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January 21, 2016

Dirk VanderHart
Portland Mercury
115 S.W. Ash St., Suite 600
Portland, Oregon 97204

Heidi Brown
Deputy City Attorney
Office of the City Attorney
1221 S.W. Fourth Ave., Suite 430
Portland, Oregon 97204

Re: Petition of Dirk VanderHart for the Portland Mercury requesting all documents relating to the City of Portland human resources investigation of Park Ranger Supervisor Hasan Artharee

Dear Mr. VanderHart and Ms. Brown:

In his public records petition under ORS 192.410 et seq., petitioner Dirk VanderHart appeals the denial of his request for the following documents from the City of Portland:

the findings of the human resources investigation of Hasan Artharee, as well as any/all documents relating to that investigation and/or its conclusions.

The following background discussion is necessarily limited to those facts that are already in the public record. Hasan Artharee was the immediate supervisor of the Portland Parks Bureau park rangers. At the same time, Mr. Artharee also owned a private security company, Safeguard Security. The operations of Safeguard were managed by Mr. Artharee's father, Baruti Artharee, the former public safety advisor to the mayor.

A private organization working to improve the business climate in the Lloyd District retained Safeguard Security to provide patrol services in Holladay Park after-hours. During business hours the park rangers, supervised by Mr. Artharee, provide a security presence in Holladay Park.

After an anonymous complaint was lodged with the city's ombudsman about the potential conflict of interest, the city conducted an internal investigation into Mr. Artharee and the extent of his active association with Safeguard. The city placed Mr. Artharee on paid administrative leave during the investigation and has now concluded its process. The city disciplined Mr. Artharee, but did not terminate his employment.

Petitioner has already been provided with two internal memoranda written by Mr. Artharee and dated June 2, 2015 that detail his awareness of the potential conflict of interest between his association with Safeguard and his work with the parks bureau.

As to the remaining responsive records, the city asserts that some are protected by attorney-client privilege (ORS 192.502(9)), some are exempt as information of a personal nature (ORS 192.502(2)), and others are exempt as the results of an internal disciplinary investigation (ORS 192.501(12)).

DISCUSSION

This office has reviewed the documents at issue and, for the reasons discussed below, agrees that the city may withhold these records as materials or documents supporting a personnel discipline action.

A. Personnel Discipline – ORS 192.501(12)

Records of a personnel discipline action, or materials or documents supporting that action are conditionally exempt from disclosure under the public records law. ORS 192.501(12). In this case petitioner does not dispute that these are personnel discipline materials, rather he argues that the public interest requires disclosure notwithstanding the general rule.

To evaluate the public's interest in disclosure under ORS 192.501(12) we have established guidelines known as the *Foster* criteria. *In re petition of Foster for The Oregonian*, MCDA PRO 96-31 (1997). These guidelines are, in summary:

1. Serious misconduct by a government employee should be disclosed;
2. Generally, termination from employment or other discipline for cause is serious misconduct if it is based on corruption (including theft of public property), abuse of power, misconduct that impairs the mission of the agency, or criminal behavior;
3. Less serious misconduct may require disclosure if repeated violations fairly raises the issue of imprudent management of public employees;
4. Cases evidencing systematic misconduct within a particular agency or part of an agency that shed light on the effectiveness of management may require disclosure even if, individually, the instances of misconduct are not serious;
5. Less serious misconduct may require disclosure in the public interest where circumstances raise a question of unduly harsh (or unduly lenient), arbitrary, irrational or discriminatory administration of discipline by management;
6. Lastly, public employees should not be subjected to public disclosure of disciplinary violations that do not fit into a category above where such would not significantly promote the public's understanding of the manner in which government business is carried out.

We are limited in our ability to discuss the facts underlying the city's decision to discipline Mr. Artharee in what is a public order. Suffice it to say that the circumstances that led to imposition of discipline did not constitute "major misconduct" within the *Foster* framework.

Petitioner has not alleged, and this office's review of the records does not provide an independent basis to conclude, that the parks bureau has exhibited a pattern of unduly harsh, unduly lenient, or arbitrary disciplinary decisions that might require disclosure per *Foster* of less than major misconduct. Furthermore, Mr. Artharee is a low-level supervisor. The public interest would not be advanced by disclosure in the same way it might for a more senior manager.

Accordingly, we agree with the city that the requested records are materials or documents supporting a personnel discipline action and that the public interest does not demand their disclosure in this instance.

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

Some of the information contained in the responsive records is medical information of Mr. Artharee. We have consistently concluded that the disclosure of medical information is a presumptively unreasonable invasion of privacy, and we see no basis to depart from that precedent here. See, *In re petition of Frazier for the Oregonian*, MCDA PRO 15-18 (2015) (information regarding requested ADA accommodations) and *In re petition of Hinkle for The Oregonian*, MCDA PRO 05-03 (2005) (information regarding police and fire disability payments). To the extent that the city argues that ORS 192.502(2) shields records beyond medical information in this case, our resolution of the personnel discipline claim of exemption obviates any need to reach that argument here.

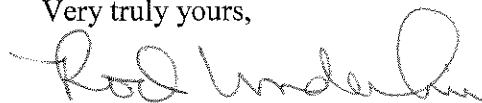
C. Attorney-client privilege – ORS 192.502(9), ORS 40.225

The city has further raised attorney-client privilege as a basis for exemption. Some of the documents identified by the city are clearly covered by the privilege, others appear not to be. However, because we conclude that the personnel discipline exemption covers all of the responsive records, we need not sort the privileged documents from the non-privileged in order to resolve the present appeal.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon