



ROD UNDERHILL, District Attorney for Multnomah County

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May 6, 2016

Nick Budnick
Portland Tribune
6605 S.E. Lake Road
Portland, Oregon 97222

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

Re: Petition of Nick Budnick requesting an unredacted copy of a tort claim notice filed by Sam Sachs

Dear Mr. Budnick and Ms. Brown:

In his public records petition under ORS 192.410 et seq., petitioner Nick Budnick requests this office to order the City of Portland to disclose the following document:

an unredacted copy of a tort claim notice filed by Sam Sachs dated March 11, 2016.

On April 6, 2016 petitioner submitted a public records request seeking any tort claim notice filed with the city on behalf of Portland Park Ranger Sam Sachs. On April 12, 2016 the city provided a redacted tort claim notice dated March 11, 2016. The tort claim notice, as redacted, depicts allegations of retaliation against Mr. Sachs relating to certain formal complaints that he filed with the city. On April 26, 2016 petitioner filed this appeal seeking disclosure of a more complete version of the document.

On May 3, 2016 the city filed a response with this office and, in addition to providing legal argument justifying the asserted exemptions, the city also provided a new version of the tort claim notice containing fewer redactions. The current version of the city's redactions elide only four to five sentences on page five of the six-page document and it is apparent from context that some of those redactions relate to disciplinary actions purportedly taken by the city. The city asserts that the redacted portions of the notice are exempt from disclosure under ORS 192.501(12) (information supporting a personnel discipline action), ORS 192.502(2) (information of a personal nature), and ORS 192.502(3) (public employee addresses). The city has provided this office with an unredacted version of the tort claim notice, which we have reviewed.

DISCUSSION

A tort claim notice submitted to the city is not a personnel record within the meaning of the public records law. Our resolution of the various claims of exemption asserted mostly flow

from that determination and, as discussed in more detail below, compel the conclusion that an unredacted version of the tort claim notice must be provided to petitioner.

A. Personnel Discipline – 192.501(12)

ORS 192.501(12) conditionally exempts from disclosure:

A personnel discipline action, or materials or documents supporting that action.

Put simply the question before us is whether ORS 192.501(12) protects 1) the documents involved in a discipline action or, 2) information, regardless of its source, that purports to describe a discipline action.

ORS 30.275 provides that a person seeking to litigate a tort action against the government must provide factual notice to the governmental body of the basis of the claim within a defined period of time. A tort claim notice as described in ORS 30.275 is not, under any reasonable definition of that term, a “personnel discipline action.” *City of Portland v. Rice*, 308 Or 118, 123 (1989) (“The words ‘a personnel discipline action’ appear to be words of art which are used uniformly, albeit with some variation in the form, to mean the completed process and the sanction of discipline imposed upon a public employee.”) A tort claim notice may well discuss or describe allegations relating to a personnel discipline action, but it is not, itself, a personnel discipline action.

Mr. Sachs’ notice of tort claim was not a part of the city’s discipline process and indeed was generated after its conclusion. It cannot therefore be a document supporting a personnel discipline action. *Rice*, 308 Or at 122 (“The word ‘supporting’ is not a synonym of ‘relating to.’”) Guided by *Rice* we conclude that ORS 192.501(12) does not exempt the information contained in Mr. Sachs’ tort claim notice.

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

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 city makes a general assertion that disclosure of the redacted information contained in the tort claim notice would constitute an unreasonable invasion of privacy. Unlike 192.501(12), discussed above, 192.502(2) expressly applies to “information” regardless of the particular document in which it may be found. However, we have on multiple occasions reviewed asserted exemptions as to tort claim notices, and have never found the tort claim notice, or any portion thereof, exempt from disclosure. In an opinion from 2010 we stated:

We disagree with petitioner’s contention that a person who files a tort claim notice automatically gives up his or her interest in privacy. However, such a document must be distinguished from materials normally contained in a personnel or medical file. It also is generally in the public interest to know what potential civil suits may be pending in a school district. We do sympathize with the desire of the [public agency] to protect sexual assault victims and employees with

disabilities. With that in mind we have reviewed the five notices and find nothing that would constitute “an unreasonable invasion of privacy.”

In re petition of Slovic for Willamette Week, MCDA PRO 10-07 (2010).

Slovic recognizes that a tort claim notice is not such a private document, even when alleging a tortious sexual assault, that disclosure would be a presumptive invasion of privacy. The present case does not provide a compelling reason to revisit that conclusion. Our appellate courts have consistently held that any claim of exemption under 192.502(2) must be specific and individualized. See, e.g. *Mail Tribune v. Winters*, 236 Or App 91 (2010); *Guard Publishing v. Lane County School District*, 310 Or 32 (1990); *Slovic*, MCDA PRO 10-07 (2010). Redaction of Mr. Sachs’ tort claim notice is not justified by ORS 192.502(2).

C. Public employee addresses – 192.502(3)

ORS 192.502(3) exempts from disclosure:

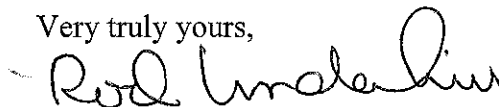
Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.

The tort claim notice in this case, as is standard in any formal letter, contains the address of the sender. The sender, Mr. Sachs, remains a City of Portland employee. The exemption in ORS 192.502(3), however, applies only to addresses that are contained in personnel records. See, *Petition of Gruber*, Att’y Gen. PRO (6/4/1998) at p.4 (noting limit of exemption to addresses contained in personnel records). The city has not argued that a tort claim notice is a “personnel record,” and we see no independent basis to so conclude. Although there does not appear to be any particular public interest in disclosure of Mr. Sachs’ address, public interest balancing only occurs when the exemption facially applies, which, in this instance, it does not.

ORDER

The petition is granted. The City of Portland is ordered to promptly disclose an unredacted copy of Mr. Sachs’ March 11, 2016 notice of tort claim to petitioner. This disclosure is subject to payment of fees to the city, if any, not exceeding the actual cost in making the information available.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

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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.

16-07