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

**KENT A. VANDER KAMP**, an individual,  
Plaintiff,

v.

**DESCHUTES COUNTY**, a political subdivision of the State of Oregon, **DESCHUTES COUNTY SHERIFF'S OFFICE**, an agency of Deschutes County; **DESCHUTES COUNTY SHERIFF L. SHANE NELSON**, in his official capacity, **DESCHUTES COUNTY SHERIFF'S OFFICE UNDERSHERIFF PAUL B. GARRISON**, in his official capacity, **OREGON PUBLIC BROADCASTING**, **EMILY CURETON COOK**, in her official capacity,  
Defendants.

Case No.

**PLAINTIFF'S *EX PARTE* MOTION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE AND POINTS AND AUTHORITIES**

**Filing Fee: \$111.00**

**Fee Authority: ORS 21.200(1)(e)**

**MOTION**

Pursuant to ORCP 79, Plaintiff Kent A. Vander Kamp ("Plaintiff") moves for a Temporary Restraining Order ("TRO") enjoining Defendants Deschutes County and its' employees (the "County"), Deschutes County Sheriff's Office and its' employees ("DCSO"), Deschutes County Sheriff L. Shane Nelson ("Nelson"), and Deschutes County Sheriff's Office Undersheriff Paul B. Garrison ("Garrison") from publicly releasing Plaintiff's confidential personnel records and information from the City of La Mesa and the La Mesa Police Department (the "Records") in response to a Public Records Request ("PRR") made by Defendants Oregon Public Broadcasting ("OPB") and Emily Cureton Cook ("Cook"). The Defendants release of Plaintiff's Records will cause immediate and irreparable harm, including violation of Plaintiff's confidentiality and Plaintiff's rights to have his confidential personnel records and information kept private. Plaintiff also moves for an Order requiring Defendants to show cause, if there

1 by any, why the requested TRO should not be entered as a preliminary injunction during the pendency  
2 of this action.

3 Counsel for Plaintiff state that they have notified Defendants County, DCSO, Nelson, and  
4 Garrison, through legal counsel, that Plaintiff will move for a TRO before this Court *ex parte* on  
5 October 9, 2024. Counsel for Plaintiff indicated that the Defendants are welcome to attend the *ex parte*  
6 hearing on this TRO. On the morning of October 9, 2024, Cook emailed Plaintiff’s counsel stating,  
7 “would you kindly confirm whether it is accurate that Deschutes County was informed late yesterday  
8 that attorneys for [Plaintiff] will be appearing tomorrow, Wednesday, October 9, 2024, at Deschutes  
9 County Circuit Court Ex Parte to request a TRO on the release of the La Mesa records?” In response to  
10 that email, Plaintiff’s counsel responded confirming that information and inviting Cook and OPB to  
11 participate in the hearing and be heard by the Court.

12 Plaintiff requests that no security be required under ORCP 82. In the alternative, Plaintiff requests  
13 that the security under ORCP 82 be set at a nominal amount of \$1,000.00. There is no ascertainable harm  
14 that Defendants will suffer by the Court entering an Order preserving, during the pendency of this action,  
15 the *status quo*.

16 In support of this motion, Plaintiff submits and relies on his Complaint, the Declaration of Andrew  
17 T. Mittendorf (“Mittendorf Dec.”) and the following Points and Authorities.

18 **POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Plaintiff seeks temporary and preliminary injunctive relief to preserve the *status quo* by enjoining  
21 the Defendants from publicly disclosing confidential and personal personnel records and information. A  
22 TRO is necessary to maintain the *status quo* and prevent the Records and information from being  
23 disclosed – information that, once disclosed, can never regain its confidentiality. As shown below,  
24 Plaintiff is entitled to the relief demanded in his Complaint. Moreover, Plaintiff will suffer irreparable  
25 harm if his confidential personnel file is disclosed, and such disclosure would render a judgment on  
26 Plaintiff’s Complaint ineffectual. Further, the balance of equities and public interest weigh heavily in

1 favor of temporary injunctive relief.

## 2 **II. FACTUAL BACKGROUND**

### 3 **A. Statutory Framework**

4 This case deals with two statutes, one from the State of Oregon, the PRL, and the other from the  
5 State of California, California Evidence Code §1045(e). California Evidence Code §1045(e), states,  
6  
7 “[t]he court *shall*, in any case or proceeding permitting the disclosure or discovery of any peace officer  
8 or custodial officer records requested pursuant to Section 1043, order that the records disclosed or  
9 discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.”  
10 (Emphasis added). The PRL confers the right to inspect public records. Importantly, however, the PRL  
11 exempts from disclosure confidential information and records and other kinds of exempt information and  
12 records in the possession of the public body.

