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June 1, 2017

Beth Slovic
Portland Tribune
6605 S.E. Lake Road
Portland, Oregon 97222

Stephanie Harper
Portland Public Schools
General Counsel's Office
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of Beth Slovic, on behalf of the Portland Tribune seeking records from Portland Public Schools.

Dear Ms. Slovic and Ms. Harper:

Ms. Slovic made a public records request on April 11, 2017, for “any settlement agreement with Theresa Seeley.” PPS responded by providing two documents 1) an agreement resolving a federal lawsuit that Ms. Seeley had filed against the district and, 2) a “grievance settlement agreement” resolving outstanding grievances filed by Ms. Seeley’s union relating to her employment with PPS. PPS released the first document in its entirety. PPS heavily redacted the second. Ms. Slovic now requests this office to order PPS to provide an unredacted version of the grievance settlement agreement.

In March, 2013, the PPS Board voted not to continue Ms. Seeley’s employment with PPS.¹ In October, 2013, PPS placed Ms. Seeley on paid leave.² In 2014, Ms. Seeley filed a complaint with the Bureau of Labor and Industries against PPS that was subsequently dismissed. In October, 2015, Ms. Seeley filed a federal civil rights lawsuit against PPS. In January, 2017, Ms. Seeley returned to work at PPS. In February, 2017, PPS and Ms. Seeley reached an agreement to resolve the labor grievances, which is the contested document in this petition. In April, 2017, PPS and Ms. Seeley entered into an agreement to settle this lawsuit, a copy of which PPS provided to petitioner as part of this records request.

Against this backdrop, petitioner asserts that explaining how Ms. Seeley was permitted to return to work is of significant public interest. Either the decision was justified, in which case the

¹ The chronology in this case is taken from publicly available records and reporting, and is not based on information contained in the contested records.

² A related public records matter is pending in the circuit court relating to whether PPS is required to publicly disclose which employees are on paid leave. Accordingly, it is not known publicly if the period of Ms. Seeley’s leave from October 2015 – January 2017 was paid or unpaid.

public deserves to know why an employee languished on leave for three years, or it was not justified, in which case the public deserves to know why PPS returned a school psychologist to work against its better judgment.

Although these public interest arguments are compelling, we find ORS 342.850(8) dispositive in this instance. The requested records are unconditionally exempt by operation of the statutes governing teacher employment matters and we are not legally able to consider whether or not the public interest requires their disclosure.

DISCUSSION

A. Teacher Personnel Files – ORS 342.850(8)

As to teacher personnel files ORS 342.850(8) provides,

The personnel file shall be open for inspection by the teacher, the teacher's designees and the district school board and its designees. District school boards shall adopt rules governing access to personnel files, including rules specifying whom school officials may designate to inspect personnel files.

The Oregon Supreme Court has concluded that this section absolutely exempts documents in teacher personnel files from disclosure under the public records law. *Oregonian Publishing Co. v. Portland School Dist. 1J*, 329 Or 393, 400 (1999) (noting that PPS has enacted rules pursuant to this authorization that make these files confidential and absolutely exempt from disclosure by operation of ORS 192.502(9)).

i. Is a school psychologist a "teacher" for purposes of ORS 342.850(8)?

The confidentiality provisions derived from ORS 342.850(8) apply only to "teachers." We are unaware of any Oregon appellate court having construed this statute in this context and, as such, turn directly to the statutory definitions. ORS 342.815(9) defines "teacher" for purposes of ORS 342.850 to include "any person who holds a teaching license or registration [...] or who is otherwise authorized to teach in the public schools of this state and who is employed half-time or more as an instructor or administrator." Ms. Seeley's license information available from the Oregon Teacher Standards and Practices Commission (TSPC) indicates she is licensed as a school psychologist and authorized to "teach" from pre-K-12. "Instruction" is likewise a defined term, which includes "direction of learning in class, in small groups, in individual situations, in the library and in guidance and counseling[.]" ORS 342.120(5). A school psychologist is a TSPC licensed professional who engages in "direction of learning [...] in guidance and counseling." As such, it appears Ms. Seeley is a "teacher" as that term is used in ORS 342.850.

ii. Is the grievance settlement agreement in a "personnel file?"

The next step is to determine whether or not the specific record at issue in this case, the grievance settlement agreement, is properly part of Ms. Seeley's "personnel file." Any notices of discipline that exist would properly be found within a personnel file. The settlement agreement in this case, however, is not itself a notice of discipline.

The Portland Association of Teachers (PAT) and PPS have attempted to address this issue by contract. The last negotiated PAT-PPS agreement provides that, "All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file which shall constitute a "personnel file," within the meaning of the confidentiality provisions of ORS 342.850." Article 26.C(8). This is of limited utility to PPS in this instance, however, as a public agency cannot contractually agree to turn a non-exempt record into an exempt record under the public records law. And, in any event, the public records law looks at the content and character of documents rather than their labels or physical location in evaluating exemptions. See, *Oregonian v. Portland Sch. Dist. 1J*, 329 Or 393, 402 (1999).

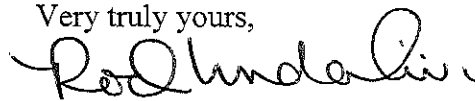
In this case, the designation of materials relating to a grievance as part of a "personnel file" appears sound. *Id.* at 401 (concluding that personnel files "would usually include information about a teacher's education and qualifications for employment, job performance, evaluations, disciplinary matters or other information useful in making employment decisions regarding an employee.") Because the grievance settlement agreement in this case documents the final disposition of a personnel disciplinary process, we conclude that it is part of a "personnel file" within the meaning of ORS 342.850 regardless of where PPS has elected to physically place it as an administrative or contractual matter.

Because Ms. Seeley is a "teacher" within the meaning of the statute, and the records are of the type found in a "personnel file," then they are exempt without reference to the public's interest in disclosure. Having concluded that the records are exempt under ORS 342.850, we do not need to consider PPS' alternate arguments for exemption under ORS 192.501(12) and 192.502(2).

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon