



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

February 28, 2012

Robert Cullivan  
c/o The Gresham Outlook  
P.O. Box 747  
1190 NE Division St.  
Gresham, Oregon 97030

Bruce A. Zagar  
Garrett Hemann Robertson P.C.  
Willamette Professional Center  
1011 Commercial St. NE  
P.O. Box 749  
Salem Oregon 97204

Re: Petition of Robert Cullivan for The Gresham Outlook received February 21,  
2012 to disclose certain records of the Reynolds School District

Dear Mr. Cullivan and Mr. Zagar:

On this public records petition, ORS 192.410 et. seq., petitioner Robert Cullivan asks the District Attorney to order the Reynolds School District and its employees or agents to produce copies of the following records:

**[T]he public records of Reynolds High School Principal Jeff  
Gilbert's reimbursable expenses from July 1, 2008, through Jan. 31,  
2012.**

Petitioner made his request in a February 13, 2012 email to Superintendent Joyce Henstrand and Communications Coordinator Andrea Watson. Ms. Watson denied the request in a February 15, 2012 letter on advice of counsel and asserted attorney/client privilege. Ms. Watson did note there was an ongoing investigation of Principal Gilbert and expressed concern that disclosure prior to a fair hearing may harm his reputation and would not be in the public interest.

Bruce Zagar, legal counsel for the District, responded to the petition in a confidential letter dated February 22, 2012. Mr. Zagar explained the nature of the investigation, described the contents of a "preliminary report," and claimed exemption for the report under ORS 192.502(9), as attorney/client privileged material.

For centuries, the common law doctrine has maintained the rule that “communications between an attorney and his client during and by reason of their relations as such, made in confidence and to enable the attorney to perform his professional duty in regard to the subject matter of the communication, are deemed privileged.” Sitton v. Peyree, 117 Or 107, 114 (1926). This doctrine has been codified in Oregon Evidence Code (OEC) 503 (ORS 40.225).

The Oregon Supreme Court has made the availability of the privilege dependent on two conditions:

- (1) the communications must be confidential within the meaning of OEC 503(1)(b)<sup>1</sup>, and
- (2) the communications must be made for the purpose of facilitating the rendition of professional legal services to the client.  
State v. Jancsek, 302 Or 270, 275 (1986).

The lawyer-client privilege of ORS 40.225 is incorporated by ORS 192.502(9) into an unconditional exemption under the Public Records Law. In its July 6, 1982 Public Records Order (Zaitz), the Attorney General determined that a review of such a claimed exemption is very limited:

If the lawyer-client privilege is applicable, the Attorney General cannot consider whether or not the information should be disclosed in the public interest, but must deny your petition.  
Attorney General’s Public Records Manual, 2008, page F-5.

The School District apparently is investigating Principal Gilbert for “possible misuse of public and student body funds” according to Oregonian reporter James Mayer in a February 23, 2012 article. Mr. Zagar has been placed in charge of the investigation. Petitioner has carefully limited his request to documents in the custody of the Reynolds School District created and maintained independent of the ongoing investigation of Principal Gilbert. Petitioner has not asked for the preliminary report which is, in fact, protected by the attorney/client privilege. Nor has petitioner asked for any student body account information referred to by Mr. Mayer in his article.

This office had long taken the position that it would be premature to order disclosure of personnel matters pending resolution of internal discipline proceedings. Petitioner has carefully avoided that issue. In any case, the claimed exemption is not applicable to the requested records.

---

<sup>1</sup> OEC 503(1)(b) provides:

“Confidential communication” means a communication not intended to be disclosed to third persons other than to those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

February 28, 2012

Accordingly, it is ordered that the Reynolds School District promptly disclose the records sought in the above petition. Disclosure of the documents ordered is subject to payment of the Reynolds School District's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,



MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney 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 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.