



ROD UNDERHILL, District Attorney for Multnomah County

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January 17, 2016

Frank Hudson
HUDSONLAW LLC
P.O. Box 40452
Portland, Oregon 97240

Steven Abel
Stoel Rives LLP
760 S.W. Ninth Avenue, Suite 3000
Portland, Oregon 97205

Re: Petition of Frank Hudson seeking records from Home Forward.

Dear Mr. Hudson and Mr. Abel:

In his public records petition, dated January 5, 2017, petitioner Frank Hudson requests this office to order Home Forward to disclose copies of the following records:

Names and addresses of people that Home Forward either (a) hired between June 1, 2011 and December 31, 2014 or (b) received an employment application from but were not hired between June 1, 2011 and December 2014.

Petitioner requested the records at issue on June 27, 2016. On July 12, 2016 Home Forward, via counsel, denied Mr. Hudson's request citing ORS 192.502(3), exempting personal information of public employees; ORS 192.502(2), exempting information of a personal nature; and ORS 192.502(4), exempting confidential submissions.

Mr. Hudson states in his submissions that his purpose in seeking these records is to determine how many veterans applied for jobs with Home Forward during this period and were denied a veterans' preference in evaluating their application. Mr. Hudson, an attorney, has also informed this office that he has recently filed a class action civil rights law suit against Home Forward, alleging violation of the veterans' preference laws. His records request seeks to identify other potential members of the affected class.

Mr. Hudson, a veteran himself, became concerned about Home Forward not using veteran's preference laws after he was not selected for a position at the agency in 2015. His subsequent inquiries led to Home Forward telling him that it had not, in fact, applied a veterans' preference to his application. Home Forward acknowledges that it did not incorporate veterans' preference into its hiring process at the time Mr. Hudson applied. In response to recent media inquiries Home Forward's executive director, Michael Buonocore, provided the following statement: "As a veteran myself, I was upset to learn about this mistake in 2015 and we fixed it immediately."

In July of 2015, Mr. Hudson filed a complaint with the Bureau of Labor and Industries (BOLI) and, on March 29, 2015, BOLI issued a notice that it had found "substantial evidence" to

support the claim that Home Forward had engaged in unlawful employment practices, specifically a failure to apply veteran's preference to qualifying job applicants.

For the reasons discussed in more depth below, we respectfully deny Mr. Hudson's petition.

DISCUSSION

A. Public Employee Information – ORS 192.502(3)

ORS 192.502(3) exempts from disclosure:

[P]ublic body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.

The exemption does not apply, however, if the petitioner shows by clear and convincing evidence that the public interest requires disclosure. ORS 192.502(3)(b).

Petitioner certainly has a private interest in this case as an aggrieved party as well as potential class member in a lawsuit. The public's interest is in ensuring that its public agencies are applying appropriate employment preference to our veterans. To the extent that Home Forward has failed to do so, the public certainly has an interest in remedying that failure. However, petitioner has not established by clear and convincing evidence that the public interest requires his access to information that would permit him to more easily identify members of the affected class.

BOLI is aware of, and has investigated, his complaints. Indeed, it appears from the limited submissions to this office that the practice that BOLI found unlawful has been remedied. Whether Home Forward is liable for its past employment practices, as petitioner asserts, is a question well beyond the scope of this opinion. As to the specific public records issue before us, the public interest does not require the identification of each and every affected individual and does not require the disclosure of the identities and addresses of what are likely a large number of non-veteran employees to petitioner.

B. Confidential Submissions – ORS 192.502(4)

ORS 192.502(4) exempts from disclosure:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

Counsel for Home Forward quotes from its employment application site, which includes statements assuring potential applicants that their personal information will be kept confidential to the extent permitted by law. Given these statements and our prior decisions in similar cases, we conclude that the first four elements are satisfied without further discussion. See, *Petition of Schwend for KXL*, MCDA PRO 04-04 (2004) (names of unsuccessful applicants for school superintendent not subject to disclosure).

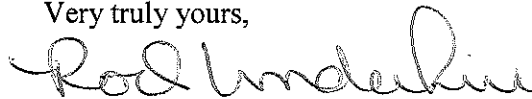
As to the public interest, private litigation is not essential in this instance to protect the public's interest in fair, and indeed preferential, treatment of our veterans by Home Forward. Mr. Hudson is to be commended for identifying this lapse on Home Forward's part and taking steps that led to its correction. However, in this case, the records requested by petitioner would include the personal information of many unsuccessful non-veteran job applicants in addition to, presumably, some veterans to whom a preference was not applied. The bulk disclosure of names and contact information for individuals who believed their applications to be confidential would, on balance, harm the public interest.

Because we conclude that the records at issue are exempt under one or both of ORS 192.502(3) and 192.502(4), we need not to evaluate Home Forward's claim of exemption under ORS 192.502(2).

ORDER

The petition is denied.

Very truly yours,

A handwritten signature in cursive script that reads "Rod Underhill".

ROD UNDERHILL

District Attorney

Multnomah County, Oregon