



ROD UNDERHILL, District Attorney for Multnomah County

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April 9, 2018

Rachel Monahan
Willamette Week
2220 N.W. Quimby Street
Portland, Oregon 97210

Jenny Madkour
County Attorney
Multnomah County Attorney's Office
501 S.E. Hawthorne Boulevard, Suite 500
Portland, Oregon 97214

Re: Petition of Rachel Monahan, on behalf of Willamette Week, seeking documents relating to Jerome Brooks

Dear Ms. Monahan and Ms. Madkour:

Petitioner Rachel Monahan has requested the following public records from Multnomah County:

- 1) **Any memo or report sent to Commissioner Smith regarding Jerome Brooks during the period of 5/23/14 to 6/12/14.**
- 2) **Any emails sent or received by Marissa Madrigal, Mark Campbell, Patrick Williams, Travis Graves or Loretta Smith during the same period that included any reference to Jerome Brooks.**
- 3) **All emails sent or received by Loretta Smith from 5/23/14 to 6/12/14.**
- 4) **Any resume/job application submitted to Multnomah Co. by Jerome Brooks.**

Petitioner requested these records on March 5, 2018 and she acknowledges that work is ongoing on this request. On March 12, 2018 the county made a partial response to the records request in which it provided certain documents with some redaction and indicated that other responsive documents were being withheld pursuant to ORS 192.345(12), the personnel disciplinary exemption. Petitioner is challenging the redactions and exemptions asserted in the partial response, and not those portions of the request that remain ongoing.

By way of background, the documents already released by the County indicate that Mr. Brooks was a staff assistant to Multnomah County Commissioner Loretta Smith and that on June 11, 2014 his employment with the county was terminated by way of a letter from Commissioner Smith's then Chief of Staff, Jimmy Brown. Mr. Brooks had been with Commissioner Smith's office for 19 days.

To be clear, we set out the status of all items in this request as related to us whether or not they appear to actually be at issue. As to item 1, the County provided petitioner with Mr. Brooks' termination letter, redacting only his home address pursuant to ORS 192.355(3). Also responsive to this item, the County has provided us with three pages of documents that it withheld pursuant to ORS 192.345(12).

As to item 2, the County indicates that it has only one email string that relates to Mr. Brooks' termination, and asserts it is exempt both under ORS 192.355(3), the personnel discipline action exemption, and ORS 192.355(9) as it incorporates the attorney-client privilege. The County continues to work on reviewing the body of emails that are responsive to the request (i.e. contain "any" reference to Mr. Brooks) for exemption. The County has not yet denied this request as to any emails but the single string mentioned above.

As to item 3, the County indicates that it has gathered over 500 email strings and is trying to work with petitioner to narrow the scope of the request. The County has not yet denied this request.

As to item 4, the County has provided petitioner with a copy of Mr. Brooks' resume with only his home address redacted, again pursuant to ORS 192.355(3). The County explained to petitioner that it did not possess a job application for Mr. Brooks because he was hired as a direct appointment.

For the reasons discussed below, we deny the petition.

DISCUSSION

A. Public Employee Personal Contact Information – ORS 192.355(3)

ORS 192.355(3) exempts from disclosure:

public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in personnel records maintained by the public body that is the employer[.]

This exemption applies unless a records requestor follows the procedures set out in ORS 192.363 and establishes by clear and convincing evidence that the public interest requires disclosure. The redactions made under this section here are non-controversial and we do not understand petitioner to suggest otherwise. Mr. Brooks' home address may be redacted as suggested by the County.

B. Personnel Discipline Action – ORS 192.345(12)

ORS 192.345(12) conditionally exempts from disclosure,

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

The documents at issue are directly related to a personnel discipline action, Mr. Brooks' termination. The question then remains, does the public interest nonetheless require disclosure. Petitioner argues that unusually high staff turnover in Commissioner Smith's office coupled with Commissioner Smith's declared candidacy for a position on the Portland City Council creates a public interest in knowing more about the abrupt departure of one of her employees.

The county responds that ORS 192.345(12) was enacted to protect *employees* from ridicule for being disciplined and that the employee's boss' political candidacy should not have any bearing on that analysis.

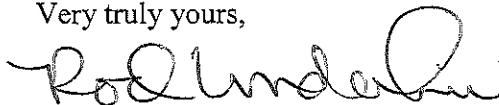
Our precedent has recognized that the nature of the misconduct that resulted in discipline is the primary factor in evaluating a claim under ORS 192.345(12). See, *Petition of Foster for The Oregonian*, MCDA PRO 96-31 (1997). But we have also noted that full vetting of a disciplinary action can also be in the public interest if it raises concerns about "unduly harsh (or unduly lenient), arbitrary, irrational or discriminatory administration of discipline by management." *Id.* We recognize that Commissioner Smith's status as a current elected official as well as an aspiring elected official creates a heightened public interest in her actions. However, without disclosing the contents of the documents, we can say little beyond that they do not implicate the public interest concerns identified by petitioner, nor do they fit within any of the categories in *Foster* that we use to guide our decisions in these matters.

The public interest does not require the disclosure of the documents at issue in this case.¹

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

18-09

¹ The County has also argued the one email string is protected by attorney-client privilege. Because we find it exempt under the personnel discipline action exemption we need not separately consider its status as privileged.