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March 20, 2017

Kim Sordyl
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Portland, Oregon 97209

Beth Slovic (via email only)
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Stephanie Harper
Portland Public Schools
General Counsel's Office
501 N. Dixon Street
Portland, Oregon 97227

Re: Petitions of Kim Sordyl and Beth Slovic a list of all Portland Public Schools employees on paid administrative leave

Dear Ms. Sordyl, Ms. Slovic, and Ms. Harper:

In their public records petitions, dated February 24, 2017 and March 5, 2017, petitioners Kim Sordyl and Beth Slovic request that this office order the Portland Public School District (PPS) to disclose the following records:

a list of all PPS employees on paid administrative leave.

For its own administrative purposes, PPS maintains a list of all employees who are on paid administrative leave, along with very basic identifying information. PPS asserts that this list is exempt from disclosure under the public records law by any one of ORS 192.501(12), the personnel discipline exemption; ORS 192.502(2), the information of a personal nature exemption; and ORS 192.502(1), the internal advisory communications exemption.

A PPS employee can be placed on paid administrative leave for any of a number of reasons, including a pending disciplinary investigation and certain medical reasons.

For the reasons discussed below, we grant the petitions.

DISCUSSION

A. Personnel Disciplinary Records – ORS 192.501(12)

ORS 192.501(12) conditionally exempts from disclosure,

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

We do not believe that a list of people, some of whom may be under investigation, some of whom may be on leave for other reasons, is a document supporting a personnel disciplinary action. At best it is a document, abstracted from other records, that could reveal the existence of

a pending disciplinary investigation, but it stretches the meaning of the statute too far to suggest that it could in anyway “support” a disciplinary action. It is also, perhaps self-evidently, not itself a personnel discipline action as an actual notice of reprimand or dismissal would be.

B. Internal Advisory Communication – ORS 192.502(1)

ORS 192.502(1) exempts from disclosure:

Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action.

The list at issue covers only factual materials, specifically who was placed on leave and on what date. This information is not exempt from disclosure by operation of ORS 192.502(1).

C. Information of a Personal Nature – ORS 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 party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

Information that a person is on paid administrative leave is information of the type that would usually be kept in an employee’s personal file by an employer. So, to the extent it could be associated with an individual employee, that information is potentially subject to this exemption. ORS 192.502(2) does not permit the application of blanket rules to justify non-disclosure, rather an individualized analysis must be made of each involved privacy interest. See, *Guard Publishing v. Lane County School District*, 310 Or 32 (1990); *Mail Tribune v. Winters*, 236 Or App (2010). The question, then, is whether or not disclosure of the leave status of any particular PPS employee would constitute an unreasonable invasion of that employee’s privacy. PPS argues that it does, as it would tend to disclose information of a medical or disciplinary nature as to the employee.

The Attorney General has already addressed this question, and resolved it adversely to PPS’ position. *Petition of Wright*, Att’y Gen. PRO (5/5/1994). In *Wright* the Attorney General wrote that:

The second determination to be made under the exemption [ORS 192.502(2)] is whether disclosure of the leave record of an individual would constitute an unreasonable invasion of privacy. The amount and frequency of time an individual takes off work for vacation is evidence of the individual's choices regarding his or her private life. Use of sick leave may reveal information about the individual's personal health. Similarly, the fact that an individual has taken leave without pay may reveal information about the individual's private life. However, the disclosure of such leave information would not constitute an “unreasonable” invasion of the individual's privacy. The information sought is not documentation supporting the particular type of leave taken, such as the reasons why an individual took sick leave or whether a vacation was for purposes of a

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trip, but only the date, hours and type of leave. Generally, an individual's co-workers are well aware of the general reason that an employee is off from work and the length of time that he or she is gone. This is not the type of information that an ordinary reasonable person would deem highly offensive to disclose.

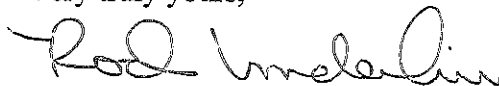
See also, ATTORNEY GENERAL PUBLIC RECORDS MANUAL (2014) at 81 (reaffirming the same reasoning).

PPS did provide this office with the underlying basis for the leave of each employee for purposes of evaluating their claim of exemption under ORS 192.502(2). However, that information has not been requested by petitioners and is not discernable from the record at issue here. Additionally, roughly half of the individuals on the list have received public media coverage as to the fact of their leave and, although not expressly disclosed by PPS, the logically likely reason for it. In any event, we agree with the reasoning in *Wright*: disclosure of the fact of an employee's leave and the type of leave is not an unreasonable invasion of privacy.

ORDER

Accordingly, the petition is granted. PPS is ordered to promptly disclose the records responsive to petitioner's request. This disclosure is subject to payment of fees to PPS, if any, not exceeding the actual cost in making the information available.¹

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.

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¹ We recognize that there are collective bargaining implications to our order today, however as the Attorney General has rightly concluded: "the terms of a contractual agreement entered into by the state cannot override the legislative mandate in the Public Records Law[.]" *Petition of Wright*, Att'y Gen. PRO (5/5/1994) at 3.