



ROD UNDERHILL, District Attorney for Multnomah County

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November 26, 2018

Annika Mayne
419 S.E. 33rd Avenue
Portland, Oregon 97214

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

Re: Petition of Annika Mayne, on behalf of the Franklin Post, requesting records relating to the Franklin High School athletics director

Dear Ms. Mayne and Ms. Kane:

In her public records appeal, dated November 8, 2018, petitioner Annika Mayne asks this office to order Portland Public Schools (PPS) to release records and make findings that PPS has unduly delayed its response to her request.

Petitioner is a reporter for the Franklin High School paper, the Franklin Post. In the request at issue here petitioner sought the following records:

Public records related to Scott Santangelo, athletics director at Franklin High School:

1. Copies of complaints
2. Any disclosable discipline records
3. Work history (hire date, positions held and dates held)

PPS asserts that records responsive to items one and two are exempt under ORS 192.345(12) and 342.850(8), and has provided petitioner with records responsive to item three.

Pursuant to ORS 192.422(2), which requires a public body to submit to the district attorney the records responsive to the original request, PPS has provided this office with a memorandum describing the present state of the personnel investigation as well as notes relating to the initial investigation of certain prior complaints.

For the reasons discussed below, we deny the petition.

DISCUSSION

A. Undue Delay – ORS 192.407

After an initial, broad, records request submitted on September 9, 2018, petitioner and PPS discussed and agreed on the final form of the records request at issue here on September 11, 2018. PPS provided petitioner with certain responsive records on September 17, 2018. On September 19, 2018 PPS's public records officer updated petitioner that he was still searching

for additional documents and would provide an update in 10 days. On October 3, 2018 he again updated her that certain responsive documents were located, but needed to be reviewed for confidentiality. Two days later, he again updated her that, due to the vacation of a person who was in possession of possibly responsive documents, three additional weeks were necessary. On November 6, 2018 PPS finally denied petitioner's request, citing an ongoing personnel investigation. By this point, 41 business days had elapsed since the initial request.

A determination under ORS 192.407 as to whether or not petitioner's request was denied due to an extended response timeline is immaterial to resolution of this petition.¹ As of the date of the petition in this case, PPS has completed its response to the records request within the meaning of ORS 192.329(2). That is, certain documents have been provided, and the balance denied on the merits. Petitioner has appealed that denial. Any order we could issue, if in fact a timeliness violation occurred, would at this point be moot.

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.

PPS is correct that we have generally considered ORS 192.345(12) presumptively applicable to pending disciplinary investigations or proceedings. This is because 1) it is not yet possible to determine if discipline will or will not be imposed and 2) many of the factors that relate to assessing the public's interest in disclosure relate to the ultimate resolution of the disciplinary action which, self-evidently, cannot be assessed until the final imposition of discipline.

The memorandum at issue certainly describes an ongoing personnel investigation. The posture of this particular investigation is somewhat unusual, but the circumstances are not so extraordinary as to justify release pending a final determination of discipline. If discipline is not ultimately imposed, ORS 192.345(12) will not apply; if it is, then public interest balancing must be conducted and an appropriate determination made as to any materials that have not been formally entered into Mr. Santangelo's personnel file.

As we have previously noted, an agency "may not indefinitely leave open an investigation in an attempt to thwart the purposes underlying the Oregon Public Records Law." *Petition of van der Voo*, MCDA PRO 15-17 (2015). And, indeed, the length of time that an investigation takes to conclude can make a compelling case that the public interest requires disclosure. See, *Petition of Slovic*, MCDA PRO 17-29 (2017), *Petition of Sordyl*, MCDA PRO 17-05 (2017). Neither of these concerns are, yet, evident in this case.

¹ Petitioner also cites a number of PPS board policies and rules relating to the handling of public records requests that she believes were violated during the handling her request. PPS board regulations do not have the force of law with respect to public records matters. We are not empowered to enforce them and express no opinion on whether or not PPS has complied with its own policies.

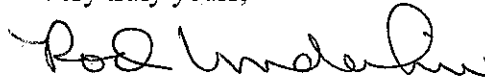
We find the same reasoning applicable to the notes. In a public facing order it is not possible to describe the nature and contents of the notes in any meaningful detail without defeating the purpose of our review. Suffice it to say that the notes relate to particular incidents where an initial investigation is now being followed up with greater context. We are satisfied that investigation as to all relevant matters is presently ongoing and, as such, these documents are exempt for the same reason as the memorandum discussed above.

Because we find ORS 192.345(12) applies in this case, we need not separately address PPS' claim of exemption under ORS 342.850(8).

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill", written in a cursive style.

ROD UNDERHILL
District Attorney
Multnomah County, Oregon