



ROD UNDERHILL, District Attorney for Multnomah County

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June 7, 2018

Shasta Kearns Moore
Portland Tribune
6605 S.E. Lake Road
Portland, Oregon 97222

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

Re: Petition of Shasta Kearns Moore, on behalf of the Portland Tribune, seeking an unredacted version of a Portland Public Schools email

Dear Ms. Kearns Moore and Ms. Kane:

In her public records appeal, dated May 29, 2018, petitioner Shasta Kearns Moore asks this office to order Portland Public Schools (PPS) to disclose an unredacted copy of an April 20, 2018 email from Jerry Vincent to Superintendent Guerrero.

Mr. Vincent served as the Chief Operating Officer for PPS until his resignation in April. Ahead of his departure, and at the superintendent's request, Mr. Vincent compiled a lengthy list of "key work strands," as well as certain contemplated or recommended projects to assist in a transition to his successor. This list comprises the majority of the April 20 email at issue.

PPS released this email to petitioner in response to her public records request in a slightly redacted form. Of the just over three page email, PPS redacted six lines, each of which references a contemplated, and not presently authorized, project or idea. Put differently, PPS disclosed all information about Mr. Vincent's work that is in progress, but redacted information showing Mr. Vincent's thoughts about possible future work.

Mr. Vincent divided his pending work into three tiers based on task priority. In Tier 1, he identifies 17 items to follow up on, three of which are redacted or partially redacted. In Tier 2, he identifies seven items, one of which is redacted. In Tier 3, there are three items, one of which is redacted. Additionally, he identifies four "other" items that need to be addressed, one of which is redacted.

The email also includes three paragraphs of text (all unredacted) discussing the workload and project management frustrations that caused him to determine that he had to leave PPS.

From the material released, petitioner has already written about Mr. Vincent's difficulty with the substantial extra duties he was asked to shoulder and the warnings he sounded for PPS about the unsustainability of its project management approach. As to the redacted portions, PPS has asserted that they are subject to the internal advisory communications exemption, ORS 192.355(1), and that the public interest does not require disclosure. As we discuss further below,

because the ideas are preliminary, non-factual, and not particularly informative as to PPS' general project or fiscal management or the reasons for Mr. Vincent's abrupt departure we agree that the public interest does not require their disclosure in this instance and deny 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 redacted sections of this email are certainly communications within a public body that relate to other than factual matters. They are also preliminary to final agency action in that they have not yet been authorized or otherwise commenced. The closer questions are 1) whether or not these communications are "frank" and, if so, 2) which of the identified public interests prevail.

The Attorney General has found this exemption applicable to discussion of various program options within an agency:

A record describing the advantages and disadvantages of various program options for a public body to deal with its budget deficit [...] was exempt from disclosure. Because managers would be reluctant to engage in frank discussions of potentially unpopular decisions, the public's interest in allowing a frank exchange concerning budget options and potential cuts would be substantially undermined if the record were disclosed before the difficult program decisions were made.

PUBLIC RECORDS AND MEETINGS MANUAL (2014) at 73. (citing *Petition of Parrish*, Public Records Order (8/6/1997)).

The Attorney General has likewise found a written "brainstorming session" to be exempt under this section. *Petition of Tucker*, Public Records Order (7/10/2001) ("because the team understood that [...] management would consider its ideas and determine which, if any, to pursue, the team was free to propose any idea, regardless of the response any concept might elicit from supporters or opponents [...].") In *Tucker* the Attorney General further noted that "disclosure of the withheld records could be contrary to the public interest to the extent that disclosure could create confusion about the state's implementation plans." *Id.* at 4.

We adopt the reasoning of *Tucker* and reach a similar conclusion here. Mr. Vincent's email is a "brain dump," often in incomplete sentences and thoughts, about matters he felt the superintendent and his successor should be aware of, address, or consider addressing moving forward. Where those thoughts touch on active projects and assigned tasks, as most of them do, PPS has disclosed that material. The remaining six items are akin to the "brainstorming session" records in *Tucker*.

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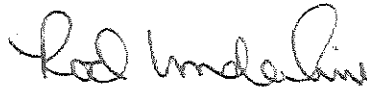
Petitioner's asserted public interests in this case relate to transparency of Mr. Vincent's overwhelming job duties, public oversight of ongoing projects, and PPS' "history of poor decision making" in the area of maintenance and operations. The unredacted portions of the email contain all of the material in this email that bears on these interests. The few redacted portions do not contain information that would advance any of these conversations. Nothing in the redacted materials discloses any of Mr. Vincent's job duties or active projects, nor does any of it relate to any of the active bonds.

There is indeed a substantial interest in public oversight of PPS, as there is for any public agency. There is also a substantial interest in a smooth transition and in institutional knowledge and ideas not being lost in a transition such as this. As in *Tucker*, above, there is also a high potential that release of these materials at this time could cause confusion about which projects PPS is actually undertaking and which are not advanced past the suggestion or idea phase. Balancing these interests in the fact-specific context of the limited redactions applied here, we find that they fit within the asserted exemption.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon