



**ROD UNDERHILL**, District Attorney for Multnomah County

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November 20, 2017

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

Bernadette Nunley  
Senior Assistant County Attorney  
501 S.E. Hawthorne, Suite 500  
Portland, Oregon 97214

Re: Petition of Nick Budnick, on behalf of the Portland Tribune, seeking notes and other materials from a meeting between county and city officials

Dear Mr. Budnick and Ms. Nunley:

In his public records petition, dated October 30, 2017, petitioner requests that this office order Multnomah County to disclose:

- 1) **handwritten notes and/or draft minutes and/or a draft or final memo or other draft or final record that documents the meeting earlier this week with the Mayor's office,**
- 2) **any records shared with the county by the city in the meeting or prior to that meeting for discussion, and**
- 3) **follow-up correspondence exchanged with the city following the meeting.**

Petitioner requested these records on October 27, 2017 in reference to an open request for proposal (RFP) for a new county ambulance services contract. Petitioner believes the meeting at issue in this appeal was for City of Portland and county officials to address objections to the RFP raised by the Bureau of Emergency Communications (BOEC) and the county's fire departments.

State law requires counties to coordinate ambulance services for their residents. The City of Portland, however, operates BOEC which provides 911-dispatch services for the county. The present RFP contains a requirement that the ambulance services provider also operate a second call center, in addition to BOEC's call center, to initially triage medical calls and determine which do not require a full fire department emergency response. Adding a second layer of call processing to the existing BOEC framework has resulted in public push-back from local emergency services providers including BOEC, Portland Fire & Rescue, and Gresham Fire & Emergency Services.

The ambulance services contract will grant a monopoly on ambulance services in the county to the winning bidder for between five and fifteen years. Depending on whose perspective one adopts the details of the new contract have the potential to either efficiently

bring our emergency dispatch system in line with industry best practices or introduce potentially life threatening delay into a system that already works just fine.

The county denied petitioner's public records request for the meeting materials and notes, citing ORS 192.502(1), the internal advisory communications exemption. We have reviewed the fifteen pages of responsive records provided to us by the county and, for the reasons discussed below, grant the petition.

## DISCUSSION

### A. Internal Advisory Communications – ORS 192.502(1)

ORS 192.502(1) exempts from disclosure under the public records law:

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. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

The county has provided us with fifteen pages of records responsive to petitioner's request. As an initial matter, it is clear that the involved documents cover communications between public bodies, about proposed policy (that is, non-factual matters), that are preliminary to a final decision. These findings are necessary but not sufficient to support a claim of exemption under this section. The public records law requires a particularized and fact-specific evaluation of the public interest.

Frequently under the public records law we must assess whether the "public interest requires disclosure in a particular instance." ORS 192.501. Although the agency always has the burden of establishing an exemption, under ORS 192.502(1) the presumption and standard is more stringent: the agency must establish that the interest in frank communication "clearly outweighs" the public interest in disclosure. A strong showing is necessary to sustain a claim under this section. *Coos County v. Oregon Dept. of Fish and Wildlife*, 86 Or App 168, 173 (1987).

As to the "discussion drafts" generated prior to this meeting we do not see any reason why disclosure would dissuade frank communication. Indeed we have on multiple occasions found that disclosure of such "relatively bland, unattributed" documents would not chill future communications. See, *Petition of Schmidt*, MCDA PRO 16-17 (2016), *Petition of Lane*, MCDA PRO 04-06 (2004).

Certain of these documents also contain handwritten notes, which are presumably identifiable by anyone familiar with the meeting attendees. These notes also attribute certain statements or positions to other identifiable participants in the meeting.

We have carefully reviewed the contents of these notes and, against the backdrop of the highly critical public comments already made by various emergency services system partners and the importance of the services at issue, we cannot say that the opinions or comments contained in these records are remarkable. If petitioner chooses to publish some or all of these comments they can be used on equal footing by any firm seeking to submit a proposal and by the public seeking to ensure its government is in good faith working to implement the best

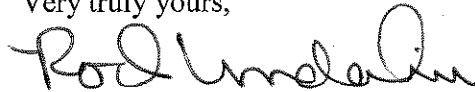
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emergency medical services system for the residents of this county. The county has not established that its interest in the confidentiality of these records clearly outweighs the public's interest in disclosure in this instance.

**ORDER**

Accordingly, the petition is granted. Multnomah County is ordered to promptly provide copies of the responsive records to petitioner. This disclosure is subject to the payment of fees, if any, not to exceed the county's actual costs in producing the records.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

17-54

**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.