



ROD UNDERHILL, District Attorney for Multnomah County

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July 7, 2020

John Riddell
18637 S.E. Giese Road
Gresham, Oregon 97080

Sherisa Davis-Larry
Gresham City Attorney's Office
1333 N.W. Eastman Parkway
Gresham, Oregon 97030

Re: Petition of John Riddell seeking an unredacted copy of a public records form

Dear Mr. Riddell and Ms. Davis-Larry:

In his public records petition, John Riddell has requested that this office order the City of Gresham to release an unredacted copy of a public records request form that identifies the person who made a July 7, 2017 request to the Gresham Fire Department.

The underlying records request relates back to a 2017 dispute between petitioner and his neighbors involving petitioner's fence line. Petitioner owns a formerly-rural farm property in an area that the City of Gresham has annexed and is now being developed for housing. Some tension has resulted between the rural uses petitioner puts his property to and the urban residential development that is now immediately adjacent to it. The dispute became sufficiently acrimonious that it received media coverage from multiple outlets.¹

In an effort to learn who initiated complaints about his property petitioner now seeks the identity of the person who made a public records request of the Gresham Fire Department for records documenting their response to the complaint.² For the reasons discussed below and based on the specific factual context of this request, we deny the petition.

DISCUSSION

A. Information of a personal nature – ORS 192.355(2)

ORS 192.355(2) exempts from disclosure,

¹ See, English, Joe. "Pile of manure dumped in Gresham neighborhood: 'He's going to show you who's boss,'" *KATU*, 29 Jun. 2017; Swindler, Samantha, "Gresham's urban/rural divide meets at a manure pile," *The Oregonian/OregonLive*, 8 Jul. 2017; Sparling, Zane, "Proposed subdivision ignites smelly snafu," *Pamplin Media Group*, 18 Jul. 2017.

² Petitioner assumes that the person who made this records request is the same person who made the complaint about his property.

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.

Petitioner in this case seeks a name that was redacted from a record he received from the City of Gresham. We have previously recognized that a name constitutes “information of a personal nature.” *Petition of Babcock*, MCDA PRO 04-10 (2004). The question then is whether or not the disclosure of a person’s name constitutes an unreasonable invasion of privacy. In most cases, the answer will be no. *Petition of Rask*. Att’y Gen. PRO (March 20, 2003). However, if the public body makes a fact-specific showing that the release of a person’s name will unreasonably invade his or her privacy, it may withhold that information.

In the leading Oregon case on the personal privacy exemption, Justice Gillette wrote “a disclosure ‘constitutes’ an unreasonable invasion of privacy if the agency’s act of releasing the information, *or the acts of those to whom the information is released*, are reasonably anticipated by the agency to lead to such an invasion of privacy.” *Jordan v. MVD*, 308 Or 433 (1989) (Gillette, concurring) (emphasis in original).

In support of its position, the City of Gresham has referenced the media coverage cited above and provided a declaration from Deputy Fire Marshal Yacapin. The declaration sets out the factual context of the complaints in 2017 and 2019 about petitioner’s property, the City’s actions with regard to petitioner’s agricultural burn permit, and petitioner’s actions in response. Based on these materials, the City of Gresham has sufficiently articulated why disclosure of this individual’s identity to this requestor would constitute an unreasonable invasion of privacy.

Petitioner has made no compelling argument that the public interest nonetheless requires disclosure and, reviewing the records and context, we find none.³

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

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³ Although we agree with the City’s position that petitioner is pursuing a private interest rather than a public interest in seeking this information, we do caution the City that pursuing a private interest is not contrary to the public records law. Individuals may utilize the public records law to advance private interests. Weighing the motivation behind a request only becomes relevant when evaluating fee waivers (not at issue here), or when determining whether or not an otherwise applicable exemption must yield in the face of an overriding public interest.