



MIKE SCHMIDT, District Attorney for Multnomah County

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January 18, 2023

VIA EMAIL ONLY

Alan Kessler
ak@alankesslerlaw.com

Jenifer Johnston
Sr. Deputy City Attorney
Jenifer.Johnston@portlandoregon.gov

Re: Petition of Alan Kessler seeking records from the City of Portland

Dear Mr. Kessler and Ms. Johnston:

On December 6, 2022, Mr. Kessler petitioned this office for a public records order compelling the City of Portland to provide him with unredacted records responsive to his request for “all text messages archived in SMARSH which contain the text: ‘imessage.’”

The City produced records with redactions applied for three reasons: 1) personal phone numbers of City employees pursuant to ORS 192.355(3); 2) one phone number for personal safety reasons; and 3) a password pursuant to ORS 192.345(22). Having reviewed the records only the last redaction is supported by law.

This office has previously rejected the City’s claim of exemption under ORS 192.355(3) under indistinguishable circumstances. *Petition of Kessler*, MCDA PRO 20-41 (2020) *aff’d sub. nom. City of Portland v. Kessler*, Mult. Co. Cir. Ct. 20CV38625, March 7, 2022 (Russell, J.). Litigation of that order remains ongoing in the appellate courts, but pending further judicial action it remains controlling authority for this office on this issue. Although the judgment in the civil litigation is stayed pending appeal, a stay of judgment does not reach beyond the confines of the case within which it was entered. The reasoning and outcome in *Kessler*, 20-41, control my decision on this issue here.

The other two exemptions asserted apply to a single redaction each, and they may be resolved without extended discussion. Redaction of the particular phone number in the context presented by these records is not supported by the personal safety exemption. Passwords used by City employees to access materials or systems are exempt under ORS 192.345(22), and that single redaction is approved.

ORDER

Accordingly, the petition is granted. Excepting only the password appearing in line 184, which may be redacted, the City is ordered to provide petitioner with unredacted records responsive to his request or, within seven days of this order, provide notice of intent to initiate

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further proceedings as provided in ORS 192.411 and 192.415. This production is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Regards,

A handwritten signature in black ink, appearing to read "Mike Schmidt", with a stylized flourish extending to the right.

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.

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