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via email only

Cristian Biro
cristibiro@yahoo.com

Sherisa Davis-Larry
sherisa.davis-larry@greshamoregon.gov

Re: Petition of Cristian Biro requesting specific code complaints from the City of Gresham

Dear Mr. Biro and Ms. Davis-Larry:

Petitioner, Cristian Biro, has submitted a public records petition under ORS 192.411 requesting this office order the City of Gresham to provide him with, “records of the number of complaints made against [him] by Mr. Cammack.” The City denied the request citing ORS 192.355(4), which exempts from disclosure certain information submitted in confidence. Petitioner then sought this office’s intervention under the public records law.

In its response to this office the City continues to assert the applicability of ORS 192.355(4) as to any code enforcement complaints that may exist, but further points out that it does not possess a record strictly responsive to petitioner’s request. That is, it does not possess a record counting the number of complaints (if any) made by David Cammack. This is, strictly speaking, correct. The public records law does not require a public body to answer questions about its records or conduct research or analysis. ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL (2019) at 7. However, the City acknowledges that petitioner is most likely seeking the actual text of any responsive complaints and has also addressed that issue on the merits. We appreciate the nod to efficiency and likewise proceed to address the substantive merits of the asserted exemption.

Petitioner states in his submission that Mr. Cammack has obtained a stalking order against him and that petitioner is seeking records of any complaints that Mr. Cammack has made against him and his property as evidence to introduce in support of his claim that Mr. Cammack is the instigator in this conflict. Apart from noting that each party has filed a stalking order against the other this year, wading in to the merits of the underlying dispute is not necessary to the resolution of the public records matter in front of us.¹

¹ *Biro v. Cammack*, Mult. Co. Cir. Ct. 24SK00601 (temporary order denied Feb. 16, 2024); *Cammack v. Biro*, Mult. Co. Cir. Ct. 24SK00722 (temporary order granted Feb. 26, 2024, permanency hearing pending) .

A. Confidential Submissions – ORS 192.355(4)

ORS 192.355(4) exempts from disclosure under the public records law:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

This office has previously concluded that this section applies to the identity and address of a person who has made a code enforcement complaint with a municipality, provided appropriate assurances of confidentiality are present. *Petition of Duchêne*, MCDA PRO 15-37 (2016). In *Duchêne* the petitioner sought the identity of a person who had made a sidewalk and foliage complaint against her property to the City of Portland. Portland pointed to the language on its code complaint submission website assuring submitters of confidentiality in support of its claim of exemption. The material submitted by the City of Gresham shows that it makes similar assurances on its online complaint portal. Having crossed that threshold, we then must evaluate whether disclosure of a complainant's identity would harm the public interest. In *Duchêne* we wrote:

Essential to any law enforcement, be it code enforcement or criminal investigation, is the ability to receive information from the public relating to potential violations of the law. In criminal prosecutions the state is not generally required to disclose the identities [of] confidential informants. This is particularly true when the informant only provides preliminary information leading to subsequent independent observation by law enforcement. *State v. Dunning*, 81 Or App 296, 299 (1986). Apart from the clear difference in severity between a sidewalk and foliage violation and a criminal charge, there is not a principled policy distinction between a confidential informant who provides information to police about criminal conduct and a resident who reports a landlord or neighbor to regulatory authorities for a city code violation.

The legislature has recognized the high public interest in the continued confidentiality of informants by enacting OEC 510(2), which privileges the identity of an informant who provides information relating to possible violations of the law. The public has an interest in the effective enforcement of its laws and regulations. The public disclosure of information tending to chill informants' future willingness to come forward would harm the public interest. Releasing the identity and address of an informant would have just such an effect.

Duchêne at 2.

We do not see any basis to distinguish the reasoning and holding in *Duchêne* from the situation presented in this petition.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Schmidt", with a large, stylized flourish at the end.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon