



MIKE SCHMIDT, District Attorney for Multnomah County

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November 12, 2020

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Law Office of Alan L Kessler
1001 S.E. Sandy Blvd, Suite 210
Portland, Oregon 97214

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

Re: Petition of Alan Kessler challenging redactions made to a public records request response

Dear Mr. Kessler and Ms. Johnston:

Petitioner has petitioned this office seeking an order compelling the City of Portland to release an unredacted, or less-redacted, version of its response to his request for records contained on certain City email servers containing the phrase: "After performing the work on your request, the actual fees due are[.]"

The City redacted multiple portions of the responsive emails on the basis of attorney-client privilege. This office has reviewed the redactions made and find that some are supported, and others are not. Most of the records here are email threads where the same statement appears multiple times throughout the records as it is quoted in each successive email.

- Page 8 – The redaction as it appears on this page (twice) or elsewhere in the production is not privileged and must be released. The text relates the fact of attorney involvement in an issue, but is not, and does not disclose the contents of, a communication involving a lawyer or her representative.
- Pages 30–64 – This is a single email thread involving communication between Mark Ross, a media relations employee with the Parks Bureau, and Carrie Wilton, a paralegal at the City Attorney's Office. Much of the redacted material, except as specifically noted below, is not privileged. Most of these communications seek Ms. Wilton's technical assistance with the operation of the public records management software, GovQA, and do not constitute communications in furtherance of the provision of legal services.
- Page 41 – The single sentence email appearing at the top of this page, dated May 21, 2020 5:56 PM, begins to transition from technical assistance to legal assistance. This statement may be redacted here and wherever else in the production it appears. The rest of the material on this page is not privilege and must be released.

- Page 45 – The full text of the message contained at the top of this page, dated May 21, 2020, 5:58 PM, is properly redacted. Other items appearing on this page should be resolved consistent with the discussion above.
- Pages 65–80 – These redactions involve direct communication between an attorney and a client relating to resolution of a legal issue and are properly made.

ORDER

Accordingly, the petition is granted in part and denied in part. The City is hereby ordered to provide petitioner with a copy of the records redacted consistent with the discussion above. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Very truly yours,



MIKE SCHMIDT
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.