MIKE SCHMIDT, District Attorney for Multnomah County

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October 18, 2024

via email only

John Bogaty
john@pnwtelco.com

Jollee Patterson
Miller Nash LLP
111 SW Fifth Ave, Suite 3400
Portland, Oregon 97204

Re: Petition of John Bogaty seeking access to an unredacted video recording of a Riverdale School Board meeting

Dear Mr. Bogaty and Ms. Patterson:

Petitioner, John Bogaty, has asked this office to order the Riverdale School District to release to him the full report of the June 17, 2024, meeting of the Riverdale School Board. The version publicly available on the Riverdale website omits a 47-minute portion. Petitioner filed a public records request for that portion of the report. The District denied that request, citing ORS 192.355(2), which exempts information of a personal nature.

For the reasons discussed below, we grant the petition.

DISCUSSION

A. Information of a Personal Nature – ORS 192.355(2)

ORS 192.355(2) exempts from disclosure under the public records law:

> 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 District asserts that the withheld portion of the recording contains an evaluation of the superintendent's performance by board members and, as such, it is "information of a personal nature." Given the critical nature of the specific comments at issue, the District argues, its release would constitute an unreasonable invasion of privacy within the meaning of ORS 192.355(2). As evidence of this the District cites the public meetings law, which permits, but does not require, a public body to conduct an evaluation of its chief executive in executive session (ORS 192.660(2)(i)), a general societal expectation that job performance evaluations are personal and private, and the superintendent's contract which contains a provision that evaluations of performance shall be conducted in executive session.

We are aware of no precedent, nor has the district cited any to us, finding that the statements of a public official in a public meeting broadcast in real time to anyone who chose to login, could subsequently be withheld from re-disclosure under the public record law regardless of their contents. The discussion of a matter noted on the agenda in a public meeting is a matter of public record and public importance even (especially) if it contains comments critical of the district's chief executive by one or more of the public officials to whom he reports.

Although this office has no authority to enforce the provisions of the public meetings law, we find it relevant to our evaluation of the interests in ORS 192.355(2) that ORS 192.650(1) requires that "*all* … recordings [of public meetings] shall be available to the public[.]" (emphasis added).

We also reject the premise that what is contained in this portion of the video is an "evaluation" of the superintendent. As any member of the public who attended the meeting would have heard, there were comments expressing frustration at and criticism of certain specific actions of the superintendent directly related to the noted agenda item of "Board Member Access to District Materials and Documents." This was not, however, anything that could reasonably be construed as a regular performance evaluation of the superintendent. That the record of the board meeting contains critical comments about the superintendent, or anyone else, does not serve to exempt the recording of those comments from disclosure.

We do not find the District has met the elements of the exemption. Re-disclosure of already-broadcast comments by a school board member critical of the superintendent does not constitute an unreasonable invasion of the superintendent's privacy. And, even if it did, given the specific remarks and their context, that is by a school board member at a school board meeting that was attended and heard in real time by members of public, the public interest by clear and convincing evidence requires disclosure.

ORDER

Accordingly, the petition is granted. Riverdale School District is ordered to promptly provide petitioner with the withheld portion of the video. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
Sr. Deputy District Attorney

Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(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.

24-52