



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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July 9, 2010

Linda Meng
City Attorney
City Attorney's Office
1221 SW 4th Avenue Suite 430
Portland, OR 97204

Beth Slovic
Willamette Week
2220 NW Quimby Street
Portland, OR 97210

Re: Petition of Beth Slovic for Willamette Week received June 21, 2010, to disclose certain records of the City of Portland.

Dear Ms. Meng and Ms. Slovic:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Beth Slovic requests the District Attorney to order the City of Portland and its employees to produce an unredacted copy of the following records:

[A]ll of the mayor's incoming and outgoing direct messages on twitter from April 15 to the present.

Petitioner made her written email request for the above information to Roy Kaufman, Communications Director, Office of Mayor Sam Adams, on May 11, 2010. Mr. Kaufman responded by email (with a PDF attachment) on June 10, 2010. He noted that "only a handful of personal, non-city business DMs were redacted." The PDF consisted of 32 pages of direct messages to and from the Mayor's in box from April 15, 2010 to May 11, 2010. There were a total of 12 redacted messages out of about 250 messages.

Ms. Slovic complained in her petition that the electronic messages were withheld "on the grounds they were personal even though they were sent from Adams' mayoral twitter account." A review of the messages supports her position that this is not a private twitter account.

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City Attorney Linda Meng responded to the petition and argued that the “redacted records do not ‘contain information relating to the conduct of the public’s business.’” Ms. Meng went on to point out that the “location of the document is not determinative of whether it is a public record.” Finally, the City contended that “the fact that a document exists on a City account does not mean it comes within the definition of a public record.”

DISCUSSION

The Public Records Law contains a specific exemption for Personal Information under ORS 192.502(2) which 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 Attorney General’s Public Records Manual, 2008, p. 72, contains a discussion of a petition involving a state university’s cellular telephone bill which contained personal as well as work-related calls. The petition was denied with respect to the personal calls because disclosure would reveal nothing about an individual’s performance as a public employee or about the performance of public duties, and “disclosure would be an unreasonable invasion of privacy.”

The City has elected not to claim the Personal Privacy exemption but, instead, maintains that a dozen of the Mayor’s official communications to the citizens of Portland should simply be sheltered from public scrutiny.

ORS 192.410(4) provides in relevant part:

(a) “Public Record” includes any writing that contains information relating to the conduct of the public’s business...prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(b) “Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.

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The broad question to be answered is whether a city official has a reasonable expectation of privacy in certain of his or her twitter communications with the public? If the communications are personal and are made on a private twitter, the answer is yes. If the communication is on a government sponsored twitter, the answer is more complicated. Unfortunately, the City has not provided this office with any City policy or guidelines explaining the limits (or allowances) on the use of a public twitter for particular purposes. Consequently, we are left to evaluate the redactions here in a vacuum.

Some of the twelve messages (both sent and received) are on the surface no different in content than many of the disclosed "tweets." The City has provided no information as to why the 12 messages are not simply communications with the Mayor's constituents. As such, the messages to and from the Mayor presumptively relate to "the public's business." Certainly we accept the possibility that the messages may very well be personal communications that found their way onto the Mayor's twitter.

Petitioner was helpful enough to disclose (in confidence) some background on the nature of her investigative efforts. We are confident the 12 messages are of no interest to the petitioner. Consequently, the position of the City will not be evaluated further at this time.

ORDER

Accordingly, it is ordered that the petition of Beth Slovic for Willamette Week to disclose certain records of the City of Portland is denied.

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon