



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

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December 15, 1999

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Re: Petition of Monica Smith, on behalf of the Oregon Education Association (OEA) and Judy Casper, received December 6, 1999, to disclose certain records of the Multnomah Education Service District (MESD)

Dear Ms. Smith and Mr. Burgess:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq. petitioner Monica Smith, counsel for OEA and its consultant Judy Casper, requests the District Attorney to order MESD and its employees to produce the following records:

#### **Home addresses of substitute teachers registered with MESD.**

The written request by Ms. Casper to the Personnel Director of MESD on October 6, 1999 was for "a list of the names and home addresses of the substitute teachers who are registered with the Multnomah Education Service District." Upon receiving no response, Ms. Smith wrote to MESD General Counsel Burgess on November 9, 1999. Mr. Burgess responded in a November 16 letter that "MESD was willing to provide to OEA the name and address of any substitute teacher in its records who "may be a member" of OEA. Mr. Burgess then requested OEA assistance in identifying OEA member substitutes so that he could comply with the public

record request. Ms. Smith replied in a November 18 letter that OEA is open for membership to all members of the teaching profession and again requested the names and home addressees of all substitute teachers registered with MESD.

In her petition to this office, Ms. Smith has taken the position that, with respect to substitute teachers, a 1999 amendment to the Public Records Law constitutes a broad exception to the 1997 exemption from disclosure of public employee addresses. In a December 8 letter response to the OEA petition, Mr. Burgess argues that the amendment is narrow in scope and limits disclosure of the home addresses of substitute teachers to actual members of a professional organization.

#### DISCUSSION

ORS 192.502(3) exempts:

**(a) Public body employees or volunteer addresses and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.** This exemption does not apply:

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(B) To such employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance.

(b) Nothing in this subsection exempting employee records from disclosure relieves a public employer of any duty under ORS 243.650 to 243.782.

This conditional exemption was the subject of a July 16, 1998 Public Records Order (98-14) involving the same petitioner and public agency. This office determined that the exemption was "applicable to the records of the substitute teachers maintained by MESD." The petitioner's request for a list of addressees was denied but MESD was ordered to provide a list of the names of all substitute teachers maintained in MESD records.

Senate Bill 711, Chapter 379, Section 1, effective October 23, 1999, provides in part:

**This exemption [ORS 192.502(3)(a)] does not apply:**

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**C) To a substitute teacher as defined in ORS 342.815  
when requested by a professional education association of  
which the substitute teacher may be a member.**

Petitioner contends that the language of the amendment is clear. Every substitute teacher "may be a member" of OEA. Therefore, the names and addresses of all substitute teachers are subject to disclosure. . MESD, on the other hand, argues that the phrase "may be" refers to existing circumstances. Therefore, a particular professional education association (in this case OEA) is entitled only to the addresses of its current substitute teacher members

MESD asserts that the phrase "may be a member" is subject to interpretation but provides little helpful legislative history<sup>1</sup> to assist the office in a determination of the legislature's intent. Petitioner rejects the legislative history analysis suggested by MESD but has offered no additional material for our evaluation.

We agree with petitioner that the meaning of the legislative amendment is clear. There is no need to explore the intent of the legislature or resolve conflicting interpretations of the phrase "may be a member." See PGE v. Bureau of Labor and Industries, 317 Or 606 (1993). In addition, we agree with petitioner that there is nothing in the text or context of ORS 192.502(3) to indicate that the amendment relates to collective bargaining or labor unions. Ms. Smith notes that the term "professional education association" is not, to her knowledge, defined by statute.<sup>2</sup>

We must, however, disagree with the OEA interpretation of the amendment. We conclude that the new statutory provision on its face simply creates a resource (through the employer) to assist any professional association in maintaining an up-to-date list of its members' current addresses and telephone numbers. ORS 192.502(3)(a)(C) constitutes a narrow exception to the otherwise broad privacy protection recently granted to all public employees.

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<sup>1</sup> "The purpose of this act, according to its chief proponents --- the Oregon Substitute Teachers Association --- was to allow for improved communication relating to professional development opportunities between substitute teachers and their professional association." 1999 Legislative Report, Confederation of Oregon School Administrators and the Oregon School Boards Association, p. 22. (From Burgess letter dated December 8, 1999).

<sup>2</sup> Ms. Smith points out in a December 13 letter to this office that the Oregon Substitute Teachers Association is not, to her knowledge, a labor organization. "[O]nly three bargaining units exist (Portland, Beaverton, and Eugene), and all three are represented by local affiliates of the OEA."

Page 4  
December 15, 1999  
Re: Petition of Monica Smith

Mr. Burgess has advised this office that MESD does not maintain a separate list of OEA substitute teachers. MESD cannot, therefore, readily identify any records to satisfy petitioner's request under the Public Records Law. If, however, OEA were to provide MESD with a current list of its members who "may be" substitute teachers, MESD would then be in a position to cross-reference those names with its own computer list of substitute teachers. The addresses of those identified substitute teachers should then be disclosed in compliance with ORS 192.502(3).

ORDER

Accordingly, it is ordered that the petition of Monica Smith, on behalf of the OEA, to disclose certain records of the MESD is denied. This petition is subject to renewal if MESD does not provide the addresses of OEA-member substitute teachers upon presentation to MESD of an OEA Membership roster.

Very truly yours,

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MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County