



**ROD UNDERHILL**, District Attorney for Multnomah County

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October 14, 2016

Shasta Kearns Moore  
Portland Tribune  
6605 S.E. Lake Road  
Portland, Oregon 97222

Kim Sordyl  
311 N.W. 12th Avenue  
Portland, Oregon 97209

Stephanie Harper  
Portland Public Schools  
General Counsel's Office  
501 N. Dixon Street  
Portland, Oregon 97227

Re: Petitions of Shasta Kearns Moore, on behalf of the Portland Tribune, and Kim Sordyl seeking emails and text messages from Portland Public Schools employees and board members.

Dear Ms. Kearns Moore, Ms. Sordyl, and Ms. Harper:

In her public records petition, dated October 6, 2016, petitioner Shasta Kearns Moore requests this office to order the Portland Public School District (PPS) to disclose copies of the following records:

**All written communications (including e-mail) related to the student protest/walk-out and lock-out on September 7, 2016 by/from PPS, its board members and employees, PPS Campus Security, Portland Police (including SROs), and other individuals, students, and press regarding these incidents.**

**All text messages between Board members Amy Kohnstamm, Tom Koehler, Pam Knowles with each other and with PPS employees and any other individuals from September 6, 2016 through midnight Sept 12, 2016 that relate in any way to PPS.**

Ms. Kearns Moore filed this request with PPS on September 12, 2016 and, as of October 6, 2016, the date of her petition to this office, had not received any records in response. PPS informs us that it has received 20 identical records requests from various individuals, some representing local media outlets some as concerned members of the community.

On October 10, 2016, PPS provided 233 pages of emails responsive to the first portion of the request to all twenty requestors along with a cover letter from interim general counsel, Stephanie Harper, explaining the volume of public records requests currently pending with PPS

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as well as certain logistical issues involved in responding to this particular request.<sup>1</sup> In her letter, Ms. Harper notes that PPS has received 92 public records requests in the last four months and that PPS has a single staff member to handle intake and release of public records and a single attorney, herself, to conduct review of records for possible redaction.

On October 11, 2016, Kim Sordyl, who was one of the other nineteen individuals to have requested these records, filed a petition with this office generally challenging PPS' explanation of delay and specifically demanding that the requested text messages be promptly provided. Ms. Sordyl argues, in part, that PPS employs multiple attorneys as well as the services of outside counsel and that it can, and indeed must, make use of these resources to provide more prompt responses to public records requests.

Both petitioners urge us to find that access to the remaining records has been constructively denied and order PPS to produce them immediately. As discussed below, we do not have jurisdiction to consider this petition.

### DISCUSSION

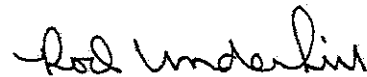
At the time Ms. Kearns Moore filed her initial petition the district had yet to provide any records in response to either part of the request. However, with the provision of the 233 pages of emails, Ms. Harper has informed this office that the only responsive records that remain outstanding are the text messages sought from the cell phones of the three identified board members.

With respect to any records in the custody of a school board member this office lacks the authority to intervene. ORS 192.480 provides that when a public record is in the custody of an elected official "no petition to require disclosure may be filed with the [...] district attorney." Because Amy Kohnstamm, Tom Koehler, and Pam Knowles are undeniably elected officials, ORS 192.480 requires that any claim for relief be filed directly in the Multnomah County Circuit Court.

### ORDER

As to the records responsive to the first portion of the request, the petition is denied as moot. As to the second item, the petition is dismissed for lack of jurisdiction.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

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<sup>1</sup> Ms. Harper writes that PPS presently lacks the ability to retrieve and provide text messages from cell phones. She informs the requestors that PPS working on securing a services contract to provide the technical capacity to comply with its legal obligations.