



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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January 06, 2003

Nancy Ayres
City Attorney's Office
1221 SW 4th Avenue Suite 430
Portland, OR 97204

Nigel Jaquiss
Willamette Week
822 SW 10th Ave
Portland, OR 97205

Re: Petition of Nigel Jaquiss for Willamette Week received December 20, 2002, to disclose certain records of the City of Portland.

Dear Ms. Ayres and Mr. Jaquiss,

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Nigel Jaquiss requests the District Attorney to order the City of Portland and its employees to produce the following records:

[T]he financial information submitted as part of the application [submitted by TSB Acquisition LLC].

Petitioner made his written request for the above information to Ms. Terri Williams and Mr. Jim Wadsworth of the City Bureau of Licenses on November 12, 2002. Petitioner had been allowed to review certain application materials including a six-page document titled "Supplemental Information Taxicab Company Application." TSB Acquisition was in the process of purchasing Broadway Cab and, of necessity, wanted to secure the transfer of the taxicab permit. The City withheld certain documents from petitioner including responses to categories titled "Investor information," "Financing plan," "Lease and Rental agreements," and "Assumptions used in the prospective financial statements regarding Customer/Client base and anticipated capital expenditures." TSB Acquisition submitted this information in a separate, confidential document.

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Terri Williams, Operations and Policy Manager for the Bureau of Licenses, responded to petitioner in writing on November 21, 2002. An exemption was claimed under ORS 192.502(4), Confidential Submissions. Nancy Ayres, Senior Deputy City Attorney, submitted a December 24 letter response to the petition and again asserted exemption for the deleted material under ORS 192.502(4). Included with her response was a four-page affidavit of Ms. Williams together with the Portland City Code provisions for permit applications and the requirements for supplemental information submissions.

Petitioner provided an email rebuttal to the city's arguments on January 2. The City replied by letter received in this office on January 3. The arguments will be discussed below as they relate to the various requirements of the Confidential Submission exemption.

DISCUSSION

ORS 192.502(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.

According to the Attorney General's Public Records Manual, 2001, p. 64, the purpose of this exemption is to "encourage voluntary submission of relevant information to public bodies, with some reasonable assurance that the information will be kept confidential." The exemption requires that each of five tests must be satisfied in order for the exemption to apply:

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

See Attorney General's Public Records Manual, 2001, p. 64.

The affidavit of Ms. Williams recites that the documents in the supplemental information were marked "confidential" and "were submitted by the applicant on the condition that they would be kept confidential." The first requirement is clearly satisfied.

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The letter response of Deputy City Attorney Ayres takes the position that the second test is met because the "obligation to submit the information derived solely from applicant's desire to obtain the permit and therefore the applicant was not required by law to submit anything to the City." Petitioner argues that the City wants to have it both ways since the application would not be accepted without the financial information. Petitioner also cites the analogous Oregon Administrative Rule requirements for OLCC applicants. Deputy City Attorney Ayres responds that the laws cited by petitioner "do require submission of information." Ms. Williams points out in her affidavit that "submission of the requested documents to the Bureau of Licenses is discretionary and not required by law." This is sufficient to satisfy the second requirement.

There does not appear to be any argument by petitioner that the sensitive and detailed financial information submitted by TSB Acquisition is not of a nature that reasonably should be kept confidential. Deputy City attorney Ayres notes that the information consists of "tax returns, historical financial reports and statements, projections of future financial statements and assumption of cash flow." Ms. Williams concludes that releasing the information "would give other permitted taxicab companies an unfair advantage in the marketplace." The third test is satisfied.

The fourth condition is satisfied by the statement in Ms. William's affidavit that "I assured the applicant and the applicant's accountant that the requested information was considered by the Bureau of Licenses to be confidential."

The final requirement relates to the public interest and places the burden on the public agency to establish how disclosure would be harmful. The City contends that TSB Acquisition would be adversely affected and that other "informants" would be discouraged from providing information in confidence in the future. According to Ms. Williams, the City's ability to "obtain the complete information necessary to review taxicab company permit applications would be harmed by the City's inability to properly regulate entry into the taxicab industry."

Petitioner submitted with his petition a fourteen-page article from Willamette Week entitled "Sho Dozono's Rules." According to petitioner, Mr. Dozono, the CEO of TSB Acquisition, has "a track record of financial instability." He argues that the public could be impacted by taxi fare increases if Mr. Dozono's company is not financially sound. Petitioner also alludes to Mr. Dozono's "close personal and professional relationship with city elected officials and high-level bureaucrats" with the corresponding "ability to leverage his influence to gain higher taxi fares."


Deputy City Attorney Ayres argues that [a]ny change to taxicab fares would necessitate an amendment to the City Code. Under that circumstance, a public hearing is required and the opportunity for public testimony is available as provided by City Council rules." This office concludes that the City has made a strong case for maintaining the confidentiality of such financial information in a routine taxicab permit application. Petitioner has not demonstrated that the particular supplemental application of TSB Acquisition should be treated any differently.

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ORDER

Accordingly, it is ordered that the petition of Nigel Jaquiss for Willamette Week to disclose certain records of the City of Portland is denied.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon