



## Nathan Vasquez, Multnomah County District Attorney

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September 22, 2025

*via email only*

John Bogaty  
[john@pnwtelco.com](mailto:john@pnwtelco.com)

Jollee Faber Patterson  
Miller Nash LLP  
[Jollee.Patterson@millernash.com](mailto:Jollee.Patterson@millernash.com)

Re: Petition of John Bogaty seeking records from the Riverdale School District pertaining to a lawsuit against a member of its school board

Dear Mr. Bogaty and Ms. Patterson,

Petitioner, John Bogaty, submitted a public records petition to this office on September 3, 2025, pursuant to ORS 192.422, challenging the Riverdale School District's partial denial of a public records request. Petitioner had requested:

All communications from and to Riverdale School District and PACE/OSBA[;]

Any communications between Board members and the administration related to the Rosenbaum Lawsuit.<sup>1</sup>

Petitioner also specified a date range of May 1, 2025 through July 25, 2025. The District denied the request, citing ORS 192.345(1), the exemption for records pertaining to litigation, and ORS 192.345(9) as it incorporates the attorney-client privilege.

### **BACKGROUND**

The context for the records at issue starts with an executive session of the Riverdale Board of Education (the Board) held on October 24, 2024. The Oregon Government Ethics Commission (OGEC) received a complaint alleging that a violation of the public meetings law occurred during this meeting. The OGEC held a meeting on April 25, 2025 to consider whether to open an investigation. It invited members of the Board to address the commission at that meeting. Board member Michele Rosenbaum, among others, did so.

As a result of a statement made by Director Rosenbaum at the April 25, 2025, OGEC meeting, legal counsel for another board member, Kevin McPherson, sent her a cease-and-desist letter demanding, among other things, a retraction. On July 14, 2025, former-Director McPherson (then no longer a member of the school board) filed a lawsuit against Director Rosenbaum alleging defamation. On July 25, 2025, the Board voted to defend and indemnify Director Rosenbaum.

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<sup>1</sup> A third item in the request was supplied by the District and is not at issue in this petition.

On July 29, 2025, petitioner submitted the above-described public records request to the District seeking communications between the District and its insurer (PACE) and/or the Oregon School Board Association to assess how PACE will or will not provide insurance coverage, why this situation was not resolved prior to litigation, and what risk this litigation poses to public funds.

The District has released to petitioner its PACE insurance policy, the Board voted to defend and indemnify Director Rosenbaum in a public meeting, and the complaint and responsive motions are available in the public record of the circuit court. The District has also stated that PACE has agreed to cover the costs of the lawsuit and that that information may be shared publicly.

The defamation suit is open in Multnomah County Circuit Court (*McPherson v. Rosenbaum*, Case # 25CV40602). Multiple motions are pending, but most relevant to the present dispute is the District's motion to substitute itself as the defendant pursuant to ORS 30.265.

The district has made the records it withheld from disclosure available for my review as required by ORS 192.422(2). Based on that review I conclude that the District's asserted exemptions are supported by law and deny the petition.

## DISCUSSION

### A. Attorney-Client Privilege – ORS 40.225 / ORS 192.355(9)

The confidentiality of communications between an attorney and their client is a foundational principle of our system of laws. *Upjohn Co. v. United States*, 449 U.S. 383 (1981) (“The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.”) This privilege extends to public organizations that employ or retain lawyers to give them legal advice and shields those communications from disclosure under the public records law. *Port of Portland v. Or. Ctr. for Envtl. Health*, 238 Or App 404, 409 (2010) (noting incorporation of attorney-client privilege into the public records law by way of ORS 192.502(9)).

The majority of the records at issue in this case involve direct communication between District officers and counsel for the district requesting, discussing, or delivering legal services. Such communications are core attorney-client privileged material and unconditionally exempt from disclosure. A handful are communications between District officers made for the purpose of seeking legal services. Even though these do not directly involve a lawyer, they are nonetheless subject to attorney-client privilege under ORS 40.225(2)(d).

### B. Litigation Records – ORS 192.345(1)

ORS 192.345(1) conditionally exempts from disclosure,

Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur.

This exemption only applies records created after the threat of litigation arose. It does not reach records created in the ordinary course of business that subsequently become relevant to litigation. *Lane County Sch. Dist. v. Parks*, 55 Or App 416, 420 (1981). Service of the cease and desist was akin to a tort claim notice for purposes of establishing that litigation was “reasonably

likely to occur.” All the records I reviewed post-date and pertain to either the service of a cease and desist letter on Director Rosenbaum or the related litigation. Communications by a public body relating to a claim or case are within the scope of ORS 192.345(1). *Petition of Donald Upham*, Att’y Gen. PRO (Mar. 10, 2025).

Petitioner’s primary argument is that, because the District is not a party to the lawsuit (it was filed against Director Rosenbaum personally), it cannot avail itself of the exemption in ORS 192.345(1). The District’s position at its core is that under the ORS 30.265 the proper party to this suit is the District, not its officer. Therefore, that plaintiff filed against the wrong (in the District’s view) party, does not provide an end run to public release of its preparations to defend the suit.

The District has moved to intervene in the lawsuit and has a non-frivolous argument that it should be substituted in place of Director Rosenbaum. It is not my role to rule on the merits of the substitution motion (which is contested, and pending). I conclude only that it is reasonably likely that the District will be a party to litigation in this matter. As a result, records pertaining to that litigation are exempt under ORS 192.345(1) unless the public interest requires.

The records not covered by attorney-client privilege in this case are a handful of messages between District officers and its insurer, PACE. The Attorney General has found ORS 192.345(1) applicable to records of DAS Risk (the State of Oregon’s internal insurer) involving litigation against other state agencies. See, for example, *Petition of Upham*, Att’y Gen. PRO (Mar. 21, 2025).

In *Upham* DAS was not a party to the lawsuit, but it determined that it would ultimately be responsible for an adverse judgment and created records in support of addressing that potential liability. The Attorney General found that such records were exempt under ORS 192.345(1). As in *Upham*, the District is not currently a party to this lawsuit but believes that it may ultimately be responsible for an adverse judgment. As a result, it has taken steps to mitigate that potential liability. Following the Attorney General’s analysis, I likewise conclude that these records are within the scope of ORS 192.345(1) and exempt from disclosure.

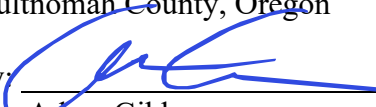
Having reviewed the few records to which this conditional exemption applies and the context of information already publicly available about this matter, I do not find that the public interest requires disclosure of the incremental additional information in these emails.

**ORDER**

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ  
District Attorney  
Multnomah County, Oregon

By:   
Adam Gibbs  
General Counsel