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March 15, 2023

VIA EMAIL ONLY

Patrick Cashman
pcashman20@gmail.com

Trevor Byrd
trevor.byrd@portlandoregon.gov

Re: Petition of Patrick Cashman seeking production of information redacted by the City of Portland from applications for the Community Involvement Committee

Dear Mr. Cashman and Mr. Byrd:

On January 23, 2023, petitioner, Patrick Cashman, made a public records request to the City of Portland for, “the applications showing residence of record and primary employment (meaning providing the majority of their declared annual income) of the current appointees of the Community Involvement Community [sic] used to meet the explicit geography and employment requirements of OAR 660-015-0000(1).” The City provided petitioner with applications from the seven individuals who applied for the commission, however the City redacted demographic information and personal contact information from each application.

Specifically, the City redacted the responses to questions it asked concerning the applicants’ age, racial or ethnic identity, languages spoken in their home, tribal affiliation, disability, gender, and sexual orientation.

For the reasons discussed below, we find that the City has not produced evidence sufficient to support its claim of exemption as to this demographic information. As to the individuals who were selected to serve on the commission, their contact information is exempt from disclosure

DISCUSSION

A. Information of a Personal Nature – ORS 192.355(2)

ORS 192.355(2) exempts from disclosure,

Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

The City observes as a threshold matter that demographic information and contact information, such as what is redacted in this case, is “personal.” This is self-evident. The City goes on to argue, “as the petitioner seeking disclosure, Mr. Cashman has the burden to establish by clear and convincing evidence that disclosing this information in an identifiable fashion does not constitute an unreasonable invasion in privacy.” The City has conflated the burden of production with the burden of persuasion. See, *State v. James*, 339 Or 476, 484 (2005) (discussing the differences). While a records requestor may indeed have the burden of persuasion as to the invasion of privacy element, our courts are clear that the public body retains the initial burden of production as to both elements:

The personal privacy exemption may be invoked by a public custodian of records upon evidence that (1) the information is personal in nature and (2) disclosure would unreasonably invade privacy. If the public body produces evidence to satisfy those criteria, the burden shifts to the party seeking disclosure, who must show, by clear and convincing evidence, that the public interest nonetheless demands disclosure.

Mail Tribune v. Winters, 236 Or App 91, 96 (2010). In *Mail Tribune* the Court of Appeals found that the elected official in question had “failed to satisfy his burden of producing evidence that disclosing [the records] would constitute an unreasonable invasion of an individual’s personal privacy.” *Id.* Accordingly, we must conclude that the City has the burden to produce evidence that disclosing these records would constitute an unreasonable invasion of privacy.

The City has produced no evidence as to any individual person whose information appears in these records demonstrating how release of this information would unreasonably invade any individual’s privacy. Indeed it seems unlikely that it could do so: this information was voluntarily provided to the City by applicants who had the option to indicate “prefer not to answer” or similar as to each question. The City’s general assertion that reports of bias crimes have increased recently, although true, does not alter this analysis.

As to personal contact information for the applicants, we likewise do not write on a clean slate. *Guard Publishing v. Lane County School Dist.*, 310 Or 32 (1990), provides that the release of home addresses of public employees under significantly more dire circumstances than presented here did not meet this standard. As this office and the courts have repeatedly said, blanket nondisclosure policies cannot support a claim of exemption under ORS 192.355(2).

Considering the particular circumstances of the records in this case, and controlled by the appellate decisions in *Mail Tribune* and *Guard Publishing*, we do not find that the City has met its burden of producing individualized evidence tending to show that release of any of the redacted information would unreasonably invade the privacy of any applicant.

B. Public Employee Information – ORS 192.355(3)

ORS 192.355(3) exempts from disclosure,

public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses,

driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.

The City also argues that, as to those individuals who were selected to serve on the Community Involvement Commission, their personal contact information is independently exempt from disclosure under ORS 192.355(3). We agree. The volunteer applications are documents that could would ordinarily be contained in an employee's "personnel record" and, as such, any of the categories of information covered by this section are unconditionally exempt from disclosure. The City argues, in a footnote, that this section should also extend to applicants for a position or, in its words, "potential employees." We see no statutory basis support this suggestion.

ORDER

Accordingly, the petition is granted in part. The City of Portland is ordered to provide petitioner copies of the documents responsive to his request redacted consistent with the discussion above. This production is subject to the payment of fees, if any, 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.