



ROD UNDERHILL, District Attorney for Multnomah County

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September 7, 2018

Gordon Friedman
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Franco Lucchin
Senior Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Gordon Friedman, on behalf of The Oregonian, seeking review of redactions made to grievances relating to the Portland Fire Bureau

Dear Mr. Friedman and Mr. Lucchin:

In his public records appeal, dated August 28, 2018, petitioner Gordon Friedman asked this office to order the City of Portland to release labor grievances filed by the Portland Fire Fighters Association from January 1, 2016 to present. The city initially denied petitioner's request in its entirety, citing the personnel disciplinary exception, ORS 192.345(12). This appeal ensued.

While this appeal was pending, the city revisited its initial response and elected to provide petitioner with most of the records he sought. The city continues to assert that certain portions of various grievances are exempt as information of a personal nature, ORS 192.355(2), or as information supporting a personnel disciplinary action, ORS 192.345(12).

In total the city has provided petitioner, and this office, with 52 pages of grievances, with redactions applied to portions of nine pages. In large part these redactions are narrowly tailored and appropriate. Except as specifically noted below, the petition is denied.

DISCUSSION

A. Information of a Personal Nature – ORS 192.355(2)

ORS 192.355(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.

In applying this exemption we have consistently recognized that the "disclosure of any medical information is presumptively an unreasonable invasion of privacy." *Petition of Hinkle*,

MCDA PRO 05-03 (2005). Likewise, the specific ADA accommodations requested by a disabled person are subject to this section. *Petition of Frazier*, MCDA PRO 15-27 (2015).

The only assertions of this exemption as to the grievances at issue here relate to the reason why a person's absence was classified as "sick leave." The situations are analogous. This exemption does not apply to the fact of sick leave, that is not personal, but the underlying reason for sick leave may be intensely private, just as any of a person's medical information would be.

Redactions were also made to pages 27 and 28 under this section. As to page 27, the redacted portion contains a generic directive relating to when time should be counted as administrative leave and when it should be counted as sick leave. This information is not personal to grievant and ORS 192.355(2) does not exempt it from release. On page 28 the redaction following "This status occurred because..." obscures personal information of the grievant and is appropriate. The second redaction on the page is broader than necessary. Given information contained earlier in that paragraph, disclosure of the first nine words of this redaction would not constitute an unreasonable invasion of privacy. The last six words are properly redacted.

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.

We have recognized that, so long as some discipline is ultimately imposed, documents that are a part of the disciplinary process, to include those challenging its propriety, are part of a "personnel discipline action" for purposes of this exemption. *Petitions of Bernstein and Budnick*, MCDA PRO 18-16 (2018) (so finding as to an arbitration order). Documents already in the public domain show that both the Sullivan and Schierling grievances resulted in an oral reprimand being entered as the final discipline sanction. See, Portland City Council Ordinance 189115 (Aug. 15, 2018). As discipline was, in fact, imposed, this exemption is applicable unless the public interest requires otherwise.

Because the city retreated from its broad initial assertion under this exemption, we focus only on those few pages of redactions that the city continues to assert are exempt under this section. The city has made redactions on pages 45-46, which constitute the Schierling grievance, and pages 48-52, which constitute the Sullivan grievance.

The Schierling grievance has been provided to petitioner but with redactions to any information that would recount the conduct that resulted in the imposition of discipline. The redactions are narrowly tailored to remove only those words that would show the type of misconduct at issue. Under our *Foster* criteria it is readily apparent that this was not "serious misconduct" and the public interest does not otherwise demand its release. *Petition of Foster*, MCDA PRO 96-31 (1997). The redactions to pages 45 and 46 are approved.

The Sullivan grievance is more heavily redacted, with all but a handful of sentences redacted off of two of its six pages and narrower redaction to three additional pages. As with the Schierling grievance, the nature of the allegations against Captain Sullivan are not publicly known. The conduct at issue necessitated a somewhat more thorough recitation of the facts in the

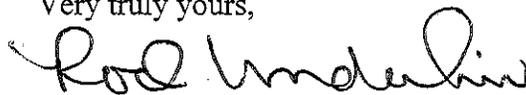
Page 3
September 7, 2018
Petition of Gordon Friedman

grievance (hence the heavier redaction) but, again, this is not serious misconduct under *Foster*. The redactions to pages 48-52 are approved.

ORDER

Accordingly, the petition is denied in part and granted in part consistent with the discussion above.

Very truly yours,

A handwritten signature in black ink that reads "Rod Underhill". The signature is written in a cursive, flowing style.

ROD UNDERHILL
District Attorney
Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411, 192.415, and 192.431(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.

18-39