



ROD UNDERHILL, District Attorney for Multnomah County

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November 23, 2016

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: Petition of Kim Sordyl seeking records from Portland Public Schools.

Dear Ms. Sordyl and Ms. Harper:

In her public records petition, dated November 16, 2016, petitioner Kim Sordyl asks this office to order the Portland Public School District (PPS) to respond to a records request she filed on October 10, 2016. In her records request, Ms. Sordyl sought seven categories of records. These individual requests, and our disposition of them, are set forth below.

1. *All written documentation, including texts, e-mail, letters, from Amy Kohnstamm to Principal Peyton Chapman from August 6, 2016 to present, including any responses.*

Ms. Kohnstamm, a PPS School Board member, has asserted, via counsel, the jurisdictional privilege of ORS 192.480. We may not consider a public records petition where, as here, the records are either in the custody of an elected official or where an elected official asserts the right to withhold disclosure.

2. *All documentation regarding the harassment and retaliation complaint made by Principal Peyton Chapman regarding Amy Kohnstamm, including all texts, e-mail, letters, memos, contracts, agreements, investigation, evidence, resolution, decision, cease & desist, protection order, etc. in any way related to the complaint.*

PPS relates that the sole record it has responsive to this item, that is not covered by its response to item 1 above, has already been provided to petitioner as part of a separate public records production in September of this year. The fact that a record has already been provided is not itself an exemption to the public records law. If petitioner is willing to pay the costs associated with reproducing the record, then PPS must provide it to her again. PPS has indicated it will do this. Petitioner's request has not been denied.

3. *Any documentation showing a contract or agreement between PPS and an outside firm, agency or person to collect text messages to respond to public records requests Sept. 12 or litigation, made within the last 4 weeks.*

PPS has provided this contract to this office with its response and has indicated that it intends to provide it to petitioner.¹ Petitioner's request has not been denied.

4. *Any documentation showing Amy Kohnstamm, Tom Koehler, and/or Pam Knowles were notified of the Sept. 12, 2016 public records request for their text messages, including any responses.*

PPS has provided us with two emails from counsel to the board responsive to this request and indicated that they will be provided to petitioner. This portion of petitioner's request has not been denied. As to any remaining responsive records, PPS again asserts that ORS 192.480 precludes our review. We agree and do not consider the matter further.

5. *Any documentation showing any outside attorney reviewed the Sept. 12, 2016 public records requests and responses.*

PPS has asserted that any records responsive to this request are exempt from disclosure as attorney-client privileged under ORS 192.502(9). Having reviewed the communications at issue, we agree.

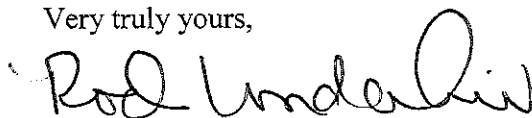
6. *Any written documentation of harassment and/or retaliation complaints (formal or informal) regarding Amy Kohnstamm, filed by PPS employees and/or community members.*
7. *Any written documentation showing Amy Kohnstamm has or will receive harassment and retaliation training from PPS or its agents, contractors, attorneys, or staff.*

As to items 6 and 7 PPS asserts that no responsive records exist. Certain records already discussed above are arguably responsive to this portion of the request, specifically item 2, and PPS has indicated it will provide that document. As to the assertion that no records in addition to this exist, we have repeatedly held that we are not legally or practically empowered to evaluate such a claim. See, e.g., *In re Petition of Bartlett*, MCDA PRO 15-24 (2015). Petitioner's request for these records has not been denied.

ORDER

The petition is dismissed for lack of jurisdiction as to item 1. The petition is denied as moot as to items 2-4. The petition is denied as to items 5-7.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

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¹ It would assist matters moving forward if, when PPS is not claiming a record is exempt, that it be provided directly to the requestor rather than to this office. In such a situation there is nothing for us to review, and no need to delay production of the document to the requestor.