



ROD UNDERHILL, District Attorney for Multnomah County

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

October 13, 2017

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

David Blankfeld
Assistant County Attorney
Multnomah County Attorney's Office
501 S.E. Hawthorne, Suite 500
Portland, Oregon 97214

Re: Petition of Nick Budnick, on behalf of The Oregonian, seeking records relating to Multnomah County's termination of Animal Services Manager Randall Brown

Dear Mr. Budnick and Mr. Blankfeld:

In his public records petition, dated October 11, 2017, petitioner Nick Budnick requests that this office order Multnomah County to provide an unredacted copy of:

correspondence informing Multnomah County Animal Services manager Randall Brown of his termination.

Randall Brown worked for Multnomah County as a manager in the animal services division. On September 12, 2017 the county terminated his employment. On October 10, 2017 a Multnomah County returned an indictment charging Mr. Brown with over 50 counts of theft, fraud, and official misconduct while in the county's employment.

In response to his request, the county provided petitioner with a copy of a September 12, 2017 letter that confirmed Mr. Brown's employment had been terminated. However, the county redacted in their entirety the sections of the letter titled "Grounds" and "Supporting Facts" and redacted a portion of the "Conclusion" section. In short, no details were released about the factual basis for the county's decision to dismiss Mr. Brown for cause.

The county argues that these redacted sections are exempt under ORS 192.501(12), the personnel disciplinary exemption, and ORS 192.502(2), the information of a personal nature exemption. Because we believe the public interest compels disclosure in this instance, we grant the petition.

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.

The record at issue is unquestionably a personnel discipline action. But this exemption is conditional in that it requires us to consider whether or not the public interest nonetheless compels disclosure. In *Petition of Foster*, MCDA PRO 96-31 (1997), we established criteria for evaluating the public's interest in personnel disciplinary cases and concluded that "serious" misconduct must be disclosed. We defined "serious misconduct" to include theft of public property. In the specific situation presented in *Foster*, we found that an employee making personal use of a city postage meter constituted serious misconduct. In that light, this is not a close case—the misconduct at issue is "serious" within the meaning of *Foster*. ORS 192.501(12) does not exempt this record from disclosure.

B. 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.

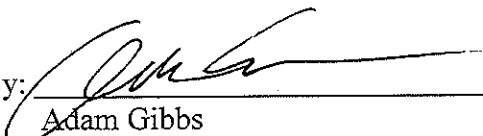
Having already determined that the public interest requires disclosure under ORS 192.501(12) we do not reach a different result under this section. Even if the details in the termination letter are "information of a personal nature," and disclosure would constitute an unreasonable invasion of Mr. Brown's privacy, neither of which are clear in this case, the public interest nonetheless requires disclosure.

ORDER

Accordingly, the petition is granted. Multnomah County is ordered to promptly provide petitioner with an unredacted copy of the letter at issue.¹ This disclosure is subject to payment of fees to the county, if any, not exceeding the actual cost in making the information available.

Regards,

ROD UNDERHILL
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Deputy District Attorney

¹ Petitioner has declaimed any interest in Mr. Brown's personal contact information. Those details may be withheld from the document the county releases to petitioner.

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.

17-47