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

April 17, 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 unredacted release of email metadata

Dear Mr. Bial and Mr. Byrd:

On August 1, 2025, Troy Brynelson, a reporter for OPB, submitted a public records request to the City of Portland for email metadata produced by the email addresses of Portland Police Chief Bob Day and Robert King for the month of July 2025. Mr. Brynelson specificly stated he was not seeking the contents of any of these messages, simply a spreadsheet containing to, from, subject, date, etc.

The City responded by providing a spreadsheet containing approximately 6,400 lines. However, within those lines the City applied redactions to various names, email addresses, and subject lines. These redactions, the City asserts, were supported by either ORS 192.355(40), ORS 192.355(9), or ORS 181A.672. OPB petitioned this office under ORS 192.415 on October 20, 2025, challenging these redactions.[1]

For the reasons discussed below I grant the petition in part.

DISCUSSION

A. Email Addresses – ORS 192.355(40)

ORS 192.355(40) exempts from disclosure,

> Electronic mail addresses in the possession or custody of […] a local government[.]

[1] The almost six month delay between petition and order is unusual, and I appreciate the parties' diligent briefing and patience as I worked through those briefs.

The email addresses redacted under this exemption in this spreadsheet are those of individuals employed by government agencies outside of Oregon. Subsequent to both the City's response to this records request and its initial response to this petition, this office issued a decision in which we concluded that ORS 192.355(40) does not apply to governmental email addresses. *Petition of OPB*, MCDA PRO 25-56 (Dec. 12, 2025). I reach the same conclusion here for the same reasons. The City may not redact the email addresses of federal or out-of-state government employees under the authority of ORS 192.355(40).

B. Attorney-Client Privilege – ORS 40.225 / ORS 192.355(9)

The confidentiality of communications between an attorney and their client is a foundational principle of our system of laws. *Upjohn Co. v. United States*, 449 U.S. 383 (1981) ("The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.") This privilege extends to public organizations that employ or retain lawyers to give them legal advice and shields those communications from disclosure under the public records law. *Port of Portland v. Or. Ctr. for Envtl. Health*, 238 Or App 404, 409 (2010) (noting incorporation of attorