



**MICHAEL D. SCHRUNK, District Attorney for Multnomah County**

600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

September 30, 1997

Karen E. Rutledge  
13141 NE San Rafael  
Portland, OR 97230

Donna M. Cameron, Esq.  
Attorney at Law  
Miller, Nash, et al.  
3500 US Bancorp Tower  
111 SW 5th Ave  
Portland, OR 97204-3699

Re: Petition of Karen Rutledge, dated August 19, 1997 to disclose certain records of the Parkrose Public Schools, School District #3

Dear Ms. Rutledge and Counselor Cameron,

On this public records petition, ORS 192.410 et seq., petitioner Karen E. Rutledge, a recently-elected member of the Parkrose School Board, requests the District Attorney to order the Parkrose School District to disclose all of the "applicant files" related to four then-vacant principal positions of schools in the district.

The school district claims exemption from disclosure by letter dated August 22, 1997 from Ms. Cameron, acting as counsel for the district on this issue. The exemption claim letter asserts that the records in question are exempt from disclosure pursuant to ORS 192.502 (1) (internal advisory communications within a public body), 192.502 (2) (information of a personal nature), and 192.502 (3) (information submitted to a public body in confidence). The district explains that it received approximately 40 applications for these four principal positions. The district states that it has not been the past practice that school board members would individually inspect all of the material which is generated by the written applications and the notes taken by an oral interview panel when candidate principals (or teachers, for that matter) are reviewed for hiring by the district. The district points out that portions at least of these applications contain highly personal information about the past education, employment positions, qualifications, etc, of the various applicants. Furthermore, the very fact that a person is making application for a position with a new employer may be information the applicant strongly desires to be kept confidential, because disclosure of that fact to the present employer might adversely affect the applicant's standing with that employer.

The school board in its corporate capacity apparently has not pursued the depth of access which petitioner claims here as an elected member of the school board. Petitioner strongly argues that, even as an individual school board member acting without the express support of a majority of the school board, she nevertheless has the right to examine all records relating to the potential hiring of an applicant for a principal position in the district because the board must make the final decision in such cases.

The school district, in its responsive exemption claim letter, provided us with samples of the type of application made by an applicant for a principal position and also the type of notations made by members of the oral interview panels who interview the final applicants. The district also provided copies of three of its board "policies," which are in the nature of rules of governance of the district, namely, the policies on BOARD-SUPERINTENDENT RELATIONSHIP, HIRING OF LICENSED ADMINISTRATORS and RECRUITMENT OF LICENSED STAFF. However, our review of these policies discloses nothing which specifically addresses the question of right of access by an individual school board member to information concerning applicants for principal positions, acting apart from the board in its collegial capacity; although the policy on BOARD-SUPERINTENDENT RELATIONSHIP does state in part: "The superintendent will assist the Board in making decisions and establishing policies by giving Board members relevant facts, information and reports."

Regarding the duties of boards of education in general, Oregon law provides that "...[D]istrict school boards have control of the district schools and are responsible for educating children residing in the district.", ORS 332.072; that all contracts of the school district must be approved by the district school board, ORS 332.075 (2); that the board shall perform "...such...duties as the wants of the district may from time to time demand.", ORS 332.105; and that "Each district school board shall establish rules for the government of the schools and pupils consistent with the rules of the State Board of Education.", ORS 332.107. Most directly pertinent to the present petition, ORS 332.505 provides:

"(1) A district school board may:

(a) Employ a superintendent of schools and necessary assistant superintendents for the district and fix the terms and conditions of employment and compensation.

(b) Employ personnel, including teachers and administrators, necessary to carry out the duties and powers of the board and fix the duties, terms and conditions of employment and the compensation.

(c) Compensate district employees in any form which may include, but shall not be limited to, insurance, tuition reimbursement and salaries.\*\*\*"

However, we have not found any provision of the state statutes which expressly addresses the right of an individual school board member, acting only in that capacity (without the express support of the board itself), to inspect and perhaps copy the employment applications of applicants for principal (or other) positions.

Petitioner strongly argues her case that she cannot be restricted to review only the applications of persons recommended for employment by the district administration. In particular, she expresses an interest in assuring that the district is in compliance with applicable "employment laws", and it appears she particularly wishes to review the applications of both successful and unsuccessful applicants in order to form her own opinion as a board member respecting how well the district is complying with such laws.

The district also contends that its application forms lead the applicants to believe that review of the information they submit will be restricted to the district administration and to only the oral interview panel in each instance. Petitioner counters that it would be unreasonable for any applicant to presume that the very body which has the final power to hire, namely, the members of the district school board, would not be included in the limited circle of those who properly would have access to employment application information.<sup>1</sup>

The district also suggests that Oregon's public records law may not apply to this situation where a government official is seeking information from that official's own governmental unit, since the main thrust of the public records law (as the district argues) is to promote access by the non-governmental general citizenry to records possessed by the government, rather than to regulate the access policies of particular governmental units respecting their own employees or officials.

We conclude that petitioner is entitled to access and inspection of all records relevant to an application for employment with the district at least when, as here, the filling of the position in question is dependent upon final approval by the district school board. We believe that the public records law does apply to this situation and that we are required to give special weight to petitioner's status as an elected member of the school board in question. Moreover, the school district has not produced any policy or rule of the district itself which precludes access by a member of the school board to

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<sup>1</sup>The district's exemption claim letter, at pp. 3-4, suggests that petitioner has made statements indicating that she might disseminate information from these applicant files in an inappropriate manner which might adversely affect the present and future hiring process and that the district would have no control over her conduct if she did so. Petitioner's reply letter dated September 5, 1997, at p. 1, states "...I have no plans to contact any of the applicants, their references, or their past or current employers. Nor do I plan to share the information with others. I intend to follow the same rules of confidentiality, law and courtesy as required of any employer in a similar hiring situation. In fact, my oath of office not only requires a higher standard of me than those who were not mandated to take this oath (Holboke, Superintendent Cottingim, and Cameron), but it also requires that I insure that they followed all employment rules and laws." The board perhaps may have authority to discipline conduct which would constitute breach of board policy or breach of fiduciary duty; if not, the electorate has the power of denying re-election or even of recalling an elected official, in their discretion. We presume that petitioner, acting as a public official, should be taken at her word unless and until the contrary is made to appear.

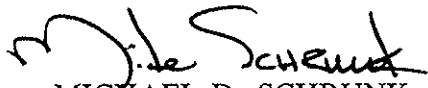
whatever information has been developed concerning an applicant for an employment position controlled by the hiring authority of the school board.<sup>2</sup>

The Oregon public records law creates a general presumption that every person in the state has a right to inspect any public record of a public body, unless the record is expressly exempted by some other provision of law. ORS 192.420. Oregon appellate court decisions repeatedly have emphasized that disclosure is favored under the public records law and exemptions from disclosure are to be narrowly construed, e.g., Guard Publishing Company v Lane County School District, 310 Or 32, at 37, 791 P2d 854 (1990). However valid the school district's claimed exemptions from disclosure under ORS 192.502 (1), (2) and (3) might be as applied to a non-school board member, we cannot conclude that those exemptions for internal advisory communications, information of a personal nature, and confidentially submitted citizen information, properly may be applied to an elected member of the school board whose duties specifically include passing upon the hiring of applicants for employment.

ORDER

Accordingly, it is ordered that the petition of Karen E. Rutledge is granted and the Parkrose School District No. 3 shall promptly disclose to petitioner all records pertaining to employment applications and the oral interview process respecting both the successful and unsuccessful applicants for principal positions in question on this public records petition.<sup>3</sup>

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

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<sup>2</sup>We intimate no opinion respecting whether the board properly could enact a policy which would regulate and perhaps restrict access to such records by individual members of the board not acting pursuant to a resolution or directive issued by the board itself.

<sup>3</sup>Because of the particular circumstance that Ms. Rutledge is an elected school board member this office refrains from the usual declaration that this order of disclosure is subject to the payment of the district's fees governing the inspection and obtaining of copies of public records, not exceeding the district's actual cost, consistent with ORS 192.440, because we are uncertain how petitioner's status as an elected school board member may affect the right the district usually would have under that statute to charge such fees.

NOTICE TO PUBLIC AGENCY: Pursuant to ORS 192.450 (2), 192.460 and 192.490 (3), your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether the petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within 7 additional days thereafter.

# MILLER | NASH

MILLER, NASH, WIENER, HAGER & CARLSEN LLP | ATTORNEYS AT LAW

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4400 Two Union Square  
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October 7, 1997

Mr. Michael D. Schrunk  
District Attorney  
600 County Courthouse  
Portland, Oregon 97204

**VIA FACSIMILE  
AND U.S. MAIL**

Subject: Petition of Karen Rutledge Dated August 19, 1997, Against  
Parkrose School District

Dear Mr. Schrunk:

I am writing regarding your opinion dated September 30, 1997, and issued on October 1, 1997, in which you stated that the Parkrose School District is required to release files related to applicants for principal positions to Karen Rutledge, a member of the Parkrose School Board.

Your opinion states that the files must be disclosed to Ms. Rutledge because "the filling of the position in question is dependent upon final approval by the district school board" and you gave "special weight to petitioner's status as an elected member of the school board in question." Ms. Rutledge became a member of the School Board on July 1, 1997. You may not have been aware that the principal positions involved included both positions that were filled before Ms. Rutledge became a member of the School Board and positions that were filled after she took office.

Your opinion is clear that Ms. Rutledge is entitled to inspect the application files related to positions that were filled and approved by the School Board after July 1, 1997. The rationale for your opinion would seem to indicate that she is not entitled to inspect application files for positions that were filled and approved by the former Board before Ms. Rutledge took office.

Based on that understanding of your opinion, the School District will allow Ms. Rutledge access to the application files for the principal hires over which Ms. Rutledge, as a member of the School Board, had responsibility after July 1, 1997. The District does

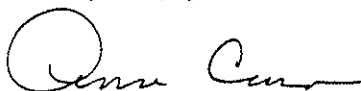
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October 7, 1997

not interpret your decision as requiring that files related to earlier hiring actions be released to Ms. Rutledge. If this understanding is not correct, please let me know as soon as possible.

Very truly yours,



Donna M. Cameron

cc: Dr. Jacki Cottingim



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**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

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October 10, 1997

Donna Cameron, Esq.  
Attorney at Law  
Miller, Nash et al.  
3500 U. S. Bancorp Tower  
111 SW 5<sup>th</sup> Avenue  
Portland, OR 97204-3699

VIA FAX TO: 224-0155

Re: Petition of Karen E. Rutledge dated August 16, 1997\*, to disclose certain records of Parkrose School District No. 3

Dear Ms. Cameron:

In response to this office's letter decision and order dated September 30, 1997 (issued October 1, 1997) granting petitioner Rutledge's petition for disclosure of all records pertaining to the employment applications and oral interview process of both successful and unsuccessful applicants for four principal positions which were vacant (or perhaps recently vacant) at the time her petition was filed, you seek clarification respecting whether petitioner's right of disclosure under our order extends to any of such positions which may have happened to be filled prior to July 1, 1997, the date petitioner became a member of the Parkrose School District Board by election, as well as any of these positions which were filled after that date. You state that you believe that our letter order of September 30 implies that only materials relating to positions filled on or after July 1, 1997 would be required to be disclosed to petitioner.

We respectfully disapprove that interpretation for the following reasons: First, this public records petition proceeding, ORS 192.410 et seq., was conducted throughout specifically respecting the four principal positions which apparently were vacant, or very recently had been vacant, at the time petitioner made her initial request for disclosure to the district administration. On any public records proceeding the burden of justifying denial of disclosure rests upon the public agency. ORS 192.450(1), 192.490(1). The district's responsive exemption claim letter dated August 22, 1997 did not stand upon any distinction among these four principal positions on the basis that one or more perhaps had been filled before July 1, 1997. Thus, that issue was not considered by this office. However, if this were the only questionable point, we might agree that the post-decision raising of this issue might still be appropriate, since the district could not know the full basis of our decision until it was issued.

In our opinion, there is, however, a second consideration which requires us to disapprove the interpretation you suggest: Petitioner has stated that she desires to review the application records relating to both successful and unsuccessful applicants for these four principal positions at least partly because she has a concern whether the district is following applicable "employment laws." Since petitioner has not specified which employment laws she refers to, we do not, of course, know the precise focus of her concern. However, the

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\*By oversight, this petition has been consistently misdescribed as dated "August 19, 1997," but actually is dated August 16.



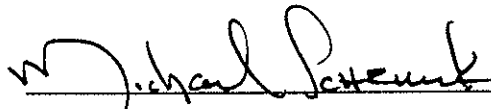
Page Two  
Letter to Donna Cameron, Esq.

district's responsive exemption claim letter of August 22 attached, inter alia, the district's policy on RECRUITMENT OF LICENSED STAFF. This policy provides, among other things, that "The superintendent/designee will develop and maintain a recruitment program designed to attract licensed personnel from diverse ethnic and linguistic backgrounds to the district. \*\*\* The search for licensed staff members may extend to a variety of educational institutions and geographical areas. Those factors considered will be the diverse characteristics of the district. Where necessary, the Board authorizes the superintendent/designee to travel in pursuit of excellent candidates from diverse backgrounds.\*\*\*" (Emphasis added). In support of this policy, adopted October 23, 1995, "Legal References" are listed relating to ORS Chapter 659 (Oregon's civil rights laws) and various federal laws including Title VI and VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Age Discrimination Act of 1975, the Equal Pay Act of 1963, and the Rehabilitation Act of 1973. It may be these "employment laws" - or perhaps others - which petitioner has in mind.

The District Board certainly would have a legitimate oversight role in reviewing progress of the district administration in achieving these diversity goals stated in the policy on RECRUITMENT OF LICENSED STAFF. As we already observed in the original letter decision of September 30, 1997, the district apparently has no rule or policy which restricts the access of elected school board members to review the contents of employment applications of those for whose hiring the district board holds the final authority.

For both of the reasons stated, we adhere to the literal terms of the original order issued in this case dated September 30, 1997: Petitioner is entitled to inspect the entirety of the employment application and oral interview materials relating to all applicants, successful or unsuccessful, for the four principal positions which were at issue on this public records petition proceeding.

Sincerely yours,



MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

cc: Karen E. Rutledge  
13141 NE San Rafael  
Portland, OR 97230

(With copy of Ms. Cameron's letter dated October 7, 1997)

# MILLER | NASH

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October 9, 1997

Mr. Michael D. Schrunk  
District Attorney  
600 County Courthouse  
Portland, Oregon 97204

**VIA FACSIMILE  
AND U.S. MAIL**

Subject: Petition of Karen Rutledge Dated August 19, 1997, Against  
Parkrose School District

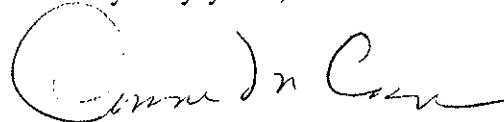
Dear Mr. Schrunk:

On October 7, 1997, I faxed and mailed to you a letter asking for clarification of the opinion you issued on October 1, 1997, which bears a date of September 30, 1997. In that letter, I also advised you that Parkrose School District would produce the records that we read your opinion as requiring to be produced.

I have not yet received a response to my October 7 request for clarification. I have received a message from Mr. Hattrick of your office advising me that I would receive a written response from you to my letter.

As your October 1, 1997, letter did not specifically address the production of files related to persons hired before Ms. Rutledge became a member of the School Board, I understand that the time period for the School District to comply with or appeal your decision as to such files has not yet commenced to run. I understand that time period will begin when I receive your letter of clarification pertaining to those files.

Very truly yours,



Donna M. Cameron

cc: Dr. Jacki Cottingim



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County  
600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

October 14, 1997

VIA FAX TO: 224-0155

Donna M. Cameron, Esq.  
Attorney at Law  
Miller, Nash et al.  
3500 US Bancorp Tower  
111 SW Fifth Avenue  
Portland, OR 97204-3699

Re: Petition of Karen E. Rutledge dated August 16, 1997 to  
disclose certain records of Parkrose School District No. 3

Dear Ms. Cameron:

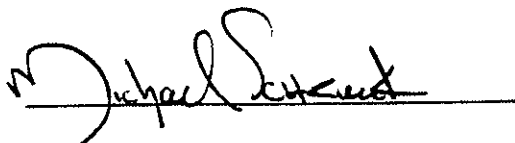
This is reply to your letter dated October 9, 1997. It is true that due to other commitments I was not able to sign and mail my response to your letter of October 7, until October 10. In your October 9 letter you state you understand that the applicable statutory time limit for giving notice of intent to contest this office's disclosure order and to actually file such a court contest would begin to run only when you received my "letter of clarification" dated October 10, 1997. This office does not necessarily agree with your understanding. Of course, it would not be an issue which this office would determine; rather, it would be for the Circuit Court to decide the issue of timeliness in accordance with the statutes cited in the NOTICE TO PUBLIC AGENCY attached to the disclosure letter-order dated September 30, 1997 (issued October 1, 1997), namely ORS 192.450(2), 192.460 and 192.490(3).

From the outset, this petition proceeding has been about reviewing "...the files of all the applicants for four principal positions." Petitioner's petition dated August 16, 1997, at p.1. Your exemption claim letter on behalf of the district dated August 22, 1997 recognized that the records in question were "... approximately 40 applications for the advertised principalships."; and that Ms. Rutledge's request related to the applicants for "...four top school administrative positions...", *ibid.* at pp.1 and 3. Thus, there was no doubt on either side that this petition related to the employment applications for four particular principal positions. This office's letter-order dated September 30, 1997 equally clearly applied to "...all records pertaining to employment applications and the oral interview process respecting both the successful and unsuccessful applicants for principal positions in question on this public records petition."; i.e., the four "principalships." If the district did not intend to comply with the original disclosure order applicable to all

four of the principal positions it could have issued an appropriate written notice of intent to initiate court action, without, of course, necessarily being bound to actually file such action if the district later decided to comply.

In any event, the timeliness of the district's compliance or of its initiation of contest would be decided by the Circuit Court, not this office.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "Michael Schrunk", written over a horizontal line.

MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

cc: Karen Rutledge  
13141 NE San Rafael  
Portland, OR 97230

(With copy of Ms. Cameron's letter dated October 9, 1997)<sup>1</sup>

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<sup>1</sup>Because neither your exemption claim letter dated August 22, 1997, nor your two most recent letters dated October 7, and October 9, 1997 contain any indication that you mailed a copy to petitioner Rutledge we do so again for the third time. Although this is not a full-blown "contested case" administrative proceeding, it nevertheless is an adversary proceeding before an administrative official which ought to be sufficient reason to follow the practice required by Oregon State Bar Rule DR7-110(B)(2). (We recognize that perhaps you sent copies to Ms. Rutledge, although not so noted on your communications).