



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

1200 SW First Ave, Suite 5200 • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

September 23, 2021

Chuck Slaney  
chuck.slaney@gmail.com [via email only]

Erik Van Hagen  
Legal Services Director, TriMet  
1800 SW 1<sup>st</sup> Avenue, Suite 300  
Portland, Oregon 97201

Re: Petition of Chuck Slaney seeking a copy of a legal investigation from TriMet and billing records generated during the same

Dear Mr. Slaney and Mr. Van Hagen:

Petitioner, Chuck Slaney, requested that TriMet provide him with “a complete copy of the Bus Maintenance Investigation report completed about April 13, 2020[.]” He further requested “a copy of the cost and bill for the outside attorney and any notes written by the attorney.”

TriMet provided him with a redacted version of the attorney’s invoice but declined to provide the investigation report, citing the attorney-client privilege. Petitioner then appealed these decisions to this office.

For the reasons discussed below, we find that the withheld materials are exempt from disclosure and deny the petition.

## DISCUSSION

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

ORS 192.355(9) exempts from disclosure under the public records law:

Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

The attorney-client privilege extends to public agencies, except as expressly provided otherwise by the legislature. *Port of Portland v. Or. Ctr. For Env'tl. Health*, 238 Or App 404, 409 (2010). As applied to the public records law by ORS 192.355(9), this creates an unconditional exemption from disclosure. This means that, if we find the requirements to establish privilege are met, we may not weigh the public’s interest in the records. *Petition of Manning*, MCDA PRO 19-18 (2019).

To assess whether or not a communication is privileged, we apply the “primary purpose” test: “was the primary purpose of the communication/investigation/report/etc. to facilitate the provision of legal services or was it in furtherance of a different goal.” *Petitions of Bial et al.*, MCDA PRO 21-24 (2021).

In this case TriMet commissioned Hart Wagner LLP, a local law firm, to investigate complaints and potential policy violations that had arisen in TriMet's Bus Maintenance Division. A lawyer from Hart Wagner LLP conducted an extensive investigation and produced a detailed report (the "Bus Maintenance Investigation report") that summarizes the factual basis for each issue and provides bullet pointed recommendations for addressing them.

Our courts have consistently held that such an investigation, when made by an attorney or an attorney's agent for the purposes of facilitating the rendition of legal advice, is privileged. *Klamath County School District v. Teamey*, 207 Or App 250 (2006); *State ex rel. OHSU v. Haas*, 325 Or 492, 501-02, 942 P.2d 261 (1997) ("A lawyer who conducts an internal investigation concerning a client's potential legal liability, provides the client with a written report on the results of that investigation, and advises the client on ways to resolve problems uncovered in the investigation renders professional legal services to the client.") We have followed these cases and, likewise, found similar investigations to be privileged. See, *Petition of Manning*, MCDA PRO 19-18 (2019), *Petition of Wyatt*, MCDA PRO 15-21 (2015), and *Petition of Schmidt*, MCDA PRO 13-07 (2013).

The Bus Maintenance Investigation report is closely analogous to the document we found exempt in *Wyatt* (15-21) in that specific discussion of the facts underlying an allegation is immediately followed by evaluation and analysis by the attorney. The detail and analysis present here and in *Wyatt* differentiate them from our recent decision in *Bial* (21-24). In *Bial*, on a detailed record, we found an outside audit of a City of Portland bureau subject to release, despite it being commissioned by the City's lawyers, where the primary purpose was not the provision of legal services but a management and culture audit.

Having concluded that the primary purpose of the Bus Maintenance Investigation report was the provision of legal services, the entire report is unconditionally exempt from disclosure.

With respect to the legal invoice, TriMet has, consistent with our previous ruling in *Petition of Meisner*, MCDA PRO 21-42 (2021), released a copy of the invoice with hours and costs visible, but descriptions of the legal services provided redacted. There is no basis to distinguish this case from *Meisner* and, as such, we find that the redacted material is properly exempt from disclosure for the reasons discussed at length in *Meisner*.

### ORDER

Accordingly, the petition is denied.

Very truly yours,



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MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon