



ROD UNDERHILL, District Attorney for Multnomah County

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November 20, 2015

Beth Slovic
Willamette Week
2220 N.W. Quimby St.
Portland, OR 97210

Jollee Patterson
General Counsel
Portland Public Schools
P.O. Box 3107
Portland, OR 97208

Re: Petition of Beth Slovic for Willamette Week seeking an unredacted contract between the Portland Public School District and Ellis Leary, Jr.

Dear Ms. Slovic and Ms. Patterson:

In her public records petition under ORS 192.410 et seq., petitioner Beth Slovic, requests the district attorney to order the Portland Public School District 1J (the district) to provide the following records:

A copy of contract number PS 62158 without the redactions or alterations that were applied to the contractor's contact information.

After being brought to her attention by a school board member's interest, petitioner filed a public records request seeking the above contract. On September 28, 2015 the district provided her with a redacted copy of the contract. The disclosed document included the name of the contractor, Ellis Leary, Jr., but omitted his contact information (phone, home address, and email address.)

The contract is the agreement between the district and a sole proprietorship, the "I AM Academy," to provide individual and small-group counseling and mentoring to students at certain district schools, for a period of one year, at a cost of \$207,000.

When challenged about the redaction, the district responded that Mr. Leary had used his personal contact information on the contract and did not feel comfortable with its public dissemination. The district has submitted a letter from Mr. Leary stating that he is adamantly opposed to public release of his personal contact information due to concerns about exposure of his family and harassment by the press.

After petitioner filed this appeal, the district amended the original contract and provided her an unredacted version that included a post office box mailing address and a company email and phone number that Mr. Leary had established. Petitioner maintained her appeal for an

unredacted copy of the original contract. The district asserts that this information is exempt from disclosure as information of a personal nature protected by ORS139.502(2).

DISCUSSION

A. ORS 192.502(2) – Information of a Personal Nature.

ORS 192.502(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.

We agree with the district that disclosure of the requested personal information will serve no clear public interest. The district has already provided petitioner with contact information for Mr. Leary in the form of the amended contract. However, by statute we may consider the public's interest in disclosure if, and only if, we first determine that the disclosure of the personal information at issue constitutes an unreasonable invasion of privacy.

In this case, the district has already released the information it now seeks to withhold. A Google search reveals a copy of the contract at issue in this appeal, including Mr. Leary's personal contact information, was posted to a local newspaper's website on September 24, 2015.¹ In this document Mr. Leary's personal email address appears clearly and his home address and phone number were the subject of an unsuccessful attempt at redaction.² Mr. Leary's home address also appears in the white pages.

The district suggests that, notwithstanding the public availability of this information, the act of disclosure itself, coming from a governmental entity, would constitute an unreasonable invasion of privacy. A distinction between the act of disclosure and the context of the disclosure was advocated by the dissent, and implicitly rejected by the majority, in *Jordan v. Motor Vehicles Division*, 308 Or 433, 447 (1989) (Linde, J. dissenting). It follows then that context, including the likely actions of individuals receiving the information as well as what information is already publically available, directly informs whether any particular disclosure is an unreasonable invasion of privacy.

In *Jordan*, the petitioner had filed a public records request with the Motor Vehicles Division (MVD) seeking the home address of a particular woman in whom he was interested.

¹ "Group demands PPS equity program audit," PORTLAND TRIBUNE, Sept. 24, 2015 (<http://www.pamplinmedia.com/pt/9-news/274135-149288-group-demands-pps-equity-program-audit->)

² Adobe Acrobat, readily available commercial software, can easily undue the applied redaction by simply moving the obscuring black square away from the contact information. Google's web crawler was likewise able to read the contact information and has archived the plain text of the entire contract, without redaction, in its cache where it is available to any internet searcher.

The woman in question had previously written the MVD and specifically requested that the agency not give out her information due to Jordan's history of stalking behavior targeted at her. The court found that an affidavit from the woman setting out her attempts to keep her information private sufficiently established that disclosure of her home address would constitute an unreasonable invasion of her privacy.

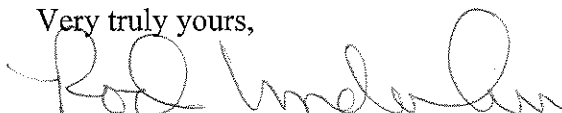
Unlike the woman in *Jordan*, who had obtained an unlisted phone number, obtained a post office box to avoid public use of her home address, and taken other affirmative steps to protect her privacy, Mr. Leary's contact information is readily available to the public. We have no record before us of any prospective attempt by Mr. Leary to maintain the privacy of information that, the court has noted, is regularly given out to strangers. *Kotulski v. Mt. Hood Community College*, 62 Or App 452 (1983) (so noting). A government agency seeking to withhold information from the public bears the burden of establishing any exemption to the public records law.

Absent extraordinary circumstances, of which the *Jordan* case provides one example, the disclosure of personal contact information does not constitute an unreasonable invasion of privacy within the meaning of ORS 192.502(2) as construed by our appellate courts. As applied to the facts of this case, the prior (if inadvertent) release by the district and the ready availability of Mr. Leary's contact information from independent sources do not distinguish this case as one deserving of a departure from the public records law's presumption of disclosure.

ORDER

Accordingly, the petition is granted. Portland Public Schools is ordered to promptly disclose an unredacted copy of the original version of Contract Number PS 62158. This disclosure is subject to payment of fees to the district, if any, not exceeding the actual cost in making the information available.

Very truly yours,



ROD UNDERHILL
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'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.