Nathan Vasquez, Multnomah County District Attorney

1200 SW 1st Avenue, Suite 5200, Portland, OR 97204-1193
P: (503) 988-3162 | F: (503) 988-3643 | www.mcda.us

March 8, 2026

via email only

Jon Bial
Deputy General Counsel
Oregon Public Broadcasting
jbial@opb.org

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

Re: Petition of Oregon Public Broadcasting seeking records that the City of Portland received from the federal government

Dear Mr. Bial and Mr. Byrd,

On December 1, 2025 OPB reporter Troy Brynelson submitted a public records request to the City of Portland for:

> copies of federal records that the city attorney's office received that were NOT entered into exhibits in the federal trial between Oregon DOJ/California/Portland vs. The Trump administration related to the Nat'l Guard deployment.

Oregon v. Trump was a lawsuit by the States of Oregon and California and City of Portland against the federal government seeking to prevent the deployment of national guard troops in support of immigration enforcement activities. During the course of the suit, the parties exchanged documents as part of the process of discovery. Some were introduced into evidence at trial, some were not. OPB's request sought those that were not.

The City responded to OPB's request by asserting that the records were exempt from disclosure under ORS 192.355(8), which protects records made confidential by federal law. The City cited as its source of federal authority 28 USC § 2702 and FRCP 26(c).[1] *Oregon v. Trump* contains a stipulated protective order between the plaintiffs and defendant entered pursuant to that authority. OPB does not dispute that federal protective orders can have force under the Oregon Public Records Law by way of ORS 192.355(8). Rather, the disagreement involves this particular protective order, and whether it covers the records the OPB seeks.

OPB petitioned this office on February 26, 2026 for an order compelling the City to release the records. The City timely responded, arguing that the proper forum for this dispute is in federal court, and providing relevant communication history between the City, the Oregon Department of

[1] 28 USC 2702 grants the Supreme Court the power to enact rules of procedure for the courts. FRCP 26(c) is the enacted rule of civil procedure authorizing district court judges to grant protective orders.

Justice, and the United States Department of Justice relating to the disputed records.[2] Although I disagree that the mere assertion of a federal law basis for exemption divests the district attorney of authority to hear a public records petition, I nonetheless deny the petition.

DISCUSSION

A. Federal Law – ORS 192.355(8)

ORS 192.355(8) exempts from disclosure,

> Any public records or information the disclosure of which is prohibited by federal law or regulations.

The orders of the federal judiciary, to the extent they apply to records in the possession of an Oregon public body, fall within the scope of this section. *Petition of Bernstein*, MCDA PRO 12-10 (2012). On October 16, 2025 Judge Immergut signed a Stipulated Protective Order applicable to certain documents exchanged during pretrial discovery between the plaintiffs (the States of Oregon and California and the City of Portland) and the federal government defendants. The purpose of the order was to permit the exchange of "confidential, proprietary, or private information" without permitting redisclosure by the other.

Section 7 of the order states what may (and more importantly may not) be done with material a party has designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

> 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
>
> Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensure that access is limited to persons authorized under this Order.
>
> 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party for Confidential Information may disclose any information or item designated 'CONFIDENTIAL' only to [categories of people].

[2] If the City's interpretation of the protective order is correct, it is prohibited by federal law from providing the underlying records to the district attorney for review as ordinarily required by ORS 192.422(2). Given the particular nature of the dispute in this case, the details of the records are not necessary to resolution of this matter, and I authorize the City to inform me of the "nature or substance" of the records as allowed by ORS 192.422(2) in lieu of providing the actual documents. The attachments to the City's response sufficiently apprise me of the nature of the records for purposes of this order.

A more restrictive process is imposed for material designated HIGHLY CONFIDENTIAL in Section 7.3. As expected, given the purpose of the protective order, the media is not included in the list of entities to whom a party may provide protected material.

Section 8 of the protective order establishes rules for the parties to follow when protected material is the subject of a public records request, subpoena, or court order. This allows the party whose information is sought to appear and defend rather than relying on the Receiving Party to defend on its behalf. Section 8 also requires the Receiving Party to maintain the status quo (i.e. non-disclosure) while the Designating Party seeks to litigate the merits of confidentiality.

> 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION
>
> If a Party is served with a PRA Request or a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:
>
> (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the PRA request or subpoena or court order;
>
> (b) promptly notify in writing the party who caused the PRA request or subpoena or order to issue that some or all of the material covered by the PRA request or subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
>
> (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the PRA request or subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court or from otherwise failing to comply with existing law

OPB urges that the failure of a party having received notice under Section 8 to seek timely judicial intervention means that the records must be released by operation of 8(c). I disagree. This section prohibits a Receiving Party from releasing material while a Designating Party is seeking judicial intervention; it does not state or imply that the Receiving Party must release material if the Designating Party does not seek such intervention.

Section 7 makes clear that designated material may not be released absent the Designating Party's permission or court order. Section 8 provides a vehicle to resolve competing court orders or disputes amongst the parties as to their disclosure obligations. I do not read Section 8 to require a Designating Party to seek a court ruling every time someone files a public records request or issues a subpoena targeting its designated material. A Receiving Party may rely on the affirmative prohibition in Section 7 as authority to not comply with such a request.

I find this reading of the interplay between Sections 7 and 8 confirmed by the "Final Disposition" provisions of Section 14. This section requires each party to return or destroy protected material it received during the course of the litigation (with an exception for attorney work product and court filings). Compliance with this provision would be impossible if such material had been provided to a third party while in the hands of the Receiving Party.

Absent the order of a court with authority to modify or vacate Judge Immergut's protective order, all documents received by the City in discovery from the federal government and designated CONFIDENTIAL or HIGHLY CONFIDENTIAL are exempt from disclosure under the Orgon Public Records Law by operation of ORS 192.355(8). This office understands from the material submitted that proceedings seeking exactly such an order from Judge Immergut are in process.

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
General Counsel

26-13