



**ROD UNDERHILL**, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

July 23, 2019

Everton Bailey  
The Oregonian/OregonLive  
1500 S.W. First Ave, Suite 400  
Portland, Oregon 97201

Krista Stearns  
Assistant General Counsel  
Portland State University  
P.O. Box 751  
Portland, Oregon 97207

Re: Petition of Everton Bailey, on behalf of The Oregonian/OregonLive, seeking resignation letters submitted by two former Portland State University police officers

Dear Mr. Bailey and Ms. Stearns:

In his public records petition Everton Bailey, on behalf of The Oregonian/OregonLive, requests that we order Portland State University (PSU) to release any resignation letters submitted by former Portland State University officers Shawn A. McKenzie and James P. Dewey in 2018 and 2019.

Officers Dewey and McKenzie were employed as police officers for PSU and, in that capacity, were involved in the fatal shooting death of Jason Washington near PSU's campus on July 29, 2018. Both have subsequently resigned from their positions at PSU. On July 2, 2019 petitioner requested any resignation letters from these officers in the possession of PSU. The next day PSU denied his request, citing ORS 192.355(2).

PSU has provided this office with one letter, which it indicates is the only responsive document in its possession. For the reasons discussed below, we grant the petition and order the letter produced.

## **DISCUSSION**

### **A. Personal Information – 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. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

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Analyzing a claim of exemption under this section involves three questions: 1) is the information of a personal nature; 2) would disclosure constitute an unreasonable invasion of privacy; and 3) if yes to both one and two, does the public interest nonetheless require disclosure. *Jordan v. MVD*, 308 Or 433 (1989). Here a resignation letter is clearly “personal” in that it relates to a particular person. Attorney General’s Public Records Manual (2019) at 91.

However, that information is “personal” does not mean that its disclosure would unreasonably invade a person’s privacy. The Attorney General notes that under this standard neither the fact that information would not ordinarily be shared with the public nor that the person has a general desire to be “let alone” is sufficient. *Id.* at 93 On the other hand, a showing that a reasonable person would find the release of the information “highly offensive” is. *Id.*

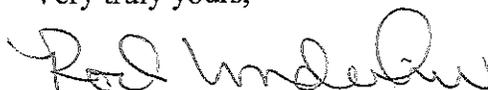
Applying this standard to the letter in question, we readily conclude that release would not unreasonably invade the resigned officer’s privacy. This particular letter is innocuous and indeed includes less relevant information than has already been released by the Department of Public Safety Standards and Training relating to this officer’s separation from PSU.

PSU argues that the innocuous nature of the letter indicates little public interest in the contents of the letter. We agree with that assessment in the abstract, but that does not support a claim of exemption. For the same reasons that this letter does little to advance the public’s understanding of this matter, it trespasses little on the officer’s privacy. And, if disclosure would not unreasonably invade privacy, then the public’s interest in disclosure is irrelevant to the ORS 192.355(2) analysis.

### ORDER

Accordingly, the petition is granted, excepting that the personal contact information that appears in the header of the letter may be redacted pursuant to ORS 192.355(3).

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon

### Notice to Public Agency

Pursuant to ORS 192.411(2), 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.