



MICHAEL D. SCHRUNK, District Attorney for Multnomah County
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July 16, 1998

JUDY CASPER
UNISERV CONSULTANT
EAST MULTNOMAH COUNTY
OEA-OACE
202 SE 181ST ST
PORTLAND, OR 97233

JOHN W. BURGESS
GENERAL COUNSEL
MULTNOMAH EDUCATION SERVICE DISTRICT
11611 NE AINSWORTH CIRCLE
PORTLAND, OR 97220-9017

Re: Petition of Judy Casper, for OEA-OACE, dated 29,
1998, to disclose certain records of the Multnomah
Education Service District

Dear Ms. Casper and Mr. Burgess:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Judy Casper, for OEA-OACE, requests the District Attorney to order the Multnomah Education Service District (MESD) to produce the following records:

Current substitute list to include their names, addresses and phone numbers.

The written request to the MESD was for

a list of the names and home addresses of the substitute teachers who are registered with the MESD.

The response to the OEA-OACE request by Nora Fain, Human Resources Director for MESD, did not assert an exemption to disclosure of the **name** of the substitute teachers. Rather, MESD asserted that the **addresses** of the substitute teachers are exempt from disclosure.

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This petition will assume that the request for the records in question was intended to include the names, addresses and phone numbers of the substitute teachers on file with the MESD and that MESD would claim an exemption for the phone numbers as well.

John Burgess, general counsel for MESD, provided a letter response to this office with a copy to Ms. Casper. MESD has taken the position that ORS 192.502(3), a new conditional exemption from the 1997 legislature, is applicable with respect to the **addresses and telephone numbers** of the substitute teachers.

Mr. Burgess does not appear to claim exemption for the **names** of the substitute teachers except to note the expense that would be required to remove exempt material from MESD records. Mr. Burgess included a document titled **Substitute Report All Substitutes** as a representation of the 700 name, 80 page MESD personnel record.

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:

(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.

Monica Smith, counsel for petitioner OEA-OACE, has chosen not to provide an argument that disclosure is in the public interest. Rather, Ms. Smith contends that the exemption does not apply because MESD does not maintain the list of available substitutes as an employer of the teachers. Her position is that the list is "a list of applicants for substitute teaching positions" but that "no employment relationship is formed by virtue of registering for the list." Ms. Smith argues that MESD is in the role of an employment agency or referral service.

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Ms. Smith acknowledges the existence of an agency relationship but not that MESD is an employer. She describes MESD as a referral agent which does not satisfy the definition of an employer.

Mr. Burgess for the public body contends that MESD provides "an automated employee absence reporting service" which "provides the personal information necessary to place the person in the system and to enable the districts to meet their payroll needs." MESD is an "agent" for the various school districts. As such, the addresses and phone numbers on the list are exempt as personnel records maintained by "the public body that is the employer" of "the public body employees."

A resolution to this public records request requires reference to two provisions of the public records law.

"Custodian" is defined in ORS 192.410(1)(b) to include:

A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian **unless the public record is not otherwise available** (emphasis added).

ORS 192.502(10)) extends the asserted exemption to encompass:

Public records or information...furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, **if the consideration originally giving rise to the confidential or exempt nature of the public records or information remain applicable** (emphasis added).

In this age of computers and the demand for government efficiency, it is hard to find fault with the cooperative efforts of MESD and its six school districts. The personnel records of the available substitute teachers is maintained by MESD as custodian for the six school districts it serves.

The various school districts employ on a day to day basis many of the substitute teachers registered with MESD. These teachers are entitled to the same protection as other educators employed by the school districts.

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The legislature has established the specific exemption of ORS 192.502(3)(a) for public body employees. This office believes it is applicable to the records of the substitute teachers maintained by MESD. In the absence of petitioner satisfying the burden of clear and convincing evidence that the public interest requires disclosure, the addresses and phone numbers of substitute teachers are exempt. Their names, however, are not covered by the exemption.

ORDER

Accordingly, it is ordered that the petition of Judy Casper to disclose a list of the **addresses (and phone numbers)** of substitute teachers maintained by MESD is denied, ORS 192.502(3).

It is further ordered that MESD promptly disclose a list of the **names** of all substitute teachers maintained in MESD records. Disclosure of the documents ordered is subject to payment of the MESD 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

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 issued 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.

JKH:JKH
cc: Monica Smith
98-14