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February 26, 2016

Beth Slovic
Willamette Week
2220 N.W. Quimby St.
Portland, Oregon 97215

Krista Stearns
Assistant General Counsel
Portland State University
P.O. Box 751
Portland, Oregon 97207

Re: Petition of Beth Slovic for Willamette Week requesting certain unredacted emails between Nancy Hales and Dike Dame.

Dear Ms. Slovic and Ms. Stearns:

In her public records petition under ORS 192.410 et seq., petitioner Beth Slovic appeals the denial of her request for the following documents from Portland State University (PSU):

unredacted copies of four specific emails between First Stop Portland Director Nancy Hales and Dike Dame.

On December 7, 2015 petitioner requested four emails sent to or from Nancy Hales, the director of a PSU program known as “First Stop Portland.” Ms. Hales is an employee of PSU, and the First Stop Portland program is operated out of PSU’s Office of Research and Strategic Partnerships. Mr. Dame, and other recipients of the emails in question, serve on the First Stop Portland Advisory Council.

On February 1, 2016 PSU provided petitioner with the following emails, with certain portions redacted:

- “Updated contribution sheet – includes all firms who have supported in the past.” (12/19/14, Nancy Hales to Chip Laizure, John Carroll, Dike Dame, Phil Beyl);
- “finance numbers – with last year comparisons” (12/17/14, Nancy Hales to Dike Dame);
- “First Stop collections” (7/29/14, Dike Dame to Nancy Hales);
- “This week’s Willamette Week story” (4/12/12, to/from Dike Dame and Nancy Hales).

PSU has identified each redaction as containing “information about a person or entity interested in donating to the University.”

On February 17, 2016 petitioner filed this appeal. PSU has provided unredacted copies of the emails in question, and this office has reviewed them. PSU asserts that the redacted information is exempt from disclosure by operation of ORS 192.501(24), which exempts certain records relating to donors or potential donors to Oregon public universities.

DISCUSSION

A. OHSU and OUS Donation Records – ORS 192.501(24)

ORS 192.501(24) conditionally exempts from disclosure:

Personal information held by or under the direction of officials of the Oregon Health and Science University, a public university listed in ORS 352.002 or the Oregon University System about a person who has or who is interested in donating money or property to the Oregon Health and Science University, the system or a public university, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.

i. Applicability of ORS 192.501(24)

As PSU points out, petitioner has not contested the initial applicability of ORS 192.501(24). This apparent concession is not, however, dispositive of the question. Because a public records petitioner is axiomatically ignorant of the contents of the records, he or she is not able to present any effective argument as to why or why not an asserted exemption should apply. This office has an independent duty to review the unredacted records and evaluate whether or not an asserted exemption applies.

Portland State University is a public university listed in ORS 352.002, and First Stop Portland is a program run by the university. Accordingly, ORS 192.501(24) applies generally to donor records maintained by First Stop Portland. Having reviewed the specific records that PSU seeks to exempt from disclosure, we agree that the elements of ORS 192.501(24) are met.¹ PSU's redactions are narrowly tailored and omit only the information shielded by the exemption.

ii. Waiver by disclosure

Petitioner's primary argument on appeal is that a PSU employee has already publicly released the emails at issue and, therefore, PSU has waived any right to further withhold or redact this information. We have previously ruled that disclosure by a public agency to a newspaper reporter foreclosed the agency's ability to withhold the same records from another requestor. *In re petition of Rob Crusier*, MCDA PRO 15-07 (2015).

In contrast to *Cruser*, here the parties to whom the emails were sent are individuals affiliated with and working directly on behalf of the public agency at issue. An email by the director of an agency sent to a volunteer serving on an advisory board of that agency is not a sufficiently "public" disclosure as to waive any future claim of exemption. The work of

¹ Due to the clear definition of "person" in ORS 192.410(2), the donation records exemption applies equally to donations made by a private individual and those made by a partnership or other business entity.

volunteers for a public agency is covered by the public records law just as is the work of paid employees. See, *In re petition of Frank for The Oregonian*, MCDA PRO 05-04 (2005).

iii. Public interest in disclosure

The donor records exemption is a conditional exemption to the public records law. This means that even if PSU establishes the elements of the exemption, as it has here, the record must still be disclosed if “the public interest requires disclosure in the particular instance.” ORS 192.501.

PSU has asserted that the public has an interest in confidentiality of donors to its programs in order to promote donation-based funding for its operations in a climate of decreasing government support. PSU states that, were donors not assured of confidentiality, PSU would receive less funding from these sources thereby harming the public’s interest in robust higher education in the community.

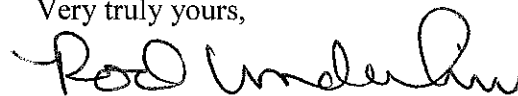
Petitioner does not contest this general premise, but rather argues that disclosure is warranted in this instance because Ms. Hales is the wife of Portland Mayor Charlie Hales. Because of this, she argues, donations to First Stop Portland are deserving of higher public scrutiny than they would be were its director not closely related to the mayor.

Having balanced the competing interests, we decline the invitation to start down the path of disclosure by association. First, a significant portion of the redacted information in this particular case relates to activities pre-dating Mayor Hales’ time in office. As to the remaining information, by enacting ORS 192.501(24) the legislature has acknowledged a general public interest in confidentiality for donors to Oregon’s public universities. Petitioner’s policy argument rests on the implication that donations made to PSU and earmarked for First Stop Portland are motivated by a desire for access to the mayor as opposed to supporting the organization’s mission of promoting local interests (business, political, research) to visiting delegations. If we were to accept this position then any employer of a spouse of a public official could be challenged on the same grounds. We do not see a basis on this record to deny a public employer the protection of a public records exemption it would otherwise be able to enjoy based solely on the identity of one of its employees’ spouse.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon