



**MIKE SCHMIDT**, District Attorney for Multnomah County

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September 15, 2020

Alan Kessler  
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Portland, Oregon 97205

Heidi Brown  
Chief Deputy City Attorney  
Portland City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Alan Kessler challenging the denial of a request for certain police information by the Portland Bureau of Human Resources

Dear Mr. Kessler and Ms. Brown:

Petitioner has asked that this office order the City of Portland's Bureau of Human Resources (BHR) to provide him records responsive to the following request:

For each day beginning with May 25, 2020 and ending on the day this request is completed, please provide time logs showing the times worked (e.g. start time, stop time, break period, lunch) for each member (sworn or otherwise) of the Portland Police Bureau, including the staff member's name and any corresponding identifying numbers.

The City has not provided petitioner any records pursuant to this request. The City states that this is because the request expressly included "identifying numbers," which the City asserts places additional procedural requirements on petitioner that, to date, he has not complied.

For the reasons discussed below, we deny the petition.

## **DISCUSSION**

### **A. Contents of Certain Requests for Disclosure – ORS 192.363**

ORS 192.363 requires that an individual making a public records request for, as relevant here "employer-issued identification card numbers" must provide in his request:

1. The names of the individuals for whom personal information is sought;
2. A statement describing the personal information being sought; and
3. A statement that shows by clear and convincing evidence that the public interest requires disclosure in a particular instance.

Petitioner's request in this matter expressly requests employee "identifying numbers," which brings it within the scope of ORS 192.363. A public body is prohibited by ORS 192.363 from providing records responsive to a request to which ORS 192.363 applies unless the requestor also submits the information identified in the statute. Petitioner has declined to do so. While this may occasionally result in apparent absurdities, the requirements of the law are unambiguous. See, *Petition of Kessler*, MCDA PRO 20-24 (2020).

Petitioner argues that, because BHR is not the "public body" that employs police officers, he is not required to answer these questions.<sup>1</sup> Consistent with the Attorney General, we conclude that this section applies to a centralized human resources department just as it would to the actual bureaus or departments it serves. *Petition of Dudash*, Att'y Gen. PRO (12/30/19) (finding ORS 192.363 applicable to the State Department of Administrative Services when processing a request for information about Department of Agriculture employees).

To access the records he is seeking petitioner must either, 1) provide information responsive to the ORS 192.363 prompts sufficient to meet the applicable burden, or 2) make a new public records request that does not "request [...] disclosure of records described in ORS 192.355(3)" and, thereby, avoid the need to provide that additional information.

Despite petitioner's argument to the contrary, we do not see this as a "segregation" issue under ORS 192.338. Due to the unique requirements of ORS 192.363, the City cannot be said to have denied petitioner's request at all because it has not received a perfected request to deny. The City has informed petitioner precisely what he needs to do to get the records he seeks: either provide the ORS 192.363 information, or make a request that omits identification numbers from its scope. In its submission to this office, counsel for the City writes:

Mr. Kessler is welcome to submit a new request not subject to the limitations of ORS 192.363 by asking for information without requesting employer-issued identification numbers. The City expected Mr. Kessler to do just this, and after this appeal was filed, the City notified him of this while also advising Mr. Kessler that if he submitted a request for job titles of PPB employees and times worked during the timeframe requested, this information would be provided to him free of charge.

Petitioner has been provided a clear path to access the non-exempt information he seeks. While some might view this as a series of unnecessary procedural hoops to jump through, this is what the public records law requires in this instance. The City may not elect to ignore the requirements of the statute simply because it would be more efficient to do so in a particular instance.

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<sup>1</sup> In summary he argues that although a public body is free to subdivide itself for purposes of the public records law process (and thereby require requestors to submit requests to individual departments rather than to the City as a unitary body), doing so has consequences. One of which, he asserts, is that the employees become solely the employees of the subdivision for which they work for purposes of references in the public records law to "the public body." We reject this line of argument without further discussion.

**ORDER**

Because the request in this case did not comply with ORS 192.363, despite expressly seeking information contained in ORS 192.355(3), the petition seeking to compel the City to respond to it is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Schmidt". The signature is fluid and cursive, with a prominent initial "M" and a stylized "S" at the end.

MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon

**20-36**