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October 5, 2017

Beth Slovic
Portland Tribune
6605 S.E. Lake Road
Portland, Oregon 97222

Ryan Vandehey
Portland Public Schools
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of Beth Slovic, on behalf of the Portland Tribune, seeking an unredacted tort claim notice from Portland Public Schools.

Dear Ms. Slovic and Mr. Vandehey:

In her public records petition, dated February 28, 2017, petitioner Beth Slovic requests this office to order the Portland Public School District (PPS) to disclose the following records:

any tort claim notice from August 2017.

PPS has already provided petitioner with the single tort claim notice received during that period, but has redacted two of its paragraphs. That notice was filed on behalf of PPS employee Sidney Morgan and alleges, generally, that PPS Director Paul Anthony had defamed her. The surrounding, unredacted, text makes clear that the redacted paragraphs quote from an email purportedly sent by Director Anthony.

PPS asserts that the existence of an open investigation into the events described in the tort claim notice exempts that quoted material from disclosure under ORS 192.501(12). For the reasons discussed below, we disagree and order PPS to disclose the unredacted tort claim notice.

DISCUSSION

A. Personnel Discipline – 192.501(12)

ORS 192.501(12) conditionally exempts from disclosure:

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

In a recent decision, this office determined that ORS 192.501(12) did not apply to a tort claim notice. *Petition of Budnick*, MCDA PRO 16-07 (2016). The reasoning we expressed in the *Budnick* order applies equally here:

Put simply the question before us is whether ORS 192.501(12) protects 1) the documents involved in a discipline action or, 2) information, regardless of its source, that purports to describe a discipline action.

ORS 30.275 provides that a person seeking to litigate a tort action against the government must provide factual notice to the governmental body of the basis of the claim within a defined period of time. A tort claim notice as described in ORS 30.275 is not, under any reasonable definition of that term, a “personnel discipline action.” *City of Portland v. Rice*, 308 Or 118, 123 (1989) (“The words ‘a personnel discipline action’ appear to be words of art which are used uniformly, albeit with some variation in the form, to mean the completed process and the sanction of discipline imposed upon a public employee.”) A tort claim notice may well discuss or describe allegations relating to a personnel discipline action, but it is not, itself, a personnel discipline action.

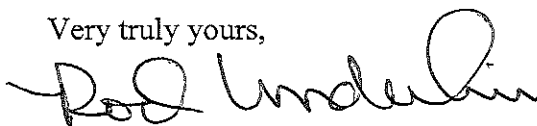
Budnick at p.2.

The nature of the tort claim notice in *Budnick* differs from the one in the present case in that the one in *Budnick* was filed after the imposition of discipline, and directly related to that discipline, whereas the one here relates to an incident that is presently being investigated. We do not believe that distinction warrants a different result in this case. A notice of tort claim, generated externally to a public agency’s disciplinary process, cannot be a document “supporting” a personnel discipline action whether or not the agency has made a final determination of discipline. *Rice*, 308 Or at 122 (“The word ‘supporting’ is not a synonym of ‘relating to.’”) Guided by the Supreme Court’s decision in *Rice*, and our prior ruling in *Budnick*, we conclude that ORS 192.501(12) does not exempt the redacted information sought by petitioner.

ORDER

Accordingly, the petition is granted. PPS is ordered to promptly disclose an unredacted copy of Ms. Morgan’s August 8, 2017 tort claim notice. 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.