACKSON COUNTY RESIDENTIAL ADDRESS.

Oregon Driver License #: _____ Expiration Date: _____ Height _____ Weight _____

Date of Birth _____ Eye _____ Hair _____ Place of Birth _____ State _____ Race _____

Employer _____ Occupation _____

Social Security Number: _____ (Disclosure of your social security account number is voluntary. Solicitation of the number is authorized under ORS 166.420. It will be used only as means of identification.)

Current Jackson County RESIDENTIAL Street Address: _____ Mailing Address (if different): _____

Number and Street name _____ P. O. Box _____

City _____ State _____ Zip Code _____ City _____ State _____ Zip Code _____

Home Phone Number _____ Work Phone Number _____

Date issued: _____ Approved By: _____ Amount Paid _____

OR/SID _____ FBI _____ CCH _____ TIB/MPD _____

DA _____ NWS _____ QMEN _____ DOC _____ Rec. Deputy _____



ATTENTION

Oregon law prohibits the issuance of a concealed handgun license to anyone with a felony conviction, a misdemeanor conviction within the last four years or anyone on pretrial release. Oregon law allows for the denial of a concealed handgun license if the Sheriff determines you are a danger based upon a past pattern of unlawful violence or threats of unlawful violence. Federal law (18 USC 922) prohibits issuance of a license to anyone who has ever been convicted of a misdemeanor crime of domestic violence. Federal law prohibits anyone who is subject to a court restraining or stalking order relating to domestic violence - to purchase and possess firearms and ammunition or engage in activities involving firearms. In addition, 18 USC 922 prohibits anyone who has been dishonorably discharged from the United States Armed Services, anyone who is an illegal alien and anyone who is an unlawful user of controlled substances from purchasing or possessing firearms.

ADDRESSES - List resident addresses and dates for the past three years, if different than current address

REFERENCES (FOR NEW APPLICANT ONLY)

List two character references who are not related to applicant and not residing at applicant's address (name and complete mailing address).

1. _____
2. _____

LIST ALL STATES LIVED IN AS AN ADULT (18 YEARS AND OLDER)

PLEASE ANSWER THE FOLLOWING QUESTIONS

1. Have you ever been dishonorably discharged from the United States Armed Forces?
 Yes No If yes, when _____
2. Have you ever renounced your United States Citizenship?
 Yes No If yes, when _____
3. Do you currently use controlled substances such as marijuana, cocaine, methamphetamine, LSD, or ecstasy?
 Yes No (If no, skip to question 4.)
 - 3a. If you answered yes to question 3, what controlled substances do you use? _____
 - 3b. If you answered yes to question 3, how would you describe your usage?
 Infrequent (less than 4 times during the past 12 months)
 Casual (4 to 12 times during the past 12 months)
 Frequent (at least 12, but less than 24 times during the past 12 months)
 Regular (once a week or more)
 Other _____
 - 3c. If you answered yes to question 3, approximately how long have you been using controlled substances?
 Less than 3 Months
 3 to 6 Months
 6 Months to 1 Year
 More than 1 Year

3d. If you answered yes to question 3, is your use of controlled substances authorized by a medical doctor?
 Yes No

3e. If you answered yes to question 3, do you have a prescription authorizing the use of controlled substances?
 Yes No

4. Are you subject to any type of restraining or stalking order issued by any court?
 Yes No

5. If you are subject to a restraining or stalking order, please provide information about the order: _____

6. Have you EVER been convicted of a misdemeanor crime of domestic violence?
 Yes No If yes, when? _____

7. If you answered Yes to question 1 through 6 above, do you currently possess a firearm?
 Yes No If yes, who manufactured this firearm? (I.e. Glock, Ruger, Winchester, Remington)

CAUTION: Possession of a concealed handgun license does not authorize you to carry a firearm in any federal building, on airport property or in any courthouse where the presiding judge has posted notice of such prohibition. If you are apprehended with a weapon on these premises your concealed handgun license will be seized and returned to the Sheriff, and you may be arrested and charged with a crime.

I have read the entire text of this application. All information submitted is correct. I further understand that making false statements on the application is a Class B misdemeanor and I am subject to prosecution and automatic denial or revocation. All payments are non-refundable. I further understand Oregon Law considers this application public information.

Signature of Applicant: _____ Date Signed: _____

If your address changes at any time while you have a Concealed Handgun License, notify the Concealed Handgun Unit within 30 days of the change of address to obtain a new license. There is a \$15 dollar fee to issue the new license with the updated address. ORS 166.291.(5) (c)

***** To be filled in by Sheriff's Office Personnel *****

Proof of identification: (Two pieces of current identification are required, one of which must bear a photograph of the applicant. Type of identification and number on identification to be filled in by Sheriff's Office.)

ID #1 Type _____ Number: _____

ID #2 Type _____ Number: _____

Competency with handgun demonstrated: _____ Date Signed: _____