



ROD UNDERHILL, District Attorney for Multnomah County

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

March 8, 2017

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

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 seeking disciplinary records from Portland Public Schools.

Dear Ms. Kearns Moore and Ms. Harper:

In her public records petition, dated February 28, 2017, petitioner Shasta Kearns Moore requests this office to order the Portland Public School District (PPS) to disclose copies of the following records:

records or documentation generated this year that relate to the allegation that an instructional aide at George Middle School circulated a photo of a student urinating.

Petitioner submitted this records request on February 17, 2017. On February 24, 2017 PPS denied the records request, citing ORS 192.501(12), the personnel discipline exemption.

By asserting the personnel discipline exemption, PPS has acknowledged that the instructional aide at issue was disciplined in some form as a result of this incident. Beyond that, we are unable to address the facts here because they are not known publicly and to do so would defeat the purpose of the public records exemption at issue. PPS has provided us, and we have reviewed, the responsive records including notes, emails, and official communications to the employee.

For the reasons discussed below, we conclude that these records are exempt from disclosure by operation of ORS 192.501(12).

DISCUSSION

A. Personnel Discipline Action – 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;
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.

Petitioner points to much recent media attention relating to PPS human resources issues, and, indeed, we have this year ordered released two personnel investigations performed by PPS on public interest grounds. We concluded that those cases raised concerns under the fifth *Foster* factor. See, *Petition of Barnes*, MCDA PRO 17-08 (investigation of Coach Whitehurst); *Petition of Sordyl*, MCDA PRO 17-05 (investigation of Richard Gilliam). This does not, however, mean that any particular subsequent investigation performed by PPS must be disclosed just because there were concerns about prior investigations. The conduct at issue in this case, and indeed the process followed by PPS, is wholly dissimilar to what we addressed in *Barnes* or *Sordyl*.

In this case, the employee did something wrong and was disciplined for it. The information provided to this office indicates that the family of the affected student, having been made aware of the scope of the conduct at issue, is supportive of the employee and not interested in the matter being pursued further. Our own review of the records does not raise such concerns as would justify releasing details of an incident that has been resolved to the apparent satisfaction of the school, the employee, and the family.

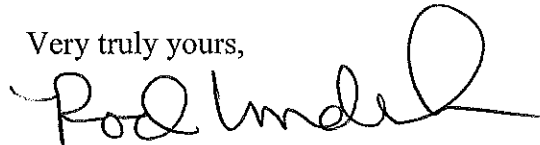
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Under these circumstances, we do not believe that the public interest requires disclosure of these records.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is fluid and cursive, with a large loop at the end.

ROD UNDERHILL

District Attorney

Multnomah County, Oregon

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