



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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May 10, 2010

Floy Jones
2204 S.E. 59th St.
Portland, OR 97215

Terence Thatcher
Deputy City attorney
City of Portland
Office of the City Attorney
City Hall, Suite 430
1221 SW 4th Avenue
Portland, OR 97204

Re: Petition of Floy Jones received April 29, 2010 to disclose certain records of the City of Portland.

Dear Ms. Jones and Mr. Thatcher:

On this public records petition, ORS 192.410 et. seq., petitioner Floy Jones requests the assistance of the District Attorney “with regard to reviewing material related to a February 4 Public Records Request of two Portland Utility Review Board members.” Over three months after the request was received, Laurel Batman, then Principal Management Analyst for Business Operations, Office of Management & Finance, provided most of the requested documents. The April 28, 2010 email from Ms. Butman noted that nine emails (mostly repetitious string emails) and one sentence redaction from a tenth email were withheld on the basis of attorney-client privilege.

In a May 4, 2010 letter response to the petition, Deputy City Attorney Terence Thatcher explained that the relevant documents were “primarily email between Dave Johnson and me, sometimes involving other City officials as well.” Mr. Johnson was then a member of the Public Utility Review Board making him, in the opinion of Mr. Thatcher, a client of the City Attorney’s Office. The nine emails were either the seeking or providing of legal advice. In addition, Edward Campbell, a Portland Water Bureau official, made reference in a tenth email to the legal advice of Mr. Thatcher.

"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-4.

We have carefully reviewed the ten documents provided by the City. With one noted exception below, the contents are clearly confidential communications made for the purpose of facilitating the rendition of legal services to a member of the Public Utility Review Board or an official of the City Water Bureau. As such, the nine undisclosed documents are unconditionally privileged and cannot be ordered disclosed to petitioner.

One sentence was redacted by Mr. Thatcher from a series of string emails made on April 29, 2009 involving correspondence between Dave Johnson and Edward Campbell. We have been advised by the petitioner that the unredacted email was inadvertently disclosed by Ms. Butman when she provide other emails to petitioner on April 28, 2010. A decision on that email is moot.

¹ OEC 503(1)(b) provides:

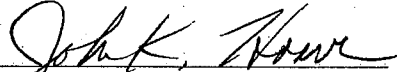
"Confidential communication" means a communication not intended to be disclosed to third persons other than to those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

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ORDER

Accordingly, it is ordered that the petition of Floy Jones to disclose certain records of the City of Portland is denied.

Very truly yours,



John K. Hoover
Deputy District Attorney
Multnomah County