



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

May 18, 2022

VIA EMAIL ONLY

Patrick Cashman
pcashman20@gmail.com

Jenifer Johnston
jenifer.johnston@portlandoregon.gov

Re: Petition of Patrick Cashman seeking records from the City of Portland

Dear Mr. Cashman and Ms. Johnston:

On April 28, 2022, petitioner, Patrick Cashman, asked the City of Portland to provide him: “the complete and current ‘reroute list’ referred to in the email of Jeff Baer to Jake Dornblaser of 12/24 in which he stated ‘Please let me know if you need others blocked or added to the reroute list, however we may not be able to get to this until Monday morning due to the holiday.’” This request references a determination by the City that certain emails from Mr. Cashman should be automatically rerouted when sent to certain City employees. Mr. Cashman sought a copy of the list of address from which his messages were rerouted.

On May 6, 2022, the City provided petitioner with an email thread covering 8 pages. The City informed him that the “reroute list” appeared on pages 2–3 of the thread. Page 3 contains one redacted sentence, pages 4–8 are effectively redacted in their entirety. Petitioner promptly appealed to this office, requesting that we order the City to produce the redacted material.

The City asserts that the redactions are all supported by the attorney-client privilege. For the reasons discussed below, we agree and deny the petition.

DISCUSSION

A. Responsive Records

The City points out that petitioner’s public records request was for the “reroute list,” something the City states is fully contained in the unredacted portions of the email thread provided to petitioner. The redacted material is, according to the City, not responsive to his public records request. Having reviewed the redacted material contained in this email thread, we can confirm that that the redacted material contains no additional list or other indication of email addresses from which petitioner’s message are rerouted.

Since there is no responsive material in the redacted pages, petitioner’s initial records request has not been denied. We, of course, understand that the presentation of redacted material simply engenders the next records request for “the material redacted for the previous response.” Because the City has made its argument on the propriety of the redactions, we have reviewed the material, and further delay would serve no purpose, we proceed to consider it below.

B. 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 office has recently, and extensively, explored the applicability of privilege to email threads. *Petition of Bial*, MCDA PRO 22-11 (2022) (“*Bial II*”). In that opinion we set out seven different scenarios applicable to the circumstances of that petition where privilege did or did not apply. Those relevant to the records in this case are:

“Internal emails among holders of the privilege that repeat legal advice attributed to a City lawyer may have that legal advice redacted;” and

“Non-privileged emails or documents forwarded to a lawyer for the purpose of legal review or analysis are privileged as part of the communication.”

Id. at 5. In this case, the redaction on page 3 fits within the “internal repetition of legal advice” rule, and the balance of the redactions are within the “messages forwarded to counsel for advice” rule. As such, the City’s redactions for privilege are supported by law and no more extensive than necessary to comply with our ruling in *Bial II*.

ORDER

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon