



ROD UNDERHILL, District Attorney for Multnomah County

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Matt Malmshheimer
Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, Oregon 97201

Wendy Hain
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Matt Malmshheimer requesting unredacted email records from the Portland Housing Bureau

Dear Mr. Malmshheimer and Ms. Hain:

In his public records appeal, dated September 20, 2019, petitioner Matt Malmshheimer asks this office to order the Portland Housing Bureau (PHB) to release all communications to or from Bobby Daniels, a capital projects manager with PHB, between December 1, 2018 and June 26, 2019 containing one or more of a list of search terms that relate, at least in part, to a proposed PHB project at 3000 S.E. Powell Boulevard.

In response to this request, PHB released about 285 pages of email records, six of which were redacted in part or in whole. Two of the initially redacted emails have subsequently been released in unredacted form, leaving only four at issue. All four relate to the 3000 S.E. Powell project.

PHB asserts that two of the redactions are justified by the attorney-client privilege and two are justified by ORS 192.345(6), which exempts information pertaining to the appraisal of real estate. PHB has stated that it will commit to releasing the redacted materials upon completion of the relevant appraisals or as soon as the basis for the exemption otherwise expires.

We find that the redactions are narrowly tailored to the asserted exemptions and deny the petition.

DISCUSSION

A. Attorney-client privilege – ORS 192.355(9), ORS 40.225

ORS 192.355(9) exempts from disclosure under the public records law:

Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

The confidentiality of communications between an attorney and his or her client is a foundational principle of our system of laws. *Upjohn Co. v. United States*, 449 U.S. 383 (1981)

(“The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.”) This privilege extends to public organizations that employ or retain lawyers to give them legal advice and shields those communications from disclosure under the public records law. *Port of Portland v. Or. Ctr. for Env'tl. Health*, 238 Or App 404, 409 (2010) (noting incorporation of attorney-client privilege into the public records law by way of ORS 192.355(9)). Any communication between an attorney and her agency client that make it easier for the agency to make use of legal advice or services are subject to privilege and unconditionally exempt from disclosure under the public records law. *Petition of Barnes*, MCDA PRO 17-48 (2017).

Emails 1 and 2 are either to or from Adrienne DelCotto, a Deputy City Attorney. Email 1 summarizes an oral conversation involving legal strategy. Email 2 involves her recommended wording for a real estate appraisal. It is not a close call that these are covered by the attorney-client privilege and exempt from disclosure. As this is an unconditional exemption, we may not evaluate the public’s interest in disclosure. *Petition of Manning*, MCDA PRO 19-18 (2019)

B. Real estate appraisal information – ORS 192.345(6)

ORS 192.345(6) conditionally exempts from disclosure:

Information relating to the appraisal of real estate prior to its acquisition

Email 2, as discussed above, contains attorney advice as to the wording of a real estate appraisal. It is exempt as privileged, but it is also exempt under this section. The redactions to emails 3 and 4 cover the same three sentences that appear in two different iterations of the same email string. The balance of each string is unredacted.

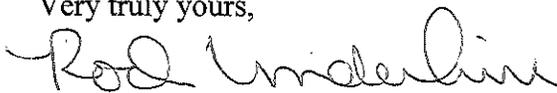
Ms. Hain, on behalf of PHB, has provided this office with contextual information about the 3000 SE Powell project. For the same reasons that PHB has a present interest in the confidentiality of the sentences in these emails, we likewise cannot relate that context in a public order without negating the purpose of the exemption. Suffice it to say that the context makes clear that despite PHB’s present ownership of the 3000 SE Powell property, the redacted language in emails 3 and 4 still falls within the scope of ORS 192.345(6) because it discusses information to be evaluated in the appraisal of an adjacent property, 3032 SE Powell, that PHB has commissioned as part of due diligence for potential acquisition. This conclusion is supported by the timing, content, and parties to emails 3 and 4.

Petitioner has argued that there is nonetheless a public interest in the release of this information. Because PHB has agreed that it will, eventually, release these redacted emails, the question really is whether or not there is a public interest in the immediate release of these emails. While there may be a private interest to one or more of petitioner’s clients in this information, our review of the emails does not suggest an urgent public interest. We can also say that none of the contents of these emails appear to relate to petitioner’s stated interest of ensuring that PHB operates lawfully and ethically in its awarding of public contracts. This is, of course, irrelevant to whether or not an exemption applies, but does have relevance to evaluating the public’s interest in release.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink that reads "Rod Underhill". The signature is written in a cursive style with a large, looped "R" and "U".

ROD UNDERHILL
District Attorney
Multnomah County, Oregon

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