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

August 27, 2026

via email only

Ramin Farahmandpur, Ph.D.
rfp@pdx.edu

Melissa Lehane Rawlinson
Miller Nash LLP
Attorneys for Portland State University
melissa.rawlinson@millernash.com

Re: Petition of Ramin Farahmandpur seeking records concerning the elimination of his position under Portland State University's Article 22 retrenchment

Dear Dr. Farahmandpur and Ms. Rawlinson:

On May 26, 2026, Dr. Farahmandpur submitted a public records request to Portland State University for records concerning the selection of his faculty position for elimination under Article 22 of the University's collective bargaining agreement with the PSU chapter of the American Association of University Professors. Following conferral and payment of $1,529.14 in fees, the University produced its response in three parts between July 17 and July 28, 2026, totaling roughly 2,000 pages. It withheld nine documents or email threads citing attorney-client privilege and redacted portions of a February 26, 2026 email thread under ORS 192.355(1).

Dr. Farahmandpur petitioned this office on August 3, 2026, as permitted by ORS 192.415 and ORS 192.422, arguing that a bare count of withheld documents accompanied by boilerplate cannot carry the University's burden, that underlying facts and financial data do not become privileged because they were routed through counsel, and that the internal advisory exemption cannot survive the University's issuance of its Final Plan on July 21, 2026. The University responded on August 10 and provided the nine withheld documents for my review pursuant to ORS 192.422(2).

For the reasons discussed below, Exhibits 1 and 9 must be released and the petition is denied as to the balance.

DISCUSSION

A. Attorney-Client Privilege — ORS 192.355(9), ORS 40.225

ORS 192.355(9)(a) exempts from disclosure under the public records law:

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

The attorney-client privilege of OEC 503 (ORS 40.225) is such a restriction, and it extends to public bodies. *Port of Portland v. Or. Ctr. for Envtl. Health*, 238 Or App 404, 409 (2010). A claim of privilege requires a confidential communication among the classes of persons the rule identifies, made for the purpose of facilitating the rendition of professional legal services to the client. *State v. Jancsek*, 302 Or 270, 274 (1986). The exemption is unconditional; once privilege is established, the public interest in the contents of the record cannot be weighed against it. *Petition of Manning*, MCDA PRO 19-18 (2019) ("it is clear that the legislature has not permitted us to consider the public's interest when evaluating an assertion of attorney-client privilege.")

Dr. Farahmandpur's threshold complaint is that the University provided no detail about its asserted exemptions and thus no way to tell this office what was wrong with it. The Oregon Public Records Law contains no withholding-log requirement. ORS 192.411(1) imposes a burden on the public body to sustain its action when challenged, but nothing mandates a response *to the requestor* more detailed than what is set out in ORS 192.329(2)(b). The University has submitted to me a statement of its reasons for believing the documents are exempt as required by ORS 192.422(2). However, the *in camera* nature of my review does not permit the disclosure of those details in a public-facing order. As with many claims of privilege, the information necessary to properly contextualize and establish privilege itself discloses further privileged information.

The core of the petition is the argument that the University has privileged its own decision-making by routing it through lawyers. Underlying facts, Dr. Farahmandpur correctly argues, are not privileged, and spreadsheets of faculty, seniority, and salary are facts. The former is correct; the latter is more nuanced. That Professor A has been with the university for 10 years, works in B department, and earns C dollars in salary are all facts, not subject to privilege. That those facts were gathered into a document, along with similar facts about other professors at the request of legal counsel to review scenarios for compliance with the provisions of the operative collective bargaining agreement and labor law could be. Facts aren't privileged; the collection and transmission of facts can be. *Chaimov v. State*, 370 Or 382, 401 (2022).

In addressing multi-faceted problems, communications that involve lawyers can legitimately have more than one purpose. A blended-purpose communication is tested by whether the facilitation of legal services was a primary goal of the communication. *Petition of Bial*, MCDA PRO 21-24 (2021) (ordering released a consultant's report that contained "no legal analysis, no legal recommendations, no discussion of how to limit liability" and instead "provides management, personnel, and public relations advice.")

Like many Collective Bargaining Agreements, the agreement between the American Association of University Professors and Portland State University is a complex document. Article 22 contains the provisions for faculty layoffs in times of financial exigency. Any layoff process under a CBA is complex and carries litigation risk. This is the kind of undertaking in which the direct involvement of a lawyer would be expected, and in which a lawyer must be told the client's facts and priorities in order to advise. *Petition of Poris*, MCDA PRO 26-08 (2026) (discussing privileged nature of communications between counsel and management in relation to collective bargaining process.)

I find the University has met its burden of showing that Exhibits 2-8 were created with a primary purpose of facilitating the rendition of professional legal services and are, thus, exempt from disclosure under ORS 192.355(9)(a).

The email thread marked as Exhibit 1 contains at least one attorney on the cc line. However, the specific content of the email makes clear that it is flagging a non-legal decision point and not requesting legal input. It is not possible to further elaborate without disclosing the disputed contents. I do not find that PSU has met its burden of establishing it was a communication made with a primary purpose of facilitating the rendition of professional legal services.

B. Internal Advisory Communications — ORS 192.355(1)

The University withheld portions of an email thread, submitted to me as Exhibit 9, under the internal advisory exemption, ORS 192.355(1). This section exempts from disclosure "communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action," and it "shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure." This is not a general deliberative-process shield. *Coos County v. Dept. of Fish & Wildlife*, 86 Or App 168, 173 (1987) (exemption does not reach all non-factual internal advisory communications); *City of Portland v. Oregonian Pub. Co.*, 200 Or App 120, 124 (2005) (describing a public body's burden under this section as "daunting").

From the portions of the email thread that were released to petitioner, it is apparent that it is a February 26, 2026 exchange between two administrators on the topic of "Potential Layoffs." The withheld portions of the email constitute a snapshot in time of the process of planning for layoffs. The work of implementing a budget reduction is difficult and there is certainly a need for frank and difficult recommendations in that process that would activate all elements of ORS 192.355(1). Having reviewed the withheld portions of these emails: they are preliminary to final decision; they are non-factual in that they describe something that has not happened yet; and they are advisory in that they provide advice to the president as to actions to take. The meat of this exemption, however, is balancing the interest in encouraging frank communication against the interests in disclosure.

The withheld portions are administrative conclusions, and corrections, made in the course of a planning task. The University's argument reduces to the proposition that officials may not do such work candidly if the public may later see it.[1] The Court of Appeals rejected a version of this argument in *City of Portland*, where the City resisted disclosure of internal police review documents on the ground that public employees "will be more likely to evaluate their supervisors, subordinates, and colleagues with candor if they know the evaluation will not be made public." 200 Or App at 122. Having reviewed the documents, the court found:

> No otherwise anonymous whistle blower is identified; no personal criticism (as opposed to findings regarding which actions fell outside of bureau policies) is leveled. Supervisory personnel render judgments, but they are clinical and detached. To conclude that public disclosure of such judgments, made pursuant to

---

[1] This is not to suggest that the redacted contents show embarrassing or unprofessional conduct by university administrators. To the contrary, this is an unremarkable and professional planning discussion about a weighty topic. Indeed, the mundane nature of the interchange itself weighs against ongoing protection under ORS 192.355(1).

> supervisory duties, would discourage future candor is an insult to the supervisors themselves.

Id. at 127. The court also declined to treat confidentiality as an unmixed good, observing that officials who know their statements will not be disclosed "are also more likely to be vindictive, careless, or speculative — and therefore unreliable." *Id.* at 125.

I find minimal risk that disclosure at this time of these particular sections of these emails will discourage future frank communication. See, *Petition of Schmidt*, MCDA PRO 16-17 (2016) (ordering released "bland, unattributed, analysis"); *Petition of Austin*, MCDA PRO 04-06 (2004) (ordering released "muted" criticism and "unremarkable" recommendations and advice that "cannot be characterized as sensational or controversial.")

On the other side, the public interest in disclosure of these particular records to this particular requestor is also minimal. *In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005) (a public interest is present when furnishing the record "has utility — indeed, its greatest utility — to the community or society as a whole"); *Petition of Capone*, MCDA PRO 25-53 (2025) ("[t]hat a requestor seeks records pertaining to themselves, their family, or their business is strong, and usually dispositive, evidence that the interest advanced by release is primarily a private interest.")

Presented with a minimal risk of discouraging frank communication and a low public interest in release I conclude that the interests are in equipoise. In such a situation the balance breaks in favor of disclosure. *ACLU v. City of Eugene*, 360 Or 269, 285 (2016) (when balancing competing interests under the public records law, the presumption is "in favor of disclosure.") This is not to say that ORS 192.355(1) ceases to apply, as petitioner suggests, once the final decision has been made. It continues in force. However, the balancing of the public interest is from the point in time of the request and depends on the particular contents of the particular records at issue in that context.

ORDER

Accordingly, the petition is granted in part. Portland State University shall promptly produce to Dr. Farahmandpur the record submitted to this office as Exhibit 1 and the redacted portions of Exhibit 9. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4). The petition is otherwise denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: ________________________
Adam Gibbs
General Counsel

Notice to Public Agency

Pursuant to ORS 192.411, 192.415, and 192.431(3), your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless of 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.

26-59