



Nathan Vasquez, Multnomah County District Attorney

1200 SW 1st Avenue, Suite 5200, Portland, OR 97204-1193
P: (503) 988-3162 | F: (503) 988-3643 | www.mcda.us

December 18, 2025

via email only

Alan Kessler
ak@alankessler.law

Trevor Byrd
Deputy City Attorney
trevor.byrd@portlandoregon.gov

Re: Petition of Alan Kessler seeking emails with the keyword "jtff" from the City of Portland

Dear Mr. Kessler and Mr. Byrd:

On October 2, 2025, Mr. Kessler submitted a public records request to the City of Portland for:

all emails from the PPB server between September 30, 2025 and October 1, 2025 (inclusive) containing the text "jtff" (case insensitive) in any searchable field (text, html, email addresses, attachments, body, etc.).

The City produced a set of documents to him on October 23, 2025, but asserted that certain portions were exempt due to ORS 192.355(9) as it incorporates ORS 40.225(2)(d), attorney-client privilege; ORS 192.345(37), audit records; ORS 192.355(40), email addresses; and ORS 181A.672, undercover officer information. Mr. Kessler submitted a petition for review with this office pursuant to ORS 192.422.

For the reasons discussed below, I grant the petition in part.

DISCUSSION

A. Email Addresses – 192.355(40)

ORS 192.355(40)(a) exempts from disclosure,

Electronic mail addresses in the possession or custody of [...] a local government[.]

A public body may assert this exemption to withhold any personal email addresses in its possession. Although the Attorney General advises that a public body should be cautious about doing so when the request is not seeking email lists, it is nonetheless legally permissible to do so. See *Petition of OPB*, MCDA PRO 25-56 (2025).

However, this exemption only applies to personal email addresses, not government-issued email addresses. ORS 192.355(40)(b) ("This subsection does not apply to electronic mail

addresses assigned by a public body to public employees for use by the employees in the ordinary course of their employment.”)

It is certainly plausible to read this section, as the City urges, to apply only to the public bodies within the State of Oregon. It is, however, *possible* to read it otherwise. For the reasons explained at length in *OPB*, I conclude that the intent of the legislature in enacting what is now ORS 192.355(40) was to protect the personal email address of individuals interacting with the government. ORS 174.020 mandates that, I must interpret statutes consistent with the intent of the legislature “if possible.”

Petitioner has articulated a path to construing ORS 192.355(40)(b) consistent with that intent. ORS 192.355(40)(b) provides that the exemption from disclosure in ORS 192.355(40)(a) does not apply to email addresses “assigned by a public body to public employees.” ORS 192.311(4) defines public body for purposes of this section:

“Public body” includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

Although this list does not include the federal government, it is expressly a non-exclusive list. Indeed, in the very next section of the public records law, the legislature stated that the law applied only to “any public records of a public body *in this state*... .” ORS 192.314 (emphasis added). If “public body” were already strictly limited to agencies organized under Oregon law, then “in this state” is surplusage. Constructions that render words in a statute redundant or surplus are to be avoided. *State v. Clemente-Perez*, 357 Or 745, 755 (2015) (collecting authority).

The email addresses redacted in the 20-page redlined document provided to me for review are subject to the exception in ORS 192.355(40)(b) and thus not exempt under ORS 192.355(40)(a).

B. Information about Undercover Police – ORS 181A.825(2)

With qualifications not relevant to this petition, ORS 181A.825(2) provides:

a law enforcement agency may not disclose information about an employee of the agency while the employee is assigned duties the agency considers undercover investigative duties and for a period of six months after the conclusion of those duties.

The redacted names and email addresses of Portland Police Bureau officers are those of ones who are assigned to undercover duties. Such material is “information about [the] employee” and thus subject to redaction under this section. See *Petition of Cashman*, MCDA PRO 25-05 (2025) (acknowledging policy argument against keeping police information confidential, but finding statutory mandate clear and to the contrary).

C. Audit Information – ORS 192.345(37)

ORS 192.345(37) conditionally exempts from disclosure,

Any document or other information related to an audit of a public body, as defined in ORS 174.109, that is in the custody of an auditor or audit organization operating under nationally recognized government auditing standards, until the auditor or audit organization issues a final audit report in accordance with those standards or the audit is abandoned. This exemption does not prohibit disclosure of a draft audit report that is provided to the audited entity for the entity's response to the audit findings.

The City has withheld under this section a questionnaire sent out by PPB's Office of Inspector General (its internal auditor) and completed by an individual relevant to an ongoing audit. The information in the record was compiled at the behest of an auditor, transmitted to an auditor, and related to an ongoing audit.

Information in the custody of a public body that predates an audit, and was created independently of the audit, is not exempt just because it becomes relevant to an audit. The context of this document's creation is different, and I am convinced is within the bounds of ORS 192.345(37). The text of the statute makes clear that once the final audit report is released, this exemption will no longer apply.

D. Attorney-Client Privilege

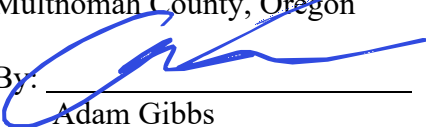
The City has provided the necessary contextual information to demonstrate that the withheld email thread for which the City asserts privilege was a communication "between representatives of the client" for the purpose of facilitating the rendition of professional legal services. A lawyer asked a question, a non-lawyer sent a communication to another non-lawyer in search of the answer to that question. Such a communication is within the scope of ORS 40.225(2)(d) and thus exempt from disclosure under ORS 192.355(9).

ORDER

Accordingly, the petition is granted in part. The City of Portland shall promptly provide to petitioner a copy of the records redacted consistent with the discussion above. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
General Counsel

Page 4

December 18, 2025

Petition of Kessler

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.

25-74