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August 11, 2003

Kristina Brenneman
Portland Tribune
620 SW Fifth Ave, Suite 400
Portland, OR 97204

Benjamin Walters
Senior 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 Kristina Brenneman for the Portland Tribune received August 1, 2003 to disclose certain records of the City of Portland

Dear Ms. Brenneman and Mr. Walters:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Kristina Brenneman requests the District Attorney to order the City of Portland to provide the following records:

[T]he city's bid for Portland General Electric, Enron Corporation's response to the bid and all related materials.

On July 8, 2003, Ms. Brenneman requested a copy of the documents from the City Attorney's Office. She received a response from Senior Deputy City Attorney Benjamin Walters in a July 9 letter declining to disclose the materials. Ms. Brenneman submitted her petition to this office as well as an e-mail note outlining her arguments for release of the information.

The City responded to the petition in an August 7, 2003 letter to this office, citing the same exemptions. Mr. Walters included a copy of City Council Resolution No. 36093, City Ordinance No. 176929, and other supporting documents. Mr. Walters submitted eight sealed confidential documents for our review. Michael Morgan, an attorney for Enron, submitted a confidential letter as well.

Mr. Walters made reference in his letter to the public records petition of Gail Kinsey Hill and the arguments made in the City's July 30 letter response to her petition. Enclosed with this order is the decision of the District Attorney denying Ms. Hill's petition. We continue to reject the City's argument that the documents are protected as trade secrets or information regarding the purchase of electric services.

DISCUSSION

Confidential Submissions

ORS 192.504(4) exempts:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

As stated in the Attorney General's Public Records and Meetings Manual, 2001, p. 64, there are "no less than five conditions that must be met" for the exemption to apply:

1. The informant must have submitted the information on the condition that the information would be kept confidential.
2. The informant must not have been required by law to provide the information.
3. The information itself must be of a nature that reasonably should be kept confidential.
4. The public body must show that it has obligated itself in *good faith* not to disclose the information.
5. Disclosure of the information must cause harm to the public interest.

Petitioner makes several arguments that do not directly track the requirements of the exemption. She notes that Enron is in bankruptcy and that Enron and PGE is a publicly held company that must file reports with the U.S. Securities and Exchange Commission. If either the bankruptcy court or the SEC ever requires the disclosure of the unsuccessful negotiations for the purchase of PGE, then the confidentiality agreement will indeed be breached. That is not a basis for determining that the exemption does not apply.

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Petitioner feels that "city officials have already disclosed a purchase price and reasons for the rejection of the bid in several newspaper articles." This office was provided with no examples of the city's alleged violation of the confidentiality agreement. We obtained and reviewed various articles including a July 11, 2003 article by petitioner, a July 25 article by Fred Leeson of The Oregonian, and an August 1 article by Ms. Hill. There is little if any evidence that the confidentiality agreement has, in fact, been breached. In any case, the City did obligate itself in good faith to not disclose the information and it is of a nature that "reasonably should be kept confidential."

Finally, petitioner points out that "City agencies, including the Portland Development Commission and City Council, reveal their bidding process and the contract and financial terms prior to a vote on a purchase." Petitioner argues that the same information should be revealed about its bid for Portland General Electric. In principle, we agree with petitioner. If and when the City makes a bid acceptable to Enron, all the details of the bidding process should be made public prior to a public debate and council vote. Unfortunately, Enron rejected the City's bid. It would be premature to order the release of the confidential documents at this time.

ORDER

Accordingly, it is ordered that the petition of Kristina Brenneman for the Portland Tribune to disclose certain records of the City of Portland is denied.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

Cc: Michael M. Morgan

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