

V. J. Ratto
(F. J. R.)

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February 19, 1997

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Re: Public records petition of Barbara J. Diamond, Esq., for Mike Persons dated February 5, 1997 to disclose certain records of the Multnomah Education Service District (MESD)

Dear Counselors:

On this public records petition, ORS 192.410 et seq., petitioner attorney Barbara Diamond acting for Mike Persons requests the District Attorney to order the Multnomah Education Service District (MESD) to disclose its list of substitute teachers in Multnomah County, i.e., the name, home address and telephone number of each such substitute.

MESD claims that the list of substitutes is exempt from disclosure pursuant to ORS 192.502(2), the exemption for "personal information" which provides:

"The following public records are exempt from disclosure under ORS 192.410 to 192.505 [the public records law]: ***(2) 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 District's exemption claim letter dated February 6, 1997 from Mr. Burgess explains that the District's Director of Human Resources, Nora T. Fain, had originally denied the request for the list of substitutes by letter dated February 3, 1997 with findings that the list of substitutes constitutes "personal information" and that it

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reasonably could be inferred that furnishing the list would create the peril of unreasonably invading the privacy of each person on the list because a strike was then pending. Ms. Fain noted that there had been some allegedly harassing activity by striking teachers against substitute teachers in past strikes of other school districts.

Petitioner responds that this "personal information" exemption claim lacks specific evidence that any such harassing purpose exists. Petitioner also defends the right of the striking teachers to engage in "politically protected speech under the First Amendment," peacefully opposing strike-breaking activity. *

This office is bound by the interpretation of the personal information exemption developed by the leading Oregon Supreme Court cases: Jordan v. Motor Vehicles Division, 308 Or 433, 781 P2d 1203 (1989) and Guard Publishing Company v. Lane County School District No. 4J, 310 Or 32, 791 P2d 854 (1990). We conclude that under the procedures dictated by those cases the District here fails to show adequate support for its claim of the personal information exemption. The combined effect of the two Supreme Court cases is to require that a local government agency must give "individualized" consideration to particular information tending to show that disclosing the particular name and address (or presumably the telephone number) of a government employee would create a significant risk of unreasonable invasion of privacy. This is a threshold requirement which must be met before consideration is given to whether any particular public interest outweighs the personal information exemption.

Here, we do not think that any prima facie case has been made that the exemption applies. Guard Publishing Company was itself a case of striking teachers, in which the Eugene School District had experienced harassing conduct in a past strike. Even though the trial court had made specific findings supporting the position of the school district, the Oregon Supreme Court rejected the adoption of a "blanket policy" prohibiting the disclosure of the names of substitute teachers, stating that "Exemptions are to be narrowly construed, i.e., they are to be made on an individualized basis and are to be based on a sufficient showing of justification." (Emphasis added). Ibid., 310 Or at 39.

In the present case, the school district has not produced any specific information relating to any of the hundreds of names on its substitute teacher list which would indicate specific reasons why it would be an unreasonable invasion of privacy to release the names in question. Many people may be inclined to say that this flies in the face of their own "common sense", which may indicate to them that harassing activity is predictable and perhaps even likely in the setting of an emotion-laden strike. But this office does not write the decisions of the Supreme Court; rather, we can only do our best to follow them. The school district has not met the requirements of the ruling case law on the record before us.

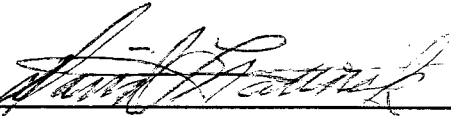
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ORDER

Accordingly, it is ordered that: the petition of Barbara J. Diamond dated February 5, 1997 is granted; the Multnomah Education Service District shall promptly disclose to petitioner the entirety of its elementary/secondary teacher substitute list to the extent that the list contains the name, home address and telephone number of the individual substitute teachers, subject to payment of the district's fee, if any, not exceeding its actual cost in making the list available, consistent with ORS 192.440.¹

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

By 
David L. Hatrick
Senior Deputy District Attorney

DLH:kg

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 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.

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¹The petition requests only the names, addresses and telephone numbers of the substitutes. A one-page sample page of the list provided to us by respondent MESD shows that the information is displayed in four columns, the first of which contains all of the information requested by petitioner. Therefore, MESD may cover all of the information shown in the remaining three columns so as to disclose to petitioner only that information which was requested.