



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County  
600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
[www.co.multnomah.or.us/da/](http://www.co.multnomah.or.us/da/)

August 2, 2006

Kevin Van Driesche  
General Counsel  
IUOE Local 701  
555 E. First Street  
Portland, OR 97027

Lory J. Kraut  
Deputy City Attorney  
Office of City Attorney  
121 SW 4<sup>th</sup> Ave, Suite 430  
Portland, OR 97204

Re: Petition of Kevin Van Driesche on behalf of the IUOE Local 701, received July 24, 2006 to disclose certain records of the Office of Transportation and the Bureau of Purchases.

Dear Mr. Van Driesche and Ms. Kraut:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Kevin Van Driesche requests the District Attorney to order the City of Portland and its employees or agents to produce copies of the following records *without improperly redacting names and addresses*:

- 1. Certified payroll and statement records from 1/30/06 to 2/19/06 related to Office of Transportation work at SW/NW Naito Parkway (Contract #36430); and**
- 2. Certified payroll and statement records from June 2006 related to work contracted by the Bureau of Purchases RCI on the Sandy Boulevard project.**

An organizer with the International Union of Operating Engineers (IUOE) Local 701 made written requests to inspect or copy the records on March 2, 2006 and July 5, 2006, respectively. The documents were provided with redactions of the names, addresses, telephone numbers, and social security numbers of employees working for contractors on the public works projects.

Petitioner made a follow-up request to the Office of Transportation in a May 1, 2006 letter to Monica Sheeler. Deputy City Attorney Lory Kraut responded in a May 22, 2006 letter claiming exemption of the redacted records under ORS 192.502(4), Confidential Information, and ORS 192.502(2), Personal Information. The City also cited the limitations of ORS 279C.845(4), which deals with the reporting requirements of the Prevailing Wage Rate law.

Mr. Van Driesche strongly disagreed with Ms. Kraut in a June 9, 2006 letter. He noted that the information was required by law to be filed with the City, which eliminated the availability of the Confidential Communication exemption. He argued that the Personal Information exemption rarely applied to names, addresses, telephone numbers, base rates of pay, and fringe benefits.

In response to the petition, Ms. Kraut incorporated her previous position on ORS 279C.845(4) and otherwise claimed exemption of the names and addresses as Personal Information. She noted that Westech Construction, Inc., the general contractor for the City of Portland on the NW/SW Naito Parkway construction project, is non-union. Several employees previously worked for a union contractor and were members of Local 701. Westech advised Ms. Kraut that union organizers have taunted its employees and taken photographs and videotape. Ms. Kraut asserted that union organizers have contacted "spouses, relatives and have even showed up at employees' homes as part of the Local's campaign to get the employees to join the union."

Ms. Kraut cited a litany of harassing contacts by union organizers. Westech advised the City that "every single employee associated with the Naito Parkway project asked Westech not to give their personal information, i.e. names, addresses, phone numbers and social security numbers to Local 701." Ms. Kraut cited Jordan v. MVD, 308 Or 433 (1983).

### DISCUSSION

#### **Personal Privacy Exemption**

ORS 192.502(2) conditionally exempts:

Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

“The purpose of this exemption is not to prevent disclosure of personal information, as such, but rather to protect privacy from unreasonable invasion.” Jordan v. MVD, 308 Or 433, 441 (1989). Only personal information that would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption. In Jordan, 308 Or at 442, the court noted that the trial court found that the affidavit filed in the trial court

...sufficiently established that disclosure to the requester would more likely than not unreasonably invade her privacy because providing the information would allow Jordan to harry her incessantly to the extent than an ordinary reasonable person would deem highly offensive.

“[T]he information is not exempt absent an individualized justification for exemption.” Attorney General’s Public Records Manual, 2005, p. 62. This determination must be made on a case-by-case basis. A blanket policy of nondisclosure is not enforceable. Guard Publishing v. Lane County School Dist., 310 Or 32, 38-40 (1990).

Personal information is not defined in the exemption. In Jordan v. MVD, *supra* at 441, the Supreme Court cited Webster’s Third New International Dictionary definition of “personal” as meaning “1. of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general\*\*\* (personal baggage):\*\*\*6: exclusively for a given individual (a personal letter)\*\*\*.”

