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June 18, 2019

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Jason Davis
OHSU Legal Department
3181 S.W. Sam Jackson Park Road
Portland, Oregon 97239

Re: Petition of Kim Sordyl seeking agreements between Dr. John Ma and OHSU

Dear Ms. Sordyl and Mr. Davis:

In her public records petition, dated June 6, 2019, Ms. Sordyl asks this office to order Oregon Health & Science University (OHSU) to disclose: “any settlement agreements, release of claims, or similar entered into between Dr. John Ma and OHSU.”

Dr. Ma is a faculty member in OHSU’s School of Medicine and, until recently, was the chair of the emergency medicine department. OHSU announced last month that Dr. Ma has stepped down from this position. OHSU asserts that any responsive record is a faculty personnel record of OHSU and, thereby, not subject to the public records law under ORS 353.260(6).

OHSU has provided, and we have reviewed, the separation agreement at issue. For the reasons discussed below, we agree with OHSU that it is a personnel record and deny the petition.

DISCUSSION

A. OHSU Personnel Records – ORS 353.260

As to OHSU personnel files ORS 353.260(6) provides,

Any category of personnel records specifically designated as confidential pursuant to valid policies or orders pursuant to this section is not a public record for the purposes of ORS 192.314

OHSU has enacted regulations pursuant to this section to exempt personnel records from public release. See, OHSU Policy 03-60-005 (Personnel Records of Unclassified Employees). In relevant part OHSU’s policy makes confidential “records containing information [...] concerning an unclassified employee [...] including, but not limited to, records relating to an employee’s qualifications of employment, promotion, compensation, disciplinary action or termination.” *Id.*

This tracks, and elaborates, the relevant definition in the authorizing statute for this policy. ORS 353.260(7).

As relevant here, ORS 353.260(7) contains three elements for information to qualify as a personnel record: 1) it must be kept by OHSU; 2) it must concern a faculty member's compensation or termination; and 3) it must have been furnished at the request of the university or the faculty member.

These elements are satisfied in this case. That the record concerns a faculty member's separation from OHSU and that it is kept by OHSU is obvious from the face of the record. OHSU must only then establish that it was created at the request of either OHSU or Dr. Ma. Again, the nature of the record answers the question. But for a request by one or the other (OHSU or Dr. Ma) such a separation agreement could not exist.

Having reviewed the record, we agree with OHSU's characterization of it as a separation agreement as opposed to a settlement agreement. The agreement does not settle any pending claims, rather it defines the terms of Dr. Ma's departure from his position.

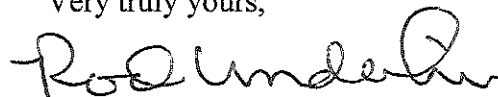
Petitioner argues that OHSU regularly publishes salary information of its employees and that, as this is really compensation information, it too should be released. OHSU's policies expressly provide that payroll records are not "personnel records" for purposes of ORS 353.260. Policy No. 03-60-005(3)(B). This agreement, whatever else it may be, is not a payroll record.

Petitioner focuses much of her argument on the allegations against Dr. Ma and various public interest arguments that stem from those allegations. However, having determined that the elements of ORS 353.260 are all met here, the separation agreement is not subject to the public records law or any balancing of the public's interest.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon