



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

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April 20, 2000

Michael Dolan  
Dolan Management  
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Portland, OR 97201-1127

Linda Meng  
Chief Deputy City Attorney  
Office of the City Attorney  
City Hall, Suite 430  
1221 SW Fourth Avenue  
Portland, OR 97204

Re: Petition of Michael Dolan, received April 11, 2000, to disclose certain records of the City of Portland **PR 00-08**

Dear Mr. Dolan and Ms. Meng:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq. petitioner Michael Dolan requests the District Attorney to order the City of Portland and its employees to make public the records

**pertaining to the purchase, management and sale of properties acquired from Dominion Capital in 1992.**

In a September 17, 1999 letter to Steve Rudman, Director of Housing and Community Development, petitioner made an extensive request for documents related to the activities of the Portland Community Reinvestment Initiative, Inc. (PCRI) and the former Dominion Capital properties. Information was sought under five categories: financial condition, assets, property management, organization and Board.

Petitioner subsequently met with Lynne Taccogna at the offices of the Bureau of Housing and Development and was provided access to numerous documents. On January 25, 2000, petitioner e-mailed Ms. Taccogna with his understanding of the state of his public records

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request. Ms. Taccogna sent a clarifying e-mail to petitioner on January 27. Petitioner was provided the opportunity to inspect documents relating to the categories of financial condition and organization as well as a list of the Board of Directors of PCRI. The Bureau did not make available documents relating to assets, property management, or the schedule or minutes of the meetings of the PCRI Board.

In an April 18 letter response to this petition, Chief Deputy City Attorney Linda Meng takes the position that the City has provided for petitioner's review all requested documents in its possession. She advises that the term "NOT AVAILABLE" in the e-mail correspondence means that the City simply does not have these documents. Chief Deputy Meng asserts that PCRI is a private non-profit corporation and that the City "does not have authority over those documents and does not have the ability to require that they be produced."

#### DISCUSSION

Petitioner has requested that the City of Portland provide certain information under its custody and control. The City takes the position that it has made available to petitioner the documents it has in its possession. Petitioner does not appear to disagree with that assertion. However, petitioner contends that the City should be required to obtain the records from PCRI, "an agency it controls."

The Public Records Law applies to the public records of public bodies. The District Attorney reviews a public records petition to determine if the public agency has denied a request without a valid explanation. If so, an order will be issued directing the public agency to provide the documents to the petitioner. If not, the petition must be denied.

ORS 192.410(4) provides:

"Public record" includes any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

ORS 192.410(3) provides:

"Public body" includes every state officer, agency, department, division, bureau board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

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Arguably, the documents sought by petitioner relate to the public's business and are public records. It is not clear, however, that PCRI is a "board, department, commission, council, or agency of the City." Chief Deputy Meng provided this office with a copy of the PCRI Articles of Incorporation. On its face, the corporation is a non-profit organization created for the "public benefit." PCRI was established in 1991 for the express purpose of "advancing and increasing the stock of decent, safe and affordable housing for very low-, low-, and moderate-income persons of all races within the State of Oregon."

Upon careful review of the various documents and arguments submitted by petitioner, we are not convinced that PCRI is a city agency. It may, nonetheless, be a public body subject to the Public Records Law.<sup>1</sup> As stated in the Attorney General's Public Records Manual, 1999, p. 3:


On its face, the Public Records Law does not apply to private entities or to private bodies such as nonprofit corporations and cooperatives. However, in a 1994 case, the Oregon Supreme Court held that if the entity is the "functional equivalent" of a public body, the Public Records Law applies to it.

It would be premature for this office to address petitioner's contention that PCRI should be responsible for adhering to the Public Records Law. PCRI is not a party to this public records petition. Chief Deputy Meng made it clear in her letter response that the "City Attorney's Office does not represent PCRI." Petitioner is certainly free to make a public records request of PCRI itself for the documents not available through the City.

ORDER

Accordingly, it is ordered that the petition of Michael Dolan to disclose certain records of the City of Portland is denied.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County

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<sup>1</sup> Both petitioner and the City have referred to the Oregon Supreme Court decision of Marks v. McKenzie High School Fact Finding Team, 319 Or 451 (1994) which set forth six relevant factors for analyzing the proper characterization of a particular entity. The Supreme Court noted that the determination of whether a particular entity is a "public body" will depend on the "character of that entity and the nature and attributes of that entity's relationship with government and governmental decision-making." Marks v. McKenzie, 319 Or at 424.