



ROD UNDERHILL, District Attorney for Multnomah County

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

February 5, 2018

Brad Schmidt
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Mary Kane
Portland Public Schools
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of Brad Schmidt, on behalf of The Oregonian, seeking records relating to Jefferson High basketball coach Pat Strickland

Dear Mr. Schmidt and Ms. Kane:

In his public records petition, dated January 23, 2018, petitioner Brad Schmidt, on behalf of The Oregonian, requests this office to order Portland Public Schools (PPS) to disclose a number of records regarding complaints and investigations connected to Pat Strickland, the Jefferson High School basketball coach.

Portions of these records were the subject of a prior public records order this office issued in 2016. *Petition of Monahan*, MCDA PRO 16-25 (2016). In *Monahan* petitioner sought two different disciplinary investigations of Mr. Strickland. One of these, "Investigation 1," resulted in the imposition of discipline, the other, "Investigation 2," did not. We found that Investigation 1 was exempt from disclosure under ORS 192.501(12), the personnel disciplinary action exemption, but we ordered PPS to disclose Investigation 2.

Petitioner in this case, Mr. Schmidt, has a somewhat redacted version of Investigation 2. He now argues that due to the information contained in that report and other intervening circumstances, we should reconsider our determination that Investigation 1 report is exempt from disclosure.

Additionally, petitioner had requested from PPS all "complaints filed against Pat Strickland from 2013 through present, including any evidence submitted by complainants." PPS responded that it "does not have additional records of complaints or investigations of Pat Strickland." Petitioner now asks that we "verify" the accuracy of PPS's claim that it has no more responsive records. We are unable to do that. See, *Petition of Sordyl*, MCDA PRO 16-31 (2016) ("As to the assertion that no records in addition to this exist, we have repeatedly held that we are not legally or practically empowered to evaluate such a claim.") However, PPS has informed this office that after the filing of this appeal it did locate an additional record responsive to this portion of petitioner's request. PPS states it expects to provide that record to petitioner pending payment of fees.

DISCUSSION

A. Personnel Discipline Action – ORS 192.501(12)

ORS 192.501(12) conditionally exempts from disclosure,

A personnel discipline action, or materials or documents supporting that action.

As with all conditional exemptions, the exemption applies only “unless the public interest requires disclosure in the particular instance.” To evaluate the public’s interest in disclosure under ORS 192.501(12) we rely on guidelines known as the *Foster* criteria. *Petition of Foster for The Oregonian*, MCDA PRO 96-31 (1997). These guidelines are, in summary:

1. Serious misconduct by a government employee should be disclosed;
2. Generally, termination from employment or other discipline for cause is serious misconduct if it is based on corruption (including theft of public property), abuse of power, misconduct that impairs the mission of the agency, or criminal behavior;
3. Less serious misconduct may require disclosure if repeated violations fairly raises the issue of imprudent management of public employees;
4. Cases evidencing systematic misconduct within a particular agency or part of an agency that shed light on the effectiveness of management may require disclosure even if, individually, the instances of misconduct are not serious;
5. Less serious misconduct may require disclosure in the public interest where circumstances raise a question of unduly harsh (or unduly lenient), arbitrary, irrational or discriminatory administration of discipline by management;
6. Lastly, public employees should not be subjected to public disclosure of disciplinary violations that do not fit into a category above where such would not significantly promote the public’s understanding of the manner in which government business is carried out.

Petitioner argues that a now-pending federal investigation into allegations of bribery of basketball coaches by the Adidas shoe company changes the public interest calculation as to whether or not Investigation 1 should be disclosed. This investigation included the issuance of a subpoena to a Nike affiliated basketball operation to which Mr. Strickland is connected. Second, he argues that the information released in the Investigation 2 report is inextricably intertwined with the Investigation 1 report and, accordingly, it should now be released. Lastly, he argues that the information already released could be read to suggest that PPS may not have aggressively investigated Mr. Strickland, perhaps because of his role as a high profile basketball coach.

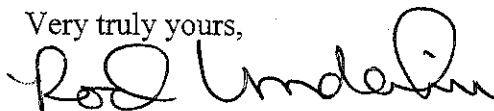
We have re-reviewed the documents from Investigation 1 and, having done so, we do not reach a different outcome than we did in *Monahan*. The Investigation 1 report remains exempt from disclosure under ORS 192.501(12).

Petitioner has additionally requested various correspondence on the subject of these investigations (items six and seven in his petition.) PPS has provided us with evidence of its ongoing work on this request and we cannot at this time say that petitioner's request has been denied.

ORDER

The petition is denied as to the Investigation 1 report and its attachments for the reasons discussed above. The petition is denied as premature to the remaining items because there has not at this time been a denial of public records request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is written in a cursive style with a large, looped "R" and "U".

ROD UNDERHILL
District Attorney
Multnomah County, Oregon