



MIKE SCHMIDT, District Attorney for Multnomah County

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January 23, 2023

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 December 12, 2022, petitioner, Patrick Cashman, asked the City of Portland to provide him: “all communications regarding application for any form of land use review for the subject property including emails and texts of BDS employees.” The City produced responsive records, but redacted large sections of certain pages, citing the attorney-client privilege. This petition ensued.

The City produced unredacted versions of the disputed records to this office as required by law. Having reviewed those materials, and the contextual information provided by the City, we agree that the redacted portions are privileged and may properly be withheld from disclosure.

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.

Given the nature of the exemption asserted and of the records at issue, we cannot discuss the specific contents of the records in a public order. The following legal principles apply to redactions contained in these records:

- 1) Internal emails among holders of the privilege that repeat legal advice attributed to a lawyer may have that legal advice redacted. *Petition of Bial*, MCDA PRO 22-11 (2022).
- 2) Communications between representatives of a client are privileged, even if they do not directly include a lawyer, if the proponent of the privilege adequately establishes

that the communication was made for the purpose of facilitating the rendition of professional legal services. ORS 40.225(2)(d).

- 3) Communications between a representative of a client and the lawyer, relating to the legal representation of the client, are core privileged material and are exempt from disclosure. ORS 40.225(2)(a).

Here the City has provided context sufficient to establish that the redacted portions of this records production fit into one of the categories above and are thus unconditionally exempt from disclosure by operation of ORS 192.355(9).

ORDER

Accordingly, the petition is denied.

Very truly yours,

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