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September 9, 2015

Laura Frazier
The Oregonian
1500 S.W. 1st Ave., Suite 400
Portland, Oregon 97201

Heidi Brown
Deputy City Attorney
Office of the City Attorney
1221 S.W. 4th Ave., Suite 430
Portland, Oregon 97204

Re: Petition of Laura Frazier for review of redactions made by the City of Portland to disclosed employment records of Michael Rosen.

Dear Ms. Frazier and Ms. Brown:

In successive public records requests dated July 2, 2015 and July 6, 2015, petitioner Laura Frazier, on behalf of The Oregonian, requested the following documents from the City of Portland:

Documents related to discipline or complaints for former Bureau of Environmental Services employee Mike Rosen, including, but not limited to, written reprimands, performance improvement plan written assessments and complaints, from 2010 to present.

The targeted severance agreement between the City of Portland and Mike Rosen related to his position with the Bureau of Environmental Services. Additionally, any tort claims filed by Mike Rosen or on behalf of Mike Rosen, any documents from attorneys representing Mike Rosen and the city's response to those documents.

In response the city produced over a hundred pages of documents to petitioner. These documents were, in places, heavily redacted. Petitioner seeks review of the redactions and disclosure of the redacted material where appropriate. The documents for which petitioner seeks review are identified in the parties' submissions as:

- Exhibit B, which consists of Bates numbers 100002, 100005, 100008-09, and 1000011-17.

- Exhibit D, which consists of a 3/23/2010 performance review of Mr. Rosen [unnumbered], unlabeled notes [unnumbered], and Bates numbers 100064-65¹ and 100100.
- Exhibit F, which consists of Bates numbers 100067-70

Exhibits C, E, and G are, respectively, the unredacted versions of Exhibits B, D, and F that the city provided to this office for our review pursuant to ORS 192.470(2).

The city has claimed that the redacted material is information of a personal nature because it relates to an employee's disability and is therefore exempt from disclosure by operation of ORS 192.502(2). The city additionally claims attorney-client privilege as to the redactions in one document.

DISCUSSION

A. Information of a Personal Nature – ORS 192.502(2)

We previously issued an order on June 29, 2015 (MCDA PRO 15-18) in which we held that, as a result of his status as a candidate for office and then an elected official, the public had an overriding interest in disclosure of certain records relating to Mr. Rosen's employment with the city. The applicability of this particular exemption is highly fact-dependent. We reached our previous decision after careful review of the specific contents of the documents at issue. Having conducted a similarly detailed review of the documents in this case, we find that the majority of the redactions made by the city are warranted.

It is public knowledge that Mr. Rosen has a disability and that he attempted to seek accommodation for that disability. Mr. Rosen's resignation letter, published in multiple local news outlets the same day it was written, publicly announces these issues:

Some of these issues were related to the symptoms of my known disability, and others to my direct and frank communication style. I worked diligently and in a variety of ways with management and human resources to address these issues, and requested reasonable accommodations for health-related issues to assist in building a reasonable workplace environment.

Due to the information already in the public sphere, redaction is not necessary as to the mere existence of a disability or as to the fact that Mr. Rosen made requests for accommodation generally.

The public record does not, however, contain information about the specific nature of Mr. Rosen's disability. We agree with the city that any information that would tend to disclose the nature of his disability is exempt from disclosure. Accordingly, we approve the redactions relating to the specifics of the accommodations he requested and the specifics of his disability.

¹ The city has subsequently agreed that these pages should have been disclosed and has produced their contents as 100067-70 subject to limited redaction based on attorney-client privilege. Accordingly, we do not address pages 100064-65 further in this opinion.

Despite the lengthy sections of redacted information, in most cases the city has narrowly tailored its redactions to protect Mr. Rosen's personal information.

We previously held that the public had an overriding interest in information relating to Mr. Rosen's job performance with the Bureau of Environmental Services (BES). Although the public certainly does have an interest in Mr. Rosen's performance of his previous public job duties and his interactions with his subordinates, managers, and the public, the public does not have an overriding interest in the details of the personal disability that Mr. Rosen faces. He may, of course, chose to share whatever information he desires, but until he does so the city is under no obligation to disclose its own records that could in turn reveal the nature of the disability claimed by Mr. Rosen.

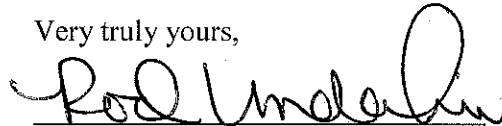
B. Attorney Client Privilege – ORS 192.502(9)

The city has claimed privilege as to some information contained in an email labeled Exhibit F. All parties to the email are managerial members of BES and, as such, they are entitled to discuss or reference attorney advice amongst themselves without waiving the privilege. The minimal redaction made does not impair the overall meaning of the document and is appropriate under the circumstances.

ORDER

Accordingly, the petition is granted in part and denied in part. Attached to the city's copy of this letter are pages indicating what additional information must be disclosed. All highlighted passages must be produced to petitioner; all others are appropriately redacted. In summary, we have approved most of the redactions made with the exception of certain redactions appearing on pages 100002, 100008-09, 100012, and 100016-17. The city is ordered to promptly provide the redacted information as indicated in the attachments. This disclosure is subject to payment of fees to the city, if any, not exceeding the actual cost in making the information available.

Very truly yours,



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's 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 seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.