



ROD UNDERHILL, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

December 23, 2014

Mark Amberg
Sr. Deputy City Attorney
Office of City Attorney
City Hall, Suite 430
1221 SW 4th Avenue
Portland, OR 97204

Brad Schmidt
Reporter, The Oregonian
1500 SW First Ave. Ste. 400
Portland, OR 97201

Re: Petition of Brad Schmidt for The Oregonian received December 15th 2014,
to disclose certain records of the City of Portland regarding Dean Marriott
disciplinary materials.

Dear Mr. Amberg and Mr. Schmidt:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Brad Schmidt for The Oregonian requests the district attorney to order the City of Portland (“the city”), and its employees or agents to produce a copy or copies of the following records:

- 1) Any notices of Dean Marriott’s paid leave.
- 2) Civil service claims filed by Dean Marriott or on his behalf.

Mr. Schmidt asked to inspect these records on December 1, 2014 citing Oregon’s public records law. The request was denied on December 11, 2014 by Carrie Wilton, senior paralegal. In her initial denial Ms. Wilton cited ORS 192.501(12) (Personnel discipline action exemption). The city later asserted as an exemption the personal privacy exemption found in ORS 192.502(2).

By way of background, petitioner states that Dean Marriott is the city’s most senior administrator, has led the Bureau of Environmental Services (BES) for 20 years, and earns \$199,160 a year. Mr. Marriott is also the only remaining bureau director with civil service protections that make disciplinary actions against him more difficult to enforce.

In response to an audit that reviewed an over budget BES project regarding the Columbia building project the city placed Mr. Marriott on paid administrative leave pending the outcome of a second, separate review by an outside attorney. The Oregonian has already reported that the city has confirmed that the audit is "alarming" and according to the city that said Marriott's leave is in the "best interest of the bureau."

The Oregonian requested the city's documentation placing Marriott on leave, as well as any civil service or tort claims filed by Marriott. The city provided the tort claim notice but did not provide the city's letter to Marriott or Marriott's civil service claim.

According to the city, Mr. Marriott considers the issuance of the letter placing him on paid administrative leave as discipline so is therefore appealing his placement on paid administrative leave to the Civil Service Board. The city's position is that placement on such leave is not discipline and that the board therefore has no jurisdiction to overturn the city's action. There currently is a hearing set on January 8, 2015 where the board will decide if it has jurisdiction over the matter.

DISCUSSION

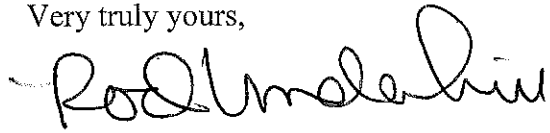
The city objects to the release of the requested documents under two exemptions: (1) Information of a personal nature under ORS 192.502(2); and (2) A completed personnel disciplinary action under ORS 192.501(12).

This is a unique fact pattern involving the application of the personnel disciplinary exemption while there is an ongoing city investigation and a related civil service appeal challenging the placement of Mr. Marriott upon paid administrative leave. To prevail in the civil service matter the city has to convince the Civil Service Board that it lacks jurisdiction since Mr. Marriott's paid administrative leave is not discipline. On the other hand, the applicability of the personnel disciplinary exemption hinges on if discipline was actually imposed. We agree with the city that it would be inappropriate to order release of the the requested records while that issue is under consideration since ORS 192.501(12) only applies if discipline is actually imposed. This decision is made easier since the Civil Service Board will convene in 15 days to adjudicate the matter and the city has assured my office that the investigation will be complete by the end of January. We also agree with the city that until the investigation is complete, and a decision is made if disciplinary action is appropriate, it would be premature to release any of the requested records. Additionally, Senior Deputy City Attorney Mark Amberg has assured my office that the city will release both sought after documents if the board finds that no discipline was imposed or convenes as a public meeting.

ORDER

Accordingly, it is ordered that the petition is denied with leave for the petitioner to resubmit his appeal after the investigation of Mr. Marriott is complete.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is written in a cursive style with a large, looped "R" and "U".

ROD UNDERHILL
District Attorney
Multnomah County, Oregon