



ROD UNDERHILL, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

June 2, 2017

Kim Sordyl
311 N.W. 12th Avenue
Portland, Oregon 97209

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

Re: Petition of Kim Sordyl, requesting records relating to attorneys representing employees on paid leave and records relating to an investigation of the interim general counsel from Portland Public Schools.

Dear Ms. Sordyl and Mr. Vandehey:

Petitioner made a public records request to Portland Public Schools (PPS) on April 20, 2017, for, "Documentation in the past 1 year showing the lawyers representing employees of color who have been placed on paid leave pending investigation into allegations of misconduct." Petitioner also requested, "Documentation, including e-mail, showing any rationale for not placing white employee Stephanie Harper on paid administrative leave pending investigation into misconduct and ethics violations." On May 4, 2017, Mr. Vandehey of PPS denied the request, citing ORS 192.501(12) and ORS 192.502(2). On May 23, 2017, petitioner appealed.

We understand that PPS is releasing the names of the attorneys to petitioner, so we will not further address that part of the request. With regards to the second part of her request, petitioner argued that ORS 192.501(12) was inapplicable, as Ms. Harper had not been disciplined and was not on paid leave. She also stated that there is a great public interest in paid leave for PPS administrators, due to a pending lawsuit PPS filed against Ms. Sordyl and a reporter, as well as a recent jury verdict against PPS for race discrimination against its employees.

For the purpose of determining this request, this office has confidentially viewed a responsive document.

DISCUSSION

A. Personnel Investigatory Exemption – ORS 192.501(12)

ORS 192.501(12) is a conditional exemption that protects from disclosure "a personnel discipline action, or materials or documents supporting that action." This office has consistently held that, because the agency cannot say whether discipline will be imposed until the

investigation is concluded, an ongoing investigation is covered by 192.501(12). See, *In re petition of Lee van der Voo of Investigate West*, MCDA PRO 15-17 (2015), *In re petition of Schmidt for The Oregonian*, MCDA PRO 14-26 (2014), *In re petition of Damewood for Willamette Week*, MCDA PRO 13-15 (2013).

Is a document showing a rationale for placing, or not placing, an employee on paid administrative leave pending an investigation covered by ORS 192.501(12)? This type of document is intrinsically tied to the process of determining whether the employee violated a rule, the ultimate decision of whether to impose discipline, and the severity of that discipline for a founded allegation against an employee. Accordingly, ORS 192.501(12) applies to the document which is sought by petitioner.

However, a conditional exemption applies only “unless the public interest requires disclosure in the particular instance.” The 2014 Attorney General’s Public Record Manual provides the following advice:

“Neither ORS 192.501(12) nor the relevant court decisions specify how the statute applies when a person seeks records in a file in a pending personnel disciplinary matter. Unless the public interest at the time of the request requires disclosure, we believe that the public body’s inability to determine the application of the exemption during the pendency of the matter excuses delaying response while the public body diligently pursues the underlying issue...Requiring disclosure of disciplinary records when requested while disciplinary actions are pending, regardless of the public interest, could effectively eviscerate the exemption of ORS 192.501(12) by compelling the disclosure of records that may turn out to be exempt.” Pg. 52.

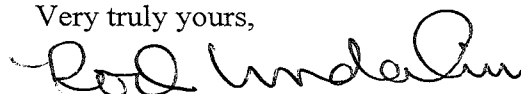
In re petition of Schmidt for The Oregonian involved a dispute where a city employee challenged the City of Portland’s decision to place him on paid leave, claiming that it was discipline. This office concluded in that matter that it was premature to release any notices of paid leave until the dispute was concluded. With regard to the requested document by petitioner, we reach the same conclusion in this matter.

Having concluded that the records are currently exempt under ORS 192.501(12), we do not need to consider PPS’ alternate argument for exemption under ORS 192.502(2).

ORDER

Accordingly, the petition is denied with leave for the petitioner to resubmit her appeal upon completion of the investigation of Ms. Harper.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon