Nathan Vasquez, Multnomah County District Attorney

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November 23, 2025

via email only

Paul Sowards
paulalexsow@gmail.com

Erik Van Hagen
Director – Legal Services
TriMet
VanhageE@trimet.org

Re: Petition of Paul Sowards seeking records in support of an Employment Relations Board claim

Dear Mr. Sowards and Mr. Van Hagen:

Between September 23, 2025 and October 8, 2025, petitioner submitted three public records requests to TriMet for records relating to a pending Oregon Employment Relations Board (ERB) case. The first request involved communications relating to a specific union grievance between specified individuals. The second two requests sought correspondence between identified individuals pertaining to Human Resources complaints made by petitioner against a manager and regarding investigation and discipline of the same manager.

That these records are relevant to, and sought in furtherance of, the ERB case is not in dispute. The petition in this case states "[t]he withheld materials are directly relevant to an ongoing administrative proceeding (Oregon ERB Case FR-002-25, consolidated with UP-050-25)."

This office previously concluded that ORS 192.345(9), which exempts from disclosure "investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180," applied this situation. *Petition of Williams*, MCDA PRO 20-51 (2020). On closer examination, however, *Williams* overlooked on point authority from the Oregon Supreme Court and thus did not accurately interpret ORS 192.345(9).

TriMet argues that, because all the requested information relates to an unfair labor practices claim, it is exempt *in toto* from disclosure by ORS 192.345(9). This was a reasonable position under *Williams*. However, contrary to the holding in *Williams*, the Oregon Supreme Court held in 1984 that the phrase "investigatory information" encompasses only "information which is discovered by investigation." *Pace Consultants, Inc. v. Roberts*, 297 Or 590, 594 (1984) (concluding that party names and associated complaints were not "investigatory information" for purposes of former ORS 192.500(1)(h)).

Thus, as per *Pace Consultants*, to withhold "investigatory information" a public body must establish that it discovered or gathered it as part of an investigation. This may include information and documents that pre-date the investigation, so long as they were subsequently gathered during

an investigation. On the record before me I have no basis to conclude that either TriMet or the ERB gathered these emails and documents during an investigation of petitioner's complaint.

That said, many of the records at issue in this case remain exempt from disclosure under the public records law for other reasons.[1] TriMet has cited ORS 192.345(12) and ORS 192.355(2) as applicable to the withheld records. ORS 192.345(12) exempts from disclosure "a personnel discipline action, or materials or documents supporting that action;" ORS 192.355(2) exempts personal information, the release of which would unreasonably invade privacy.

I conclude that ORS 192.345(12) applies to all materials from investigations that resulted in discipline, including those of petitioner. I conclude that ORS 192.355(2) applies to grievance and personnel file documents, and any summaries thereof, of individuals *other* than petitioner; release of his personal information to himself would not unreasonably invade his privacy. As to the grievance of his own discipline by the union, I find that materials submitted by the union are not exempt. A challenge or opposition to a discipline action cannot be argued to "support" a disciplinary action. *City of Portland v. Rice*, 308 Or 118, 122 (1989) (in this context "[t]he word 'supporting' is not a synonym of 'relating to.'") However, the materials generated by TriMet during the grievance process in defense of its disciplinary action are "materials or documents supporting that action." ORS 192.345(12).

Both ORS 192.345(12) and ORS 192.355(2) can be overridden by sufficient public interest. However, as petitioner seeks records in support of private litigation, that is not the case here. *Petition of DeMartino*, Att'y Gen. PRO (12/5/2016) (request for records relating to an individual's court case was a private, as opposed to a public, interest).

Application of these conclusions to the submitted records is set out below.

i. 2025-621 Communications relating to Grievance #9766.

2025-621A Email Search Results

Page	Note
5	The attachment "Copy of Warnings and Reprimands.xlsx" is exempt, excepting only line 10, cells A-L and line 1, cells A-L.
6	Exempt
10	Mostly deals with an unrelated grievance. In the email at the top of the page the words from "Also, …" through the end of that email's signature block are not exempt, along with the To, From, and Date header fields in that email. The remainder of the page is exempt.
11	Exempt
Others	All other pages not expressly mentioned above are not exempt, inclusive of any attachments linked from those pages.

[1] Petitioner may be able to obtain them through an administrative subpoena in the context of his active complaint.

2025-621A Non-Email Search Results

- Not exempt – both documents are communications from the union to TriMet, which cannot reasonably said to be in support of a personnel discipline action, and as they relate to petitioner, release to him would not unreasonably invade his privacy.

2025-621B Email Search Results

There are over 200 emails responsive to this portion of the request, many of which contain attachments with large amounts of information both irrelevant to petitioner's individual grievance and exempt under the principles set out above. It will take TriMet a significant amount of time to parse through and segregate the material consistent with this order. If petitioner wishes to pay the fees for that to be done, TriMet must release a version redacted consistent with the legal determinations above.

Given that TriMet's blanket denial of this request was based on good faith reliance on a previous order from this office, which I have now overruled, it is reasonable to permit them to conduct the segregation of this portion of the record in the first instance in the event that petitioner is willing to accept the cost of them doing so. To the extent there is any further dispute about the specific redactions made, a subsequent petition can be filed.[2]

ii. 2025-664 – Communications related to a complaint made by petitioner against a manager.

The single responsive email thread is not exempt as it is not a personnel discipline action, nor would release of it to this requestor unreasonably invade the privacy of any person. The attachments to the lead email, however, are exempt under ORS 192.345(12).

iii. 2025-665 – records about the "investigation, discipline, and/or termination" of a named TriMet employee.

This is the precise category of information sought to be shielded by the exemptions TriMet has cited. The only record I reviewed within this set of documents that is not exempt is page 2 of "2025-665B Non-Email Results." This is an innocuous resignation letter, the release of which would not unreasonably invade the privacy of the author. See, *Petition of Bailey for The Oregonian*, MCDA PRO 19-32 (2019) (police officer's resignation letter ordered released because "disclosure would not unreasonably invade privacy.")

iv. 2025-665 – records about "Roadway Worker Protection procedures"

I see nothing personal to any individual, nor anything related to any disciplinary action in the document "2025-665_PtA_Roadway_Worker_Protection." These records are not exempted from disclosure by either ORS 192.355(2) or 192.345(12).

[2] However, it will likely be more efficient for petitioner, TriMet, and this office for the discovery processes available in the active litigation to be used in lieu of the public records law.

ORDER

Accordingly, the petition is granted in part. TriMet shall provide petitioner a copy of the records responsive to these requests, redacted consistent with the discussion above. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
General Counsel

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.

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