



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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March 17, 2008

Beth Slovic
Willamette Week
2220 NW Quimby St.
Portland OR 97209

Jollee Patterson
General Counsel
Portland Public Schools
PO Box 3107
Portland OR 97208

Re: Public records petition of Beth Slovic received February 26, 2008

Dear Ms Slovic and Ms Patterson:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Beth Slovic, on behalf of Willamette Week newspaper, requests the Portland Public School District to disclose a July 2007 letter from Benson High School principal Christie Plinski to Leslie Rennie-Hill.

The letter in question has been submitted by the Portland Public School District to this office for review as it relates to the public records petition. The Portland Public School District has taken the position that the contents of this letter form the basis for a personnel disciplinary investigation that is currently in progress. To provide information regarding this position, Ms. Patterson has discussed the nature and progress of the disciplinary action with this office.

DISCUSSION

ORS 192.501(12) conditionally exempts:

A personnel discipline action, or materials or documents supporting that action.

In this case a personnel disciplinary investigation is currently underway, but is as yet uncompleted. In such situations, the 2008 Attorney General's Public Records and Meetings Manual, p.45, indicates that, while there is no case law on this point, "(w)e believe, however, that in those circumstances a public body may postpone action on the request until the personnel matter is finally resolved, in order to determine whether those records are exempt." The Portland Public School District has nonetheless determined that the records are exempt, and we will discuss that position, despite the fact that the investigation is ongoing.

We conclude that this document is clearly a "material or document supporting" a personnel disciplinary investigation, and is therefore conditionally exempt. This requires us to examine the second prong of this petition, for the petitioner has expressed the belief that even if the document is conditionally exempt, "the public interest in disclosure outweighs the public interest in confidentiality," as stated in the Attorney General's manual.

To advance the proposition that the public interest should overcome the exemption, the petitioner has raised a number of arguments. First, she has stated a belief that the letter would provide further evidence of a controversial rift between former school superintendent Vickie Phillips and high schools administrators over high school policy. Second, she believes that the letter might provide evidence of gender discrimination and how the school board has dealt with that issue. Finally, the petitioner believes that, with the backdrop of a \$1 billion construction bond measure, the voters "should feel confident they have good leaders at their schools."

Regarding the public interest in disclosure of disciplinary investigation, the Attorney General's Manual indicates that public disclosure is typically appropriate in circumstance of criminal activity and theft of public property by public employees. Also important is the "employee's position, the basis for the disciplinary action, and the extent to which the information has already been made public." Manual, p.44.

None of the arguments expressed by the petitioner reach the level stated above. Nonetheless, all are important considerations under certain circumstances, and were the document to provide significant evidence one way or another on those issues, the petitioner might have a valid claim that the public interest should outweigh the exemption of ORS 192.501(12). Having read the document, however, and having been apprised of the background and nature of the personnel action in progress, this office does not believe that these arguments are persuasive. On review, all arguments advanced for the public interest of disclosure are either not factually supported by the document itself, or are demonstrated by the facts of the personnel investigation to be relatively routine personnel matters.

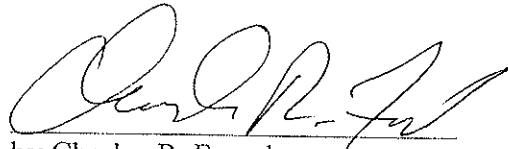
As a consequence, we conclude that the exemption of ORS 192.501(12) applies, and that the public interest does not overcome that exemption.

ORDER

Accordingly, it is ordered that the petition of Beth Slovik, on behalf of Willamette Week, to disclose certain records of the Portland Public School District is denied without prejudice to renewal when the disciplinary process is concluded.

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

A handwritten signature in cursive script, appearing to read "Charles R. French", written over a horizontal line.

by Charles R. French,
Deputy District Attorney