



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

January 11, 2011

Alan Cordle
Sylvania Library
Portland Community College
PO Box 19000
Portland, OR 97280-0990

Michael Porter, P.C.
Miller Nash LLP
111 SW Fifth Avenue, Suite 3300
Portland, OR 97204

Re: Petition of Alan Cordle received January 3, 2011 to disclose certain records of Portland Community College (PCC)

Dear Mr. Cordle and Mr. Porter:

On this public records petition, ORS 192.410 et. seq., petitioner Alan Cordle asks the District Attorney to order PCC to disclose the unredacted version of the following records:

[A]ny and all records related to me or referring to me in any format, whether internal or external between March 2005 and the present. If phone calls were made or received about me, I request a list of incoming and outgoing call records for the College official(s) involved.

Petitioner provided an October 26, 2010 letter from PCC Administrative Services Vice-President Wing-Kit Chung responsive to his public records request. This was followed up with a November 18, 2010 email with five pages of redacted attachments. Vice-President Chung asserted the "redaction is information covered by the attorney client privilege and not subject to disclosure."

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)¹, and

(2) the communication 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:

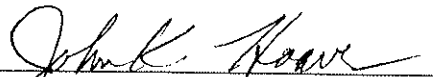
If the lawyer-client privilege is applicable, the Attorney General cannot consider whether or not the information should be disclosed in the public interest, but must deny your petition. Attorney General's Public Records Manual, 2008, page F-5.

We have carefully reviewed the unredacted documents provided by counsel for PCC, Michael Porter. The contents are clearly confidential communications made for the purpose of facilitating the rendition of legal services to administrators at PCC. As such, the undisclosed materials are unconditionally privileged and cannot be ordered disclosed to petitioner.

ORDER

Accordingly, it is ordered that the petition of Alan Cordle to disclose certain records of Portland Community College is denied.

Very truly yours,



John K. Hoover
Deputy District Attorney
Multnomah County

11-01

¹ 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.