



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

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via email only

Shane Dixon Kavanaugh and Betsy Hammond
The Oregonian | OregonLive
skavanaugh@oregonian.com
betsyhammond@oregonian.com

Jenifer Johnston
Senior Deputy City Attorney
Portland Office of City Attorney
1221 SW 4th Avenue, Suite 430
Portland, Oregon 97204
Jenifer.Johnston@portlandoregon.gov

Re: Petition of Shane Kavanaugh and Betsy Hammond requesting documents related to a draft audit of the Portland Clean Energy Fund program.

Dear Ms. Hammond, Mr. Kavanaugh, and Ms. Johnston:

Mr. Kavanaugh, a staff writer at The Oregonian / OregonLive, and Betsy Hammond, an editor at The Oregonian / OregonLive, have filed a public records appeal with this office challenging the denial of the release of the following records by the City of Portland's Bureau of Planning and Sustainability:

[E]mails, documents, hand-written notes and other public records related to a draft audit of the Portland Clean Energy Fund program by the City of Portland Auditor's Office.

The City of Portland denied the request, citing ORS 192.345(37), which conditionally exempts the release of documents "related to an audit of a public body [...] until the auditor or audit organization issues a final audit report." The audit has not been completed.

Petitioners argue that ORS 192.345(37) does not extend to the City or its agencies, but only applies to the City of Portland Auditor and her office.

Mary Hull Caballero, the elected City of Portland Auditor, is asserting ORS 192.345(37) applies to the records for which the City of Portland Bureau of Planning and Sustainability is a custodian. The City of Portland has provided us with a detailed response to the petitioners' appeal.

For the reasons discussed below, we dismiss the petition for lack of jurisdiction.

DISCUSSION

A. Elected Officials – ORS 192.427

ORS 192.427 provides that when a public record “is in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure” that “no petition to require disclosure may be filed with the [...] district attorney.”

The district attorney is ordinarily empowered to resolve public records disputes. ORS 192.407 et seq. However, ORS 192.427 is clear that, where an elected official has instructed that records not be disclosed, this office may not countermand that decision. Because the City of Portland Auditor is an elected official, we may not consider this matter further.

ORDER

The petition is dismissed for lack of jurisdiction.

Very truly yours,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By 

Adam Gibbs
Sr. Deputy District Attorney