#### 13 **1. The Oregon Public Records Law**

14 The PRL gives every person the right to inspect any public record of a public body in this  
15 state, except as otherwise provided by exemptions to disclosure. ORS 192.314(1). Any person denied the  
16 right to inspect or to receive a copy of a public record of a state agency (such as the County and DCSO)  
17 may seek enforcement of the PRL from the county District Attorney.

18 The exemptions set forth in the PRL can be either conditional or unconditional. As  
19 relevant here, the conditional exemption codified in ORS 192.355(2)(a) permits public bodies to withhold  
20 “[i]nformation of a personal nature such as but not limited to that kept in a personal, medical or similar  
21 file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest  
22 by clear and convincing evidence requires disclosure in the particular instance.” ORS 192.355(2)(a).  
23 Additionally, ORS 192.345(12) permits the public body to withhold “[a] personnel discipline action, or  
24 materials or documents supporting that action.” ORS 192.345(12).

25 The PRL also exempts from disclosure “[p]ublic records or information the disclosure of  
26 which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.”  
ORS 192.355(9)(a). Additionally, ORS 192.385(2) permits the public body to withhold “audio or video

1 records of internal investigation interviews of public safety officers.” ORS 192.385(2). Unlike ORS  
2 192.345(12) and ORS 192.355(2)(a), ORS 192.355(9)(a) and ORS 192.385(2) are not conditioned on the  
3 public interest; if disclosure is restricted by law, it is absolutely exempt from disclosure. Likewise, are  
4 “audio and video records of internal investigation interviews of public safety officers.”

## 5 **2. California Evidence Code §1045(e)**

6 California Evidence Code §1045(e), states, “[t]he court *shall*, in any case or proceeding  
7 permitting the disclosure or discovery of any peace officer or custodial officer records requested pursuant  
8 to Section 1043, order that the records disclosed or discovered may not be used for any purpose other  
9 than a court proceeding pursuant to applicable law.” (Emphasis added).

### 10 **B. Deschutes County and DCSO provide Notice to Plaintiff They Intend to Release La** 11 **Mesa Records to OPB**

12 On information and belief, on October 1, 2024, OPB through Cook submitted a PRR to the County  
13 and/or DCSO, seeking Plaintiff’s La Mesa Police Department personnel records that the County and  
14 DCSO obtained from an action in California. ATM Dec. ¶4. On October 8, 2024, at approximately  
15 3:30pm, Plaintiff, through legal counsel, was handed two (2) letters. One addressed to Plaintiff and the  
16 other addressed to Plaintiff’s legal counsel. These letters indicated that “[o]n October 1, 2024 Oregon  
17 Public Broadcasting submitted a public records request for La Mesa employment records of Kent Vander  
18 Kamp. . . . After discussions between County Counsel, County Administration and the Sheriff’s Office,  
19 the La Mesa records will be disclosed to Oregon Public Broadcasting by 3:00pm on October 9, 2024.”  
20 This provided Plaintiff with less than twenty-four (24) hour notice of the County and DCSO’s intent to  
21 disclose these Records. ATM Dec. ¶5, Exhibit 1.

## 22 **III. LEGAL STANDARD**

23 Oregon Rule of Civil Procedure (“ORCP”) 79 provides the legal standard for both Temporary  
24 Restraining Orders and Preliminary Injunctions. ORCP 79 A(1). Under ORCP 79, a Temporary  
25 Restraining Order or Preliminary Injunction may be allowed “[w]hen it appears that a party is entitled to  
26 relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission

1 or continuance of some act, the commission or continuance of which during the litigation would produce  
2 injury to the party seeking the relief.” ORCP 79 A(1)(a). Preliminary or temporary injunctive relief also  
3 is appropriate “[w]hen it appears that the party against whom a judgment is sought is doing or threatens,  
4 or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party  
5 seeking judgment concerning the subject matter of the action, and tending to render the judgment  
6 ineffectual.” ORCP 79 A(1)(b). In either of those circumstances, “[t]he office of a preliminary injunction  
7 is to preserve the status quo so that, upon the final hearing, full relief may be granted.” *State ex rel.*  
8 *Brookfield Co. v. Mart*, 135 Or 603, 613, 296 P 459 (1931); *Oregon Educ. Ass’n v. Oregon Taxpayers*  
9 *United PAC*, 227 Or App 37, 45, 204 P3d 855 (2009) (citing cases).

10 Because ORCP 79 mirrors Federal Rule of Civil Procedure 65, Oregon courts look to federal case  
11 law in deciding whether to issue temporary and preliminary injunctive relief. *See Von Ohlen v. German*  
12 *Shorthaired Pointer Club of Am.*, 179 Or App 703, 710-11 & n 13, 41 P3d 449 (2002) (stating that  
13 “federal authorit[ies] [are] \* \* \* persuasive in interpreting Oregon law” concerning the proper application  
14 of Oregon’s rules regarding injunctive relief).

15 Under both Oregon and federal law, a party seeking a Temporary Restraining Order or  
16 preliminary injunction must demonstrate that: (1) it is likely to succeed on the merits; (2) it is likely to  
17 suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor;  
18 and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 US 7, 20, 129 S  
19 Ct 365, 172 L Ed 2d 249 (2008). These factors are examined on a “sliding scale,” such that “a stronger  
20 showing of one element may offset a weaker showing of another.” *Alliance for the Wild Rockies v.*  
21 *Cottrell*, 632 F3d 1127, 1131 (9th Cir 2011). “For example, a stronger showing of irreparable harm to  
22 [the] plaintiff might offset a lesser showing of likelihood of success on the merits.” *Id.* And where the  
23 balance of hardships “tips sharply toward the plaintiff,” the plaintiff need only demonstrate “serious  
24 questions going to the merits,” rather than a strong likelihood of success. *Id.* At 1131-32 (internal  
25 quotation marks and citations omitted).

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**PAGE 5 – PLAINTIFF’S EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE AND POINTS AND AUTHORITIES**

1 **IV. ARGUMENT**

2 The Court should grant the temporary and preliminary injunctive relief requested by Plaintiff  
3 because such relief will preserve the *status quo* and is proper under ORCP 79. A party seeking  
4 preliminary injunctive relief merely has to make a “sufficient showing to warrant the preservation of the  
5 status quo until the later hearing on the merits.” *Oregon Educ. Ass’n*, 227 Or App at 45. The *status quo*  
6 prior to “the events that gave rise to the pending controversy” was that Plaintiff did not wish to have his  
7 confidential personnel records from La Mesa released to the public and therefore he was maintaining the  
8 confidentiality of the records and information at issue, and it is this state of affairs that preliminary  
9 injunctive relief should preserve. *State ex rel. McKinley Automotive, Inc. v. Oldham*, 283 Or 511, 515,  
10 584 P2d 741 (1978). Thus, Plaintiff seeks a Temporary Restraining Order to prevent the public disclosure  
11 of the Records and information until the Court can address the merits of Plaintiff’s claim that the Records  
12 and information is exempt from disclosure under the PRL.

13 Further, a Temporary Restraining Order to preserve the *status quo* is entirely appropriate here. As  
14 explained below, Plaintiff is entitled to the relief demand in his Complaint – he is likely to succeed on  
15 the merits of his claim – and the action that the Defendants is seeking to take would violate Plaintiff’s  
16 rights to maintain the confidentiality of his personnel records and would tend to render ineffectual any  
17 judgment in Plaintiff’s favor on his Complaint. The requested relief should be granted.

18 **A. Plaintiff Is Likely to Succeed on the Merits of His Claim.**

19 Plaintiff is likely to succeed on the merits of his claim for several reasons. First, because at least four (4)  
20 exemptions in the PRL and one (1) statutory exemption from the State of California justify an Order from  
21 this Court prohibiting the Defendants’ disclosure of Plaintiff’s confidential personnel records and  
22 information: (1) because ORS 192.355(9)(a) exempts from public disclosure “[p]ublic records or  
23 information the disclosure of which is prohibited or restricted or otherwise made confidential or  
24 privileged under Oregon law;” (2) because ORS 192.385(2) states, “[a] public body may not disclose  
25 audio or video records of internal investigation interviews of public safety officers;” and (3)  
26 ORS 192.345(12) provides that “[a] personnel discipline action, or materials or documents supporting

1 that action” are exempt from disclosure under the PRL unless the public interest requires disclosure in  
2 the particular instance. Finally, California Evidence Code §1045(e), states, “[t]he court *shall*, in any case  
3 or proceeding permitting the disclosure or discovery of any peace officer or custodial officer records  
4 requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for  
5 any purpose other than a court proceeding pursuant to applicable law.” (Emphasis added).

