



ROD UNDERHILL, District Attorney for Multnomah County

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November 25, 2019

Alan Kessler
805 S.W. Broadway, Suite 1580
Portland, Oregon 97205

Jenifer Johnston
Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Alan Kessler seeking access to an unredacted copy of an email

Dear Mr. Kessler and Ms. Johnston:

In his public records appeal, dated November 13, 2019, petitioner Alan Kessler, asks this office to order the City of Portland to disclose "an unredacted copy of the document marked as Exhibit 105 in the November 2019 trial in Multnomah Circuit Court, Case No. 18CV43134." The referenced court case was a public records lawsuit between petitioner and the City of Portland that recently went to trial. The document at issue was an exhibit introduced by the City in that trial, but with certain redactions applied on the basis of attorney-client privilege.

Petitioner made this public records request on November 5, 2019. On November 13, 2019, the City replied that redactions had been made to the record to protect privilege and that the City did not intend to waive privilege. This appeal ensued.

In the materials submitted in support of this appeal, petitioner argued that the City had waived privilege as to the redacted portions due to public statements made characterizing the contents of the emails. The details of that argument are not relevant to the disposition of this petition because, after reviewing petitioner's argument, the City agreed to provide petitioner exactly what he was seeking: an unredacted copy of the email thread documented in Exhibit 105.

The City asserts that, because it has now provided the requested document, the present petition is moot. Where, as here, the public body has provided the record at issue between the time of the filing of a petition and our order, we have dismissed such petitions (or the portions of them relating to the disclosed record) as moot. See, for example, *Petition of van der Voo for InvestigateWest*, MCDA PRO 15-12 (2015); *Petition of Kerensa*, MCDA PRO 19-20 (2019); *Petition of Barnes for The Oregonian*, MCDA PRO 17-03 (2017).

Petitioner disagrees that this petition should be dismissed and requests that we nonetheless order the City to provide the record. He argues that the situation he was in is capable of repetition, yet likely to evade review. Petitioner asserts that the City "has a bad habit of making bogus claims of privilege and then withdrawing those claims only when challenged."

This assertion is unsupported on the record presented in this petition. But, assuming it were, this office lacks the inherent authority of a court of law to enter injunctions or grant punitive or declaratory relief. Our only authority to sanction is found in ORS 192.407, and there is no colorable claim in this case that the prerequisites for exercising such authority have been met.

Because petitioner is now in possession of the disputed record, there is no relief that this office has authority to grant in this matter.

ORDER

Accordingly, the petition is dismissed as moot.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon