

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

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January 31, 2018

Dirk VanderHart  
Portland Mercury  
115 S.W. Ash Street, Suite 600  
Portland, Oregon 97204

Heidi Brown  
Deputy City Attorney  
Portland City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Dirk VanderHart, on behalf of the Portland Mercury, seeking names of interview panelists from the City of Portland

Dear Mr. VanderHart and Ms. Brown:

In his public records petition, dated January 22, 2018, petitioner Dirk VanderHart requests this office to order the City of Portland to disclose:

**a list of all people invited to participate on a hiring panel for the incoming Deputy Police Chief position.<sup>1</sup>**

The City of Portland has created a new position in the Portland Police Bureau of "Deputy Chief of Police." The job listing for this position, which petitioner, who was following this process, first noted on January 2, 2018, states: "The interview and selection process will include an initial interview with Interview Panelists consisting of external community members." The panel interviews are scheduled for February 1 (tomorrow), and February 2. Petitioner began inquiring about this panel the same day he learned of it and filed a formal public records request on January 4, 2018. On January 22, 2018 the city denied petitioner's request citing ORS 192.501(4), which exempts testing materials from disclosure. Petitioner immediately filed a petition with this office for review. At this time the city additionally asserted ORS 192.502(2), the exemption for information of a personal nature. The city has additionally stated that it will release the names of the panelists after the interviews are concluded on Friday.

Neither of the asserted exemptions apply in this case and we order the records released.

#### DISCUSSION

A. Tests and Examination Material – ORS 192.501(4)

ORS 192.501(4) conditionally exempts from disclosure,

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<sup>1</sup> Petitioner has clarified with this office that he is now only seeking the names of the people who will actually serve on the panel, not the names of any who were asked to serve but declined.

Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

Nothing in ORS 192.501(4) mentions “names of interview panelists.” A job interview is not a “test” or “examination” as those phrases are used here.<sup>2</sup> The name of a volunteer panelist is not a “testing procedure.” This exemption does not apply.

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.

As the Attorney General has noted, “ordinarily, disclosure of a person’s name itself will not constitute an unreasonable invasion of privacy.” Public Records Manual at 77. We have, in a few instances, found that disclosure of a person’s name is an unreasonable invasion of privacy, but have done so only in cases where a person has applied for a high-profile job and was assured of confidentiality as a part of that process. See, e.g., *Petition of Budnick*, MCDA PRO 17-38 (2017) (names of finalists for the Chief of Police could remain confidential under the particular circumstances presented).

The names of volunteers to serve on a panel of significant public import do not present any of the same concerns as identified in *Budnick*. The city has not attempted to provide an individualized basis as to why the disclosure of any particular name in this case would unreasonably invade that person’s privacy. An individualized basis is a clear and unambiguous requirement to assert an exemption under this section. *Mail Tribune v. Winters*, 236 Ore. App. 91 (2010) (“To satisfy [it’s] burden, a public body must establish exemptions from disclosure on an individualized basis.”)

Rather, the city has made the blanket assertion to this office that “the public interest in disclosure of the names of the panel members, at this juncture, is negligible unless the interest is in inappropriately influencing or harassing the decision-makers, which constitutes an unreasonable invasion of privacy.” Our government does not operate in secrecy. The public is

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<sup>2</sup> The Attorney General writes that “although primarily applicable to licensing or academic examinations, this exemption will apply to any ‘examination’ for which test questions, scoring keys or other data will be used again to grade or evaluate applications.” Public Records and Meetings Manual (2014) p.46.

entitled to know who contributes to important decisions on its behalf. Members of the public are absolutely entitled to know the identities of and attempt to contact, lobby, or otherwise express their views to public officials in the conduct of their official duties. A volunteer acting on behalf of the city is no less a public official than a paid employee. This does not constitute harassment.


Furthermore, the requestor in this case is a professional journalist. The city has put forth no evidence of a past course of conduct by this requestor (such as was the case in *Jordan v. MVD*, 308 Or 433 (1989)) that might create an individualized basis to conclude that disclosure to this requestor constitutes an unreasonable invasion of privacy.

**ORDER**

Accordingly, the petition is granted. The city must promptly disclose the record at issue.

Regards,

ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon

By:   
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Jeffrey Howes  
First Assistant to the District Attorney

**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.

18-02