



MIKE SCHMIDT, District Attorney for Multnomah County

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July 19, 2021

Megan Meisner
3505 S.E. Kelly Street
Portland, Oregon 97202

Mary Kane
Portland Public Schools
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of Megan Meisner seeking materials relating to a Portland Public Schools administrator

Dear Ms. Meisner and Ms. Kane:

Petitioner, Megan Meisner, seeks this office to order Portland Public Schools (PPS) to provide her with:

- 1) the findings letter from an investigation of Maude Lamont in 2019; and
- 2) a (less redacted) copy of a legal invoice or check paid to: Athlone Consulting for service on September 11, 2019.

Ms. Lamont is an assistant principal for PPS. In 2019 she was acting as the principal of Wilson High School, which was renamed Ida B. Wells-Barnett High School in January of this year. Local media has reported that Ms. Lamont resigned from her position at Wilson High in the midst of an investigation into her improper disposition of contraband seized from students.¹ The present appeal relates to records concerning PPS's investigation of Ms. Lamont.

PPS denied the first request, citing ORS 342.850(8) and ORS 192.345(12). PPS did provide petitioner with a copy of the invoice responsive to the second question, but redacted some of the responsive fields such that the invoice now only shows the date of service and total amount paid.

As discussed below we agree with PPS that the documents relating to the investigation of Ms. Lamont are unconditionally exempt from disclosure, but we also find that the redactions to the invoice are overbroad. As such, the petition is granted in part.

¹ "Wilson High School's Acting Principal Resigns Amid an Investigation Into Her Actions Inside an Evidence Room," Willamette Week, May 13, 2019 (<https://www.wweek.com/news/schools/2019/05/13/wilson-high-schools-acting-principal-resigns-amid-an-investigation-into-her-actions-inside-an-evidence-room/>)

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.

Earlier this year we directly addressed this section's applicability to school administrators. Petition of Merrick, MCDA PRO 21-01 (2021). In Merrick, we wrote:

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). PPS has enacted such a policy. Further, the definition of "teacher" applicable to ORS 342.850(8) includes licensed school administrators who supervise teachers.

Ms. Lamont holds active teacher and administrator licenses from the Oregon Teacher Standards and Practices Commission. Thus, any documents that are properly in her personnel file are unconditionally exempt from disclosure under the public records law. As with any unconditional exemption to the public records law, 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.

Having reviewed the two responsive documents provided to us, we are convinced that they would routinely be in a personnel file. Further, PPS has informed us that they are, in fact, in Ms. Lamont's personnel file. With these two elements met, records are lawfully exempted from disclosure by ORS 342.850(8).

B. Attorney-client privilege – ORS 192.355(9), ORS 40.225

The confidentiality of communications between an attorney and his or her client is a foundational principle of our system of laws. *Upjohn Co. v. United States*, 449 U.S. 383 (1981) ("The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.") This privilege extends to public organizations that employ or retain lawyers to give them legal advice and shields those communications from disclosure under the public records law. *Port of Portland v. Or. Ctr. for Envtl. Health*, 238 Or App 404, 409 (2010) (noting incorporation of attorney-client privilege into the public records law by way of ORS 192.355(9)).

As applied in this case, although the fact of payment or billing is not privileged, the narrative portions of an attorney billing statements can be. As the Court of Appeals has held, knowing what a lawyer worked on could allow opposing counsel to "determine what defenses had been explored, why they had not been pursued, and similar things." *State v. Cunningham*, 161 Or App 345 (1999). Although *Cunningham* does not address privilege, per se, but rather the

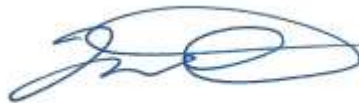
interpretation of a statute specific to indigent criminal defense records, this statement of purposes is consistent with how federal courts have resolved questions of privilege specific to billing records. See, e.g., *Mohr v. Security Credit Services, LLC*, 141 F.Supp.3d 179 (NDNY 2015) (“Time records generally have been held to be protected from disclosure by the attorney-client privilege as they may reveal litigation strategy or the specific nature of the service provided.”) But see, *Clarke v. Am. Commerce Nat. Bank*, 974 F2d 127, 130 (9th Cir 1992) (billing statements not privileged where they only contain “information on the identity of the client, the case name for which payment was made, the amount of the fee, and the general nature of the services performed.”)

In this case we find that the sections of the invoice under “activity,” “qty,” and “rate” are within the “general nature of the services performed” formulation from *Clarke* and therefore subject to disclosure. The “description” field is properly redacted under the rationale of *Cunningham* and *Mohr* as it would reveal more detail about the nature of the work the lawyer was performing for PPS.

ORDER

Accordingly, the petition is granted in part and denied in part. PPS is ordered to promptly release to petitioner a copy of the invoice responsive to the second request with only the “description” field redacted. This release is subject to the payment of fees 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.