MICHAEL D. SCHRUNK, District Attorney for Multnomah County
1021 SW Fourth Avenue • Room 600 • Portland, OR 97204-1193
Phone: 503 988-3162 • Fax: 503 988-3643 • www.co.multnomah.or.us/da/

July 25, 2011

Stephen Beaven
The Oregonian
1320 SW Broadway
Portland, OR 97201-3499

Andrea Watson
Communications Coordinator
Reynolds School District #7
Administration Building
1204 NE 201st Avenue
Fairview, OR 97024

Re: Petition of Stephen Beaven for The Oregonian, received July 7, 2011 to disclose certain records of the Reynolds School District.

Dear Mr. Beaven and Ms. Watson:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Stephen Beaven requests the District Attorney to order the Reynolds School District and its employees or agents to produce a copy or copies of the following records:

> **[T]he contents of the names, resumes and other background information for everyone who applied for the assistant principal job at Reynolds High School.**

Petitioner requested the materials in a June 27, 2011 email to Joyce Henstrand, the Reynolds School District Superintendent. Andrea Watson, Communications Coordinator, responded for the School District in a June 28, 2011 letter. She claimed exemption under ORS 192.502(4), Confidential Submissions.

Ms. Watson asserted that the submission of the job applications were made under the condition that the applications would be kept in confidence, that they were not required by law, and that the applications would be kept confidential "due to the personal nature of the information disclosed on the application."

Ms. Watson noted that "[m]any who seek employment do not inform their current employers until or unless they are named as finalists. The applications contain addresses, phone numbers, employment references and information about the applicant's disability, if any."

With respect to the public interest, Ms. Watson argued that "[q]ualified applicants would be discouraged from applying for openings and applicants could be harming their current employment."

This office was advised in a telephone conversation on July 11, 2011 that there were 108 applicants for the assistant principal position, many of whom were first time applicants. On July 12, 2011, petitioner agreed to limit his petition to the five finalists. Ms. Watson then provided the five applications and supporting materials together with a letter explanation of the School District's position.

The applications consist of a resume (education and work experience, skills and interests, and preferences), a cover letter, yes or no answers to a series of standard questions, and in some cases college transcripts and letters of reference. There did not appear to be any personal health or disability information.

Ms. Watson requested that the District Attorney consider the redaction of ten categories of information in order to allow the candidates to remain anonymous. The items included personal identifying information of both the candidates and their references.

Petitioner provided supplemental information in a July 18, 2011 email. The Oregonian emphasized the importance of knowing who the losing candidates were. While recognizing the personal nature of home addresses, telephone numbers and teaching license numbers, petitioner disagreed that release of them would be an unreasonable invasion of privacy. Petitioner asserted that the public interest is served by "releasing contact information."

The Oregonian argued that releasing the references' names, addresses, contact information and supervisor names is warranted, "especially if those people were already contacted by the Reynolds district as part of the selection process and especially if the addresses and contact information are work addresses and work phone numbers."

The public interest analysis arises from the decision of the Reynolds School District to select one of the finalists, John Dixon, as the high school assistant principal. Petitioner provided news articles relating to 2004 allegations of inappropriate conduct by Mr. Dixon with a counselor and a student. According to the articles, Mr. Dixon was reprimanded, placed on administrative probation, and ordered to receive a mental health evaluation.

Petitioner maintained that Mr. Dixon's behavior in the past "raises serious questions about his fitness for leadership in a school administration." According to petitioner, his actions "prompted a criminal investigation and widespread concern within the Reynolds community." The Oregonian "would like to assess whether the process was a solid and objective one, or a process that tended to favor one candidate over another."

DISCUSSION

I. Confidential Communications

ORS 192.502(4) conditionally exempts:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

1. The informant must have submitted the information on the condition that the information would be kept confidential.

2. The informant must not have been required by law to provide the information.

3. The information itself must be of a nature that reasonably should be kept confidential.

4. The public body must show that it has obligated itself in *good faith* not to disclose the information.

5. Disclosure of the information must cause harm to the public interest.

The representations of Ms. Watson together with the School District's privacy policy designed to receive confidential employment applications clearly establish that the first four conditions have been met. Petitioner's principle disagreement is with the School District's evaluation of the public interest.

It should be acknowledged that the very submission of an employment application for high-level public school positions such as a university president could be constrained by the knowledge that public exposure might be viewed adversely by their current employer. But such a "chilling effect" does not seem probable in the routine attempt to advance one's career from teacher to assistant principal. This is particularly true when petitioner's request here has been limited to the five finalists whose current employers would already have been notified of the applications.

The existence of an adverse public interest must be weighed against the positive public interest in disclosure of the materials sought. If a petitioner made a request for confidential employment applications simply out of curiosity, there could be little disagreement that the

exemption was appropriate. But here, the winning candidate for the assistant principal position, John Dixon, has engaged in conduct that makes his professional advancement at least subject to some scrutiny. If nothing else, the exposure of the applications of the five finalists will allow the Reynolds educational family to develop a degree of confidence in the hiring process of the School District. The named applications are not exempt from disclosure.

The remaining question is whether to exclude some or all of the personal information of either the applicants or their references. A distinction should be drawn between personal information exempt under ORS 192.502(2), Personal Privacy, and such information provided in confidence. With the advent of the Internet and the corresponding explosion of information, the requirement that disclosure not constitute "an unreasonable invasion of privacy" under the Personal Privacy exemption has necessarily evolved. This office has come to recognize the need to more closely scrutinize public records requests where it is established that exposure of certain personal identification will cause both mischief and perhaps only serve the purposes of the criminal element. But that is not the issue here.

A person applying for public employment should be expected to provide contact information potentially available to the public. This would normally be a business address and telephone number, a post office box, or a current employer. However, the disclosure of a home address, telephone number or email address is in a different category.

The best analogy would be to the specific exemption of ORS 192.502(3), Public Employee Addresses, Social Security Numbers, Birth Dates and Telephone Numbers. If a public employment applicant is in fact hired, such information would then be exempt from disclosure as part of their personnel file. Providing this personal identification in a confidential employment application should receive no less protection. Petitioner is entitled to the identification and contact information of each named applicant subject to necessary redaction of certain personal information as noted in the order.

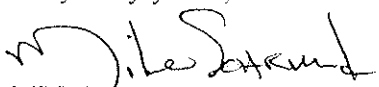
The names of the references here were provided intentionally by the applicants. The letters of recommendation submitted by the applicants were not the candid assessments solicited by a School District. The deletion of "source-identifying information" is appropriate when the current employer, not the applicant, is providing information in response to inquiries from the potential employer. See Gray v. Salem-Keizer School District, 139 Or App 556 (1996).

It is clear that the contact information for the references submitted by the five finalists was that of their business or employer and not their private or personal addresses, emails or telephone numbers. As such, it would not harm the public interest to disclose the reference letters in their entirety.

ORDER

Accordingly, it is ordered that the Reynolds School District promptly disclose the records sought in the above petition subject to redaction of the home addresses, home telephone numbers, home email addresses and license or certificate numbers of the five applicants. Disclosure of the documents ordered is subject to payment of the Reynolds Schools District's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,



MICHAEL D. SCHRUNK
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 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 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.