6 **1. Plaintiff’s Confidential Personnel Records Are Exempt from Disclosure Under**  
7 **ORS 192.355(2)(a).**

8 The PRL exempts from disclosure “[i]nformation of a personal nature such as but  
9 not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an  
10 unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires  
11 disclosure in the particular instance.” ORS 192.355(2)(a). Here, personnel records contain personal  
12 information and are not generally available to be viewed by anyone except the employee, much like  
13 medical records. Accordingly, the Records are exempt from disclosure.

14 **2. Plaintiff’s Confidential Personnel Records Are Exempt from Disclosure Under**  
15 **ORS 192.355(9)(a).**

16 The PRL exempts from disclosure “[p]ublic records or information the disclosure of  
17 which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.”  
18 ORS 192.355(9)(a). Whereas most of the PRL’s exemptions are conditional, depending on a balancing  
19 of the confidentiality interest against the public interest in disclosure, the exemption provided by  
20 ORS 192.355(9)(a) “is not similarly qualified: If disclosure of the document is restricted or otherwise  
21 made confidential or privileged under Oregon law, it is absolutely exempt from disclosure.” *Springfield*  
22 *Sch. Dist. No. 19 v. Guard Pub. Co.*, 156 Or App 176, 179-80, 967 P2d 510 (1998). Here, other Oregon  
23 laws provide additional protections for public safety officer’s personnel files. Accordingly, the Records  
24 are exempt from disclosure.

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1                   **3. Plaintiff’s Confidential Personnel Records Are Exempt from Disclosure Under**  
2                   **ORS 192.385(2).**

3                   The PRL exempts from disclosure “audio or video records of internal investigation  
4 interviews of public safety officers.” ORS 192.385(2). The Records intended for disclosure reference  
5 internal investigation interviews and contain memos from various other public safety officers regarding  
6 the investigation into Plaintiff. Accordingly, these Records would be exempt from disclosure.

7                   **4. Plaintiff’s Confidential Personnel Records Are Exempt from Disclosure Under**  
8                   **ORS 192.345(12).**

9                   The PRL exempts from disclosure “[a] personnel discipline action, or materials or  
10 documents supporting that action.” ORS 192.345(12). The Records intended for disclosure reference  
11 contain recommended discipline. Additionally, DCSO has contended and represented that Plaintiff was  
12 terminated from the La Mesa Police Department. If Plaintiff was truly terminated, that would be  
13 disciplinary action and therefore these Records would be exempt from disclosure.

14                   **5. Plaintiff’s Confidential Personnel Records Are Protected by a California**  
15                   **Protective Order.**

16                   California Evidence Code §1045(e), states, “[t]he court *shall*, in any case or  
17 proceeding permitting the disclosure or discovery of any peace officer or custodial officer records  
18 requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for  
19 any purpose other than a court proceeding pursuant to applicable law.” (Emphasis added). Accordingly,  
20 the Records and information from La Mesa are not disclosable without violating the statutory protective  
21 order from California. Allowing the disclosure of these Records before it can be adjudicated if the  
22 California protective order prevents disclosure of these Records is not prudent and will cause serious  
23 irreparable harm to Plaintiff if the California protective order is later deemed to be valid, but disclosure  
24 already took place.

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1                   **B. Absent Immediate Relief, Plaintiff Will Suffer Imminent, Irreparable Harm and**  
2                   **Any Judgment on His Complaint Would Be Rendered Ineffectual.**

3                   Absent a Temporary Restraining Order, Plaintiff will suffer irreparable harm, and any  
4 judgment on his Complaint would be rendered ineffectual. It is well settled that the improper disclosure  
5 of confidential information constitutes irreparable harm, *i.e.*, an injury that monetary damages cannot  
6 adequately remedy. *See Ruckelhaus v. Monsanto Co.*, 463 US 1315, 1317, 104 S Ct 3, 77 L Ed 2d 1417  
7 (1983) (Blackmun, J).

8                   An injunction is necessary to keep confidential information confidential until the merits  
9 of a disclosure decision have been fully resolved because “review can be effective only if it occurs before  
10 confidential information is disclosed to third parties.” *CBS Corp. v. F.C.C.*, 785 F3d 699, 708 (DC Cir  
11 2015). After all, once Plaintiff’s confidential personnel records and information are disclosed, they cannot  
12 “be made secret again,” even if the judgment below ultimately is reversed. *Ruckelhaus*, 463 US at 1317;  
13 *see also In re Papandreou*, 139 F3d 247, 251 (DC Cir 1998) (“Disclosure followed by appeal after final  
14 judgment is obviously not adequate in such cases – the cat is out of the bag.”) That is precisely why the  
15 Oregon Legislature has expressly authorized courts to temporarily or preliminarily enjoin actual or  
16 threatened actions.

17                   If the Defendants publicly disclose Plaintiff’s confidential personnel records and  
18 information, the privacy and right Plaintiff has to determine if his records are publicly disclosed will be  
19 immediately destroyed. Accordingly, the irreparable harm prong of the preliminary injunction test  
20 strongly and overwhelmingly weighs in favor of granting relief. *See* ORCP 79 A(1)(b) (temporary  
21 restraining order may be allowed when a party is about to do “some act in violation of the rights of a  
22 party seeking judgment concerning the subject matter of the action, and tending to render the judgment  
23 ineffectual”).

24                   **C. The Balance of Hardships Tips Decidedly in Plaintiff’s Favor.**

25                   The balance of hardships also “tips sharply toward” Plaintiff. *Alliance for the Wild*  
26 *Rockies*, 632 F3d at 1132. “To determine which way the balance of the hardships tips,” a court must

1 weigh “the possible harm caused by the preliminary injunction against the possibility of the harm caused  
2 by not issuing it.” *Univ. of Haw. Prof’l Assembly v. Cayetano*, 183 F3d 1096, 1108 (9th Cir 1999).

3           The balance of hardships here is not even close. On the one hand, Plaintiff is seeking to  
4 protect his confidentiality and the confidentiality of his personnel records and information. If Defendants  
5 are allowed to release Plaintiff’s Records, Plaintiff will not be able to keep his Records confidential,  
6 essentially the “cat is out of the bag.”

7           Conversely, the Defendants will not suffer any harm if the Court enters an Order  
8 preserving Plaintiff’s confidential personnel records and information and the *status quo*. Defendants  
9 simply will be required to continue abiding by their obligations not to publish and/or disclose Plaintiff’s  
10 confidential personnel records and information. Additionally, since the PRR from OPB and Cook was  
11 submitted on October 1, 2024, the Defendants did not have to acknowledge the PRR until  
12 October 6, 2024. *See ORS 192.324(2)*. Then Defendants are not obligated to “[c]omplete its response to  
13 the public records request” or “[p]rovide a written statement that the public body is still processing the  
14 request and a reasonable estimated date by which the public body expects to complete its response based  
15 on the information currently available” until October 16, 2024. ORS 192.329(5). Therefore, an entry of  
16 an Order preserving the *status quo* will not harm any Defendant nor put any Defendant in violation of  
17 the PRL.

#### 18           **D. The Public Interest Supports the Protection of Confidential Personnel Records.**

19           Finally, the public interest supports preliminary injunctive relief.

20           By allowing the Records from La Mesa Police Department to be released by the Defendants,  
21 the whole process in California and California’s laws will have been circumvented. DCSO and the  
22 County were provided the Records to assist with their internal investigation into Plaintiff in Oregon, not  
23 to be able to release to the public. If OPB and Cook wanted the La Mesa Records, they should have gone  
24 through the process in California to obtain those Records.<sup>1</sup> With the contentious election for Deschutes  
25 Sheriff pending, the motives of Defendants seem to suggest the disclosure of the Records is fueled by  
26 politics and not public interest. The Defendants in this matter are not the custodians of the sought Records.

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<sup>1</sup> On information and belief, OPB and/or Cook did attempt to get the Records from La Mesa directly, but were denied.

1 The Defendants merely possess these Records from La Mesa because they demonstrated a need for them  
2 in order to complete their internal investigation.

3 Disclosure of Plaintiff's Records in this case would go against public interest and common  
4 sense of how the Records were obtained and supposed to be used.

5 **V. CONCLUSION**

6 For these reasons, Plaintiff respectfully requests that this Court grant his Motion for a Temporary  
7 Restraining Order, and issue an Order to Show Cause As to Why a Preliminary Injunction should not  
8 issue.

9 **DATED** this 9th day of October 2024.

10 Respectfully submitted,

11 **EMPLOYMENT LAW PROFESSIONALS**  
12 **NORTHWEST LLC**

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