



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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February 29, 2008

Ted Sickinger
The Oregonian
1320 SW Broadway
Portland, OR 97212

Janet Billups
Legal Department
Oregon Health Sciences University
3181 SW Sam Jackson Park
Portland, OR 97239

Re: Petition of Ted Sickinger on behalf of the Oregonian received February 22, 2008 to disclose certain records of the Oregon Health Sciences University

Dear Mr. Sickinger and Ms. Billups:

On this public records petition, ORS 192.410 et. seq, petitioner Paul Sickinger requests the District Attorney to order the Oregon Health Sciences University (OHSU) to provide the following records:

An unredacted version of a 12/27/07 email from Amy Wayson, General Counsel for OHSU to OHSU Board of Directors and OHSU management staff.

On February 5, 2008 Tim Kringen, Senior Communications Specialist at OHSU provided to the Oregonian numerous documents pertaining to OHSU actions regarding an appellate court decision on tort cap liability and other OHSU management matters and communications. One section of one item was redacted by Mr. Kringen based on attorney-client privilege, presumably based on the available Public Records Law exemption of ORS 191.502(9) for that purpose, although the denial did not specifically reference that section of the law, but referred only to attorney-client privilege.

After a number of letters and conversations between this office and Mr. Sickinger and between apparently between OHSU officials and Mr. Sickinger, a petition was filed on January 22, 2008 requesting a determination on the denial of the redacted portion of the released records. On February 27, 2008 this office received from Ms. Billups a letter explaining the basis for their denial of the release of the document, which is a two page email exchange.

Attached to the letter was a copy of the two page email from General Counsel Amy Wayson to OHSU Board of Directors and OHSU management staff. This office has had subsequent conversations with Ms. Billups to confirm that all of the addressees on the email are, in fact, OHSU Board of Directors or OHSU staff, a fact that was not apparent from the email addresses.

DISCUSSION

ORS 192.502(9) incorporates the lawyer-client privilege of ORS 40.225 into an unconditional exemption under the Public Records Law. This centuries old common law doctrine has maintained the rule that "communications between an attorney and his client during and by reason of their relations as such...are deemed private." Sitton v Peyree, 117 Or 107, 114 (1925). This doctrine has been codified in the Oregon Evidence Code OEC 503 (ors 40.225). the Oregon Supreme Court has made the availability of the privilege dependent on two conditions:

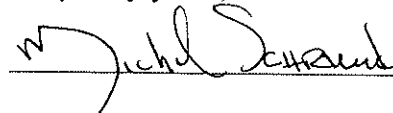
- (1) the communications must be confidential and within the meaning of ORS 503(1)(b), and
- (2) the communications must be made for the purpose of facilitating the rendition of professional legal services to the client. State v. Janscek, 302 Or 270, 275 (1986).

A careful review of the email in question reveals that the portion that has been redacted consists entirely of advice from an attorney to her clients pertaining to significant legal issues arising from an appellate court case. As such the redacted sections are unconditionally privileged and cannot be ordered disclosed to the petitioner.

ORDER

Accordingly, the petition of Ted Sickinger of the Oregonian to disclose certain redacted records of OHSU is denied.

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon