



ROD UNDERHILL, District Attorney for Multnomah County

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

February 1, 2017

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 requesting copies of investigative reports relating to Richard Gilliam.

Dear Ms. Sordyl and Ms. Harper:

In her public records petition, dated January 19, 2017, petitioner Kim Sordyl requests that this office order the Portland Public School District (PPS) to disclose the following records:

all investigation reports into alleged wrongdoing by current PPS employee Richard Gilliam, including but not limited to harassment investigations by inside or outside investigators or staff.

Ms. Sordyl submitted this records request to PPS on September 1, 2016. This is this office's second time reviewing an appeal from her arising out of this request. We denied the first petition on October 24, 2016, finding that the denial was justified at the time by ORS 192.501(12) due to the ongoing nature of the personnel investigations. *Petition of Sordyl*, MCDA PRO 16-24 (2016). Since October, the two investigations that were then pending have concluded.

Our discussion of the facts in this order is necessarily limited to what already appears in the public record. The facts stated below are drawn from what is known publicly, and not from the records under review.¹

In September 2014 PPS promoted Richard Gilliam to run the department of school and family partnerships. In that capacity he directly supervised the other employees in the department. Mr. Gilliam told Willamette Week reporter Beth Slovic that the issues that led to these investigations began in August of 2015 after he had started his own investigation into some of his employees. Mr. Gilliam's lawyer elaborated that that investigation caused the employees

¹ In this case, Willamette Week reporter Beth Slovic wrote three pieces about PPS and Mr. Gilliam: "Portland Public Schools Fights Over a Manager Who Manages No One," WILLAMETTE WEEK, (Nov. 23, 2016); "Portland Public Schools Can't Explain How It Hired a Director With a Prostitution Conviction," WILLAMETTE WEEK, (Dec. 21, 2016), "Portland Public Schools Puts Director With Prostitution Conviction on Leave," WILLAMETTE WEEK, (Dec. 22, 2016).

to complain about Mr. Gilliam's behavior, describing it as harassing and bullying. Mr. Gilliam is quoted by Ms. Slovic as stating that he never used threatening language with employees. Mr. Gilliam's lawyer then put out a statement that Mr. Gilliam had been treated disparately by PPS administration because of his race and that any white manager would not have been investigated for "trying to hold his staff accountable." As a result of this investigation, Mr. Gilliam's supervisory duties were removed.

Throughout this process PPS asserted that records relating to Mr. Gilliam's conduct were exempt from disclosure as records supporting a personnel discipline action. ORS 192.501(12).

Ms. Slovic subsequently discovered that Mr. Gilliam had been hired by PPS despite having a 1998 conviction for prostitution, which would have disqualified him from employment with PPS. PPS officials were unable to precisely explain how this slipped through. Shortly after Ms. Slovic published this information, PPS placed Mr. Gilliam on leave and began another investigation. On January 20, 2017, Mr. Gilliam resigned his position.

PPS has informed this office that, as to any investigation that did not result in a substantiated finding against Mr. Gilliam, PPS will provide those investigation records to the requestors.² As to the remaining records, those relating to sustained disciplinary findings, PPS continues to assert they are exempt as records supporting a personnel discipline action (ORS 192.501(12)) and as information of a personal nature (ORS 192.502(2)). There are two reports responsive to petitioner's request that this office reviewed, referred to in this opinion as the "Goldsmith Report" and the "Hollands Report."

For the reasons discussed below we believe the public interest requires disclosure of both reports and grant the petition.

DISCUSSION

A. Personnel Disciplinary Records – ORS 192.501(12)

ORS 192.501(12) conditionally exempts from disclosure,

A personnel discipline action, or materials or documents supporting that action.

As with all conditional exemptions, the exemption applies only "unless the public interest requires disclosure in the particular instance." To evaluate the public's interest in disclosure under ORS 192.501(12) we rely on guidelines known as the *Foster* criteria. *Petition of Foster for The Oregonian*, MCDA PRO 96-31 (1997). These guidelines are, in summary:

1. Serious misconduct by a government employee should be disclosed;
2. Generally, termination from employment or other discipline for cause is serious misconduct if it is based on corruption (including theft of public property), abuse of power, misconduct that impairs the mission of the agency, or criminal behavior;
3. Less serious misconduct may require disclosure if repeated violations fairly raises the issue of imprudent management of public employees;

² We presume that this concession applies to any investigations that were active at the time of Mr. Gilliam's resignation as well as those that were concluded with unsubstantiated findings. ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL at 50 (2014) (ORS 192.501(12) "does not apply when an employee of a public body resigns during an employer investigation or in lieu of disciplinary action.")

4. Cases evidencing systematic misconduct within a particular agency or part of an agency that shed light on the effectiveness of management may require disclosure even if, individually, the instances of misconduct are not serious;
5. Less serious misconduct may require disclosure in the public interest where circumstances raise a question of unduly harsh (or unduly lenient), arbitrary, irrational or discriminatory administration of discipline by management;
6. Lastly, public employees should not be subjected to public disclosure of disciplinary violations that do not fit into a category above where such would not significantly promote the public's understanding of the manner in which government business is carried out.

Mr. Gilliam's conduct in this case is not fraudulent or criminal, rather it relates to the nature and tenor of his interactions with his subordinates. As defined in *Foster*, the conduct at issue is not "serious misconduct." Likewise, Mr. Gilliam's relatively low position at PPS does not give rise to any particularly heightened interest in his conduct. However, as we noted in *Foster*, less serious misconduct may require disclosure in the public interest where "circumstances raise a question of [...] discriminatory administration of discipline by management." Questions have also been raised about the leniency of the discipline given that, despite being stripped of supervisory duties, Mr. Gilliam continued to be paid as a manager. It is not our role to assess the validity of either assertion, we merely note that the issues have been publicly raised: the racial bias question by Mr. Gilliam, via counsel, and the continuation of his manager's pay by Ms. Slovic in her reporting.

In applying ORS 192.501(12) the Supreme Court has stated, "[t]he policy intended by the legislature, which we enforce, protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes." *City of Portland v. Rice*, 308 Or 118, 124, n.5 (1989) Put differently, ORS 192.501(12) exists to protect the employee, not the employer. In this case, Mr. Gilliam spoke directly to at least one reporter to publicize his account of what led to PPS removing his supervisory duties.

The public statements by Mr. Gilliam, the accusation of racially disproportionate treatment, the media interest in the "manager who manages no one," and the substantial length of time between the initial complaint and the ultimate resolution lead us to conclude that the public interest in this instance does require disclosure of the investigative reports.

A. Personal Privacy – ORS 192.502(2)

ORS 192.502(2) exempts from disclosure:

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.

PPS generally asserts that information of PPS employees is contained in these records that should not be disclosed. We have previously concluded that factual recitations of events are not "information of a personal nature" within the meaning of ORS 192.502(2). *Petition of*

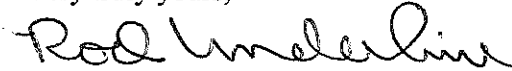
Bernstein for The Oregonian, MCDA PRO 15-14 (2015) (interviews by human resources investigators of subordinates of the Portland fire chief interviewed regarding alleged inappropriate behavior by the chief subject to disclosure.) Having reviewed the investigative reports in this case we do not find the facts to be so extraordinary that they would justify an exception to this general rule. See, e.g., *Petition of Franzen for The Oregonian*, MCDA PRO 04-02 (2004) (description of a sexual assault properly redacted).

To the extent that PPS seeks to withhold the personal contact information of its employees, it may do so. Employee addresses, phone numbers, and personal email addresses (i.e. not pps.net addresses) are exempt under ORS 192.502(3) and ORS 192.502(40) and may be redacted from the records prior to release.

ORDER

Accordingly, the petition is granted. Subject to the redactions expressly approved above, PPS is ordered to promptly disclose the records responsive to petitioner's request, specifically, the eighteen page "Goldsmith Report" and its exhibits and the fifty page "Hollands Report." This disclosure is subject to payment of fees to PPS, 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.