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January 29, 2021

Jeff Merrick
7891 S.E. 15th Avenue
Portland, Oregon 97202

Brian Hungerford
The Hungerford Law Firm
P.O. Box 3010
Oregon City, Oregon 97045

Re: Petition of Jeff Merrick seeking a contract regarding former Riverdale School District Principal Robinson's resignation

Dear Mr. Merrick and Mr. Hungerford:

Petitioner, Jeff Merrick, requested in relevant part that the Riverdale School District (Riverdale) provide him with “copies of all contracts binding on Riverdale School District to pay or otherwise compensate ... Principal Robinson.” Riverdale denied his request, indicating that any responsive records were contained in Ms. Robinson’s personnel file and were exempt from disclosure under ORS 342.850(8). Petitioner has now asked this office to find this statute inapplicable in this instance and order Riverdale to release the record to him.

This summer both the Riverdale superintendent and the principal of the high school, Paula Robinson, resigned. The reported reason for Ms. Robinson’s resignation was to spend more time with her family. Petitioner has sought more information regarding that resignation, posing a number of questions regarding potential payment of public funds in severance and waiver of legal claims that are, at present, unanswered.

Petitioner makes compelling policy arguments surrounding transparency and public right-to-know on issues of budget and governance. However, the statutory confidentiality provisions surrounding licensed teacher personnel files in Oregon do not permit us to consider these well-taken arguments. For the reasons discussed in more depth below we find that the document requested is, in fact, a teacher personnel record and, accordingly, is unconditionally exempt from disclosure.

DISCUSSION

A. Teacher Personnel Files – ORS 342.850(8)

As to teacher personnel files ORS 342.850(8) provides,

The personnel file shall be open for inspection by the teacher, the teacher’s designees and the district school board and its designees. District school boards shall adopt rules governing access to personnel files, including rules specifying whom school officials may designate to inspect personnel files.

The Oregon Supreme Court has stated that this section absolutely exempts documents in teacher personnel files from disclosure under the public records law, provided a district has enacted policies under this section making the files confidential. *Oregonian Publishing Co. v. Portland School Dist. 1J*, 329 Or 393, 400 (1999). Riverdale has enacted such a policy.

Further, the definition of “teacher” applicable to ORS 342.850(8) includes licensed school administrators who supervise teachers. Ms. Robinson holds active teacher and administrator licenses from the Oregon Teacher Standards and Practices Commission. Thus, any documents that are properly in Ms. Robinson’s personnel file are unconditionally exempt from disclosure under the public records law. As with any unconditional exemption, we are not authorized to weigh the public’s interest in accessing these materials. As such, we reject petitioner’s policy and public interest arguments without further discussion.

Riverdale has informed this office that the contract at issue here is contained in Ms. Robinson’s personnel file. Petitioner responds, correctly, that this is not conclusive. We must look to a record’s contents and not mechanically find it exempt based on where a school district has elected to file it. *Oregonian v. Portland School District 1J*, 329 Or 393 (1999) (a school police investigation report that “does not address an individual school district employee’s terms and conditions of employment” is not exempt from disclosure even if physically placed in an employee’s personnel file.)

In this case, it is not a particularly close call. Unlike in *Oregonian*, this document does address an individual employee and does relate directly to her employment (or end thereof). A document setting out the terms of an employee’s separation from employment is without a doubt a “personnel record” that one would expect to find in a personnel file. Indeed, were one reviewing a personnel file it would be highly unusual not to find as a concluding item a resignation letter, termination notice, arbitration order, or similar document. Of relevance, the Riverdale union contract specifies that a teacher’s personnel file shall contain “all materials relative to the member’s employment,” which a separation agreement certainly is.¹

Although under a somewhat different statutory scheme, we have previously found a similar separation agreement to constitute a “personnel record” of Oregon Health and Science University in relation to a faculty member. *Petition of Sordyl*, MCDA PRO 19-27 (2019).

Petitioner argues that this case is better analogized to a list of school employees on administrative leave, a record that this office and the court have both ruled is subject to release. *Petitions of Sordyl & Slovic*, MCDA PRO 17-15 (2017); *Portland Public Schools v. Oregon Publishing Corp. and Sordyl*, 17CV14047, Mult. Cty. Cir. Ct. (J. Matarazzo, 2018). We disagree. A list of employees on leave undoubtedly contains *information* that is also contained in some

¹ It is not clear that Ms. Robinson was a member of the teacher’s union. Indeed it is likely that as an administrator she was not. However, the union contract is relevant context for what regular practice as to the maintenance and contents of “personnel files” is within the Riverdale School District. “Collective Bargaining Agreement, 2017-2021, between Riverdale School District #51J and the Riverdale Teacher’s Association” Article 7A (https://www.riverdaleschool.com/cms/lib/OR02000153/Centricity/Domain/46/2017-21_RTACBA_Searchable_for_Web.pdf)

record contained in a personnel file, but ORS 342.850(8) does not exempt information, it exempts records.

The record at issue in *Sordyl & Slovic* could not have been, and was not, placed in an individual personnel file. It was a record with an independent human resources purpose that pertained to multiple employees. In contrast, the record at issue here documents the terms of a particular employee's separation from employment and is of a fundamentally different nature than what this office ordered released in *Sordyl & Slovic*.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Schmidt", is written over a horizontal line.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

21-01