In Guard Publishing Co. v. Lane School Dist., 310 Or 32 (1990), the Supreme Court commented on the Court of Appeal’s position that the test for whether information is personal under ORS 192.502(2) is “whether it normally would not be shared with strangers.” The Court of Appeals had applied that test in Guard Publishing Co. v. Lane School Dist., 96 Or App 463, 467 (1981) and held that one’s name is unquestionably information normally shared with strangers. In a footnote to its opinion, the Supreme Court noted:

In Jordan v. MVD, *supra*, we implicitly rejected this Court of Appeals test. The District Court did not seek review of the lower courts’ conclusion that it must disclose the replacement coaches’ names. However, because we hold that the District’s 1984 policy is not compatible with the disclosure statutes, we do not here decide whether a person’s name could ever be exempt from disclosure under ORS 192.502(2). 310 Or at 36, n4.

The Attorney General has taken the position that “[g]enerally, disclosure of a name itself would not constitute an unreasonable invasion of privacy.” Attorney General’s Public Records Manual, 2005, p. 63. However, the identities of candidates for university president were not

disclosed in a 1988 Letter of Advice. “[A] person’s name may be exempt in certain contexts, due to a person’s desire for confidentiality to avoid stigmatizing or other undesired effect.” Attorney General’s Public Records Manual, 2005, E-6.<sup>1</sup>

In a 1995 order, a CSD list of employees involved in a notorious case was found not exempt “because disclosure would not likely lead to harassment or physical harm of individuals named on the list.” Attorney General’s Public Records Manual, 2005, F-30. In a March 20, 2003 order, the Attorney General denied a petition for the names of individuals giving confidential information to DMV:

This office has concluded that normally, neither the name, home address nor telephone number of an individual is exempt on the basis of personal privacy because a person generally shares such information with other members of the public. However, we have also concluded that there are situations in which it can be established that such information is covered by this exemption.

This office agrees with the Attorney General that a name, no less than a home address or telephone number, is theoretically covered by the exemption. The question then is whether petitioner has satisfied his burden that public disclosure of the employees’ names and addresses would not constitute an unreasonable invasion of privacy.” ORS 192.502(2).

Petitioner maintains that IUOE Local 701 made its requests “in order to verify compliance with prevailing wage law.” The City acknowledges that the certified statements filed with the city under the Prevailing Wage Rate statute are public records. See ORS 279C.845(6). However, Ms. Kraut argues that under the statutory scheme, the certified statements are to be used “only to ensure compliance” with the public contracting provisions and that it is the Bureau of Labor and Industries (BOLI) that takes such action.

Ms. Kraut is certainly correct that the use of the certified statements is limited. However, ORS 279C.870 provides that either the Commissioner of BOLI or “any other person” may bring a civil action to enforce the requirements of the Prevailing Wage Rate law. Disclosing the names and home addresses of employees of private non-union contractors to union officials for organizing purposes would appear to run afoul of the law. Here, petitioner as General Counsel to the union has expressly stated a legitimate purpose for obtaining the certified statements. We will take him at his word.


---

<sup>1</sup> “Release of the names would be contrary to the public interest since the potential for disclosure of such information may cause many or most qualified candidates to refuse to apply, making it more difficult for the state to recruit talented individuals to fill important offices.”

The City has provided substantial documentation that certain IUOE local 701 union organizers have engaged in actions against several Westech employees and their families that have made them fearful and scared. Such harassment could satisfy the requirements of Jordan v. MVD if an individualized justification for exemption of each affected employee was documented by Westech and accepted by the City. The necessary case-by-case analysis has not been done by the City (or at least presented to this office). A blanket non-disclosure policy extrapolated from a few incidents is simply not enforceable. See Guard Publishing Co. v. Lane School Dist.

ORDER

Accordingly, it is ordered that the City of Portland promptly disclose the records sought in the above petition. Disclosure of the documents ordered is subject to payment of the City of Portland's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,  
  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

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 fees in any court action arising from this public records petition (regardless whether 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 a court action within 7 additional days thereafter.