MIKE SCHMIDT, District Attorney for Multnomah County

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November 25, 2024

via email only

Melody Brooks
melodyilbrooks@gmail.com

Trevor Byrd
Deputy City Attorney
trevor.byrd@portlandoregon.gov

Re: Petition of Melody Brooks challenging redactions to emails produced under the Public Records Law

Dear Ms. Brooks and Mr. Byrd:

On October 22, 2024 Melody Brooks submitted a public records petition to this office citing multiple errors in processing a public records request she had made of the City of Portland and, additionally, challenging the redactions made to a batch of emails produced as part of that request. The over- and under-production of materials has been the subject of multiple back-and-forth exchanges between the parties while this appeal has been pending. Disagreements about what records the City actually possesses, to the extent they are still in dispute, are beyond our authority to resolve. *Petition of Kessler*, MCDA PRO 18-28 (2018).

For its part, the City forthrightly acknowledges multiple missteps along the way to where this request currently stands. Restating the twists, turns, mis-disclosures, and re-disclosures that have occurred would not further the legal analysis necessary in this order. However, given the posture that has been set out, petitioner's general frustration with the process to date is certainly understandable. As of today, with respect to the redactions challenged by petitioner in document C351050_Redacted, the City has provided a fresh copy of the records with a significantly narrowed set of redactions. These remaining redactions, the City asserts, cover material that is exempt as confidential submissions under ORS 192.355(4).

The context for this request was an expansive records request made in July 2024, for emails to and from various identified individuals with search terms relating to the hiring process for the Vibrant Communities Equity & Inclusion Manager position with the City of Portland. The documents responsive to the request included, among other things, interview scoring sheets for applicants, reference checks for applicants, and a variety of other materials pertinent to the hiring process. Some of the records related directly to petitioner, who was an applicant for the position, many did not.

For the reasons discussed below, as to the redacted version of C351050_Redacted most recently produced to petitioner, the petition is denied.

DISCUSSION

A. Confidential Submission – ORS 192.355(4)

ORS 192.355(4) exempts from disclosure information submitted to a public body in confidence if all five of the following elements are satisfied:

1. the informant must have submitted the information on the condition that it 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; and
5. disclosure of the information must cause harm to the public interest.

The information that has been redacted falls in to one of three categories: 1) names of job applicants who specifically asked that the fact of their application be kept confidential; 2) personal references submitted by one applicant; and 3) information about a personal reference reproduced elsewhere in City records.

ORS 192.355(4) exempts information, not records. Meaning that it is not only the initial submission that is potentially covered, but anywhere else in a public body's records that that information is contained (assuming of course that it derives from the initial submission).

The first four elements are satisfied as to each category of redaction: the City has provided sufficient information to show that the redacted names were from individuals who only applied on the express condition of confidentiality; no person is ever legally required to apply for a job; there is a general societal expectation that in most contexts the fact of a job application will be kept reasonably confidential; and the City has affirmatively communicated to prospective applicants that it will, upon request, keep the fact that they have applied confidential to the extent permitted by law.

The question then is: as to the particular names and references submitted, would disclosure cause harm to the public interest? This office has previously concluded that it would. *Petition of Budnick*, MCDA PRO 17-38 (2017) (disclosure of names candidates for police chief would cause public harm given specific examples of chilling effect on other job applicants brought forward by the City). The present case involves even clearer an answer than *Budnick*. The position at issue has not generated any media interest or other wider public interest that could be harmed by continued confidentiality in this instance.

Nor do I feel that disclosing the personal references, submitted in confidence, for an equity management position advance the public interest in any meaningful way. Put in terms of ORS 192.355(4), I find that the City has established that providing those references in this context would harm the public interest. A different set of facts, involving the references for a

successful applicant for a higher-level position, might result in a different balancing of interests as to this element.

ORDER

Accordingly, the petition is denied.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
Sr. Deputy District Attorney

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