



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.co.multnomah.or.us/da/

May 24, 2005

Ryan Frank
Staff Reporter, The Oregonian
1320 SW Broadway
Portland, OR 97201-3499

Matthew R. Baines
Portland Development Commission
222 NW 5th Ave
Portland, OR 97209-3859

Re: Petition of Ryan Frank on behalf of The Oregonian, received May 12, 2005
to disclose certain records of the Portland Development Commission.

Dear Mr. Frank and Mr. Baines:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Ryan Frank requests the District Attorney to order the Portland Development Commission (PDC) and its employees or agents to produce a copy of copies of the following records:

Any and all scorecards completed by the Burnside Bridgehead evaluation committee. The records should include all names, without redaction, available for people who conducted each scoring.

Petitioner made his request for the above information in an April 18, 2005 letter to Christine Egan, Strategic Partnership Coordinator for the PDC. Then PDC General Counsel Henry H. Lazenby, Jr. responded in an April 21, 2005 letter. Petitioner received seven scorecards and a score compilation sheet. Two of the score sheets were redacted to protect the identity of the particular committee member. PDC claimed the names of the two reviewers were exemption from disclosure under ORS 192.505(2), Personal Privacy.

Petitioner argues that PDC has failed to meet its burden of justifying nondisclosure. He states in his petition that the readers of The Oregonian "have a serious and legitimate interest in the performance of the agency. The interest entitles them to know the names and judgements of people making official recommendations to a public body."

In a May 18, 2005 letter response to the petition, PDC Interim General Counsel Matthew Baines again asserts the personal privacy exemption. He points out that part of the PDC mission is to “involve representatives of the community to assist the Board in its decision making process by proffering individually anonymous recommendations to the Board.” Mr. Baines contends that the volunteer members should not be subjected to public scrutiny that “places them in a position to be held individually accountable for their analytical processes.” He takes the position that the two names incidentally handwritten on two public scorecards does not change the personal nature of the names and “their subsequent association to the individual’s private analytical process.”

DISCUSSION

Personal Privacy Exemption

ORS 192.502(2) conditionally exempts:

Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof 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 purpose of this exemption is not to prevent disclosure of personal information, as such, but rather to protect privacy from unreasonable invasion.” Jordan v. MVD, 308 Or 433, 441 (1989). Only personal information that would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption. In Jordan, 308 Or at 442, the court noted that the trial court found that the affidavit filed in the trial court

...sufficiently established that disclosure to the requester would more likely than not unreasonably invade her privacy because providing the information would allow Jordan to harr y her incessantly to the extent than an ordinary reasonable person would deem highly offensive.

“[T]he information is not exempt absent an individualized justification for exemption.” Attorney General’s Public Records Manual, 2004, p. 61. This determination must be made on a case-by-case basis. A blanket policy of nondisclosure is not enforceable. Guard Publishing v. Lane County School Dist, 310 Or 32, 38-40 (1990).

Personal information is not defined in the exemption. In Jordan v. MVD, supra at 441, the Supreme Court cited Webster's Third New International Dictionary definition of "personal" as meaning "1. of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general*** (personal baggage):***6: exclusively for a given individual (a personal letter)***."

In Guard Publishing Co. v. Lane School Dist., 310 Or 32 (1990), the Supreme Court commented on the Court of Appeal's position that the test for whether information is personal under ORS 192.502(2) is "whether it normally would not be shared with strangers." The Court of Appeals had applied that test in Guard Publishing Co. v. Lane School Dist., 96 Or App 463, 467 (1981) and held that one's name is unquestionably information normally shared with strangers. In a footnote to its opinion, the Supreme Court noted:

In Jordan v. MVD, supra, we implicitly rejected this Court of Appeals test. The District Court did not seek review of the lower courts' conclusion that it must disclose the replacement coaches' names. However, because we hold that the District's 1984 policy is not compatible with the disclosure statutes, we do not here decide whether a person's name could ever be exempt from disclosure under ORS 192.502(2). 310 Or at 36, n4.

The Attorney General has taken the position that "[g]enerally, disclosure of a name itself would not constitute an unreasonable invasion of privacy." Attorney General's Public Records Manual, 2004, p. 62. However, the identities of candidates for university president were not disclosed in a 1988 Letter of Advice. "[A] person's name may be exempt in certain contexts, due to a person's desire for confidentiality to avoid stigmatizing or other undesired effect." Attorney General's Public Records Manual, 2004, E-6.¹

In a 1995 order, a CSD list of employees involved in a notorious case was found not exempt "because disclosure would not likely lead to harassment or physical harm of individuals named on the list." Attorney General's Public Records Manual, 2004, F-30. In a March 20, 2003 order, the Attorney General denied a petition for the names of individuals giving confidential information to DMV:

¹ "Release of the names would be contrary to the public interest since the potential for disclosure of such information may cause many or most qualified candidates to refuse to apply, making it more difficult for the state to recruit talented individuals to fill important offices."

This office has concluded that normally, neither the name, home address nor telephone number of an individual is exempt on the basis of personal privacy because a person generally shares such information with other members of the public. However, we have also concluded that there are situations in which it can be established that such information is covered by this exemption.

This office agrees with the Attorney General that a name, no less than a home address or telephone number, is theoretically covered by the exemption. We are mindful of the admonition in Jensen v. Schiffman, 24 Or App 11, 17 (1976) that “any privacy rights that public officials have as to the performance of their public duties must generally be subordinated to the right of the citizens to monitor what elected and appointed officials are doing on the job.”

The names of the voluntary committee members have been made public. Petitioner received a list of names that “included each member’s full name and title as it related to their business or community group.” According to petitioner, there was a public meeting in April where four of the committee members detailed their reasons for picking one proposal and “answered direct questions from the PDC Commissioners.”

PDC appears to argue that the individual’s private analytical process is the personal information that must be protected from unreasonable invasion. However, the work of the evaluation committee is not a private concern. The analytical process is the very conduct of public business that is the subject of public interest: the recommendation to the PDC Board of the best proposal for the Burnside Bridgehead development.


We sympathize with the expressed desire of PDC to encourage the participation of volunteers by protecting their analytical processes from public scrutiny. However, “the personal privacy exemption is not intended for the benefit of the public body.” Attorney General’s Public Records Manual, 2004, page 59. This office has been provided with no evidence that the evaluation committee was promised confidentiality, its members had an expectation of anonymity, or that PDC did anything to protect the work product of the individual evaluation committee members.

We conclude that while the name of the individual evaluation committee member is personal information, his or her analytical process is not. As stated by petitioner, the Burnside Bridgehead redevelopment project “is a major project that has captured public interest throughout the inner eastside of Portland.” It is not an unreasonable invasion of privacy to disclose the scorecards with the two names. The public interest clearly outweighs any concerns of the PDC.

ORDER

Accordingly, it is ordered that the Portland Development Commission promptly disclose the records sought in the above petition. Disclosure of the documents ordered is subject to payment of the Portland Development Commission's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney 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 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.