



ROD UNDERHILL, District Attorney for Multnomah County

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June 14, 2013

Brad Schmidt
The Oregonian
1320 S.W. Broadway
Portland, Oregon 97201-3499

Linda Law
Deputy City Attorney
1221 S.W. 4th Ave, Suite 430
Portland, Oregon 97204

Re: The May 30, 2013 Petition of Brad Schmidt for The Oregonian to disclose the resumes for the three finalists¹ for the Portland Bureau of Transportation director's position.

Dear Ms. Law and Mr. Schmidt:

BACKGROUND

The Oregonian requested these records on May 30, 2013. Karen Sorensen, executive assistant, Bureau of Human Resources denied the request citing ORS 192.502(2), other public records exempt from disclosure, which includes: "Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure 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."

In the denial, Sorensen noted that, "In general, the City does not release materials associated with a recruitment (letters, apps, resumes, etc.) until a candidate has accepted the City's offer of employment."

¹ Both parties agree that there are actually only two finalists.

DISCUSSION

I. Confidential Communications

ORS 192.502(4) conditionally exempts:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

There are five conditions that must be met for this exemption to apply:

1. The informant must have submitted the information on the condition that the information would be kept confidential;
2. The informant must not have been required by law to provide the information;
3. The information itself must be of a nature that reasonably should be kept confidential;
4. The public body must show that it has obligated itself in good faith not to disclose the information;
5. Disclosure of the information must cause harm to the public interest.

II. Personal Privacy Exemption

ORS 192.502(2) 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.

Both the City and the Oregonian make compelling arguments regarding the applicability of the above mentioned exemptions. My office, however, need not make a determination if all the criteria of the exemptions are met since both can be overcome if disclosure would be in the public's best interest. It should be acknowledged that the very submission of an employment application for a high-level position such as this could be constrained by the knowledge that public

exposure might be viewed adversely by their current employer. However, this chilling effect is lessened in this scenario because petitioner's request is limited to the final two finalists. It is also possible at this stage of the hiring process that the finalist's current employers would already be aware of the recruitment process.

In balancing the public interest it is significant that the director of Transportation is a high level position. The Oregonian argues that it would not be unreasonable to release the credentials of candidates who are finalists to lead a bureau with a \$240 million annual budget and 725 employees. According to the Oregonian, Portland's new mayor, Charlie Hales, has called into question the importance of finding a qualified director after the former director resigned over concerns about the hiring process and the former director's qualifications and capabilities. The Oregonian points out as way of background, in 2011 former Mayor Sam Adams named his Chief of Staff, Tom Miller, to lead the Transportation Bureau with no competitive search.

The existence of an adverse public interest must be weighed against the positive public interest in disclosure of the materials sought. If a petitioner made a request for confidential employment applications simply out of curiosity, there could be little disagreement that the applications would be exempt from disclosure. That is not the case here. The request is limited to the two resumes of the finalists for a high ranking director's position. It is therefore not unreasonable that the resumes should be subject to public scrutiny.

It should be noted that the City could provide the resumes but redact personal information such as email addresses, telephone numbers and home addresses. The Attorney General handbook notes that questions frequently arise concerning a public body's duty to disclose information in applications for employment. "In responding to a request for such records, a public body sometimes must review documents line by line in order to segregate the exempt from nonexempt information pursuant to ORS 192.505."

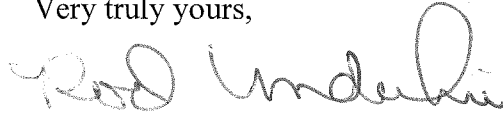
The remaining question is whether to exclude some or all of the personal information of either the applicants or their references. A person applying for public employment should be expected to provide contact information potentially available to the public. This would normally be a business address and telephone number, a post office box, or a current employer. However, the disclosure of a home address, telephone number or email address is in a different category. The best analogy would be to the specific exemption of ORS 192.502(3), public employee addresses, social security numbers, birth dates and telephone numbers. If a public employment applicant is in fact hired, such information would then be exempt from disclosure as part of their personnel file. Providing this personal identification in a confidential employment application should receive no less protection. Petitioner is entitled to the identification and contact information of each named applicant subject to necessary redaction of certain personal information as noted in the order.

ORDER

Accordingly, it is ordered that the City of Portland promptly disclose the records sought in the above petition subject to redaction of the home addresses, home telephone numbers, home

email addresses and other similar personal information of the two finalists. Disclosure of the documents ordered is subject to payment of the City's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,

A handwritten signature in cursive script that reads "Rod Underhill".

Rod Underhill
District Attorney
Multnomah County, Oregon

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 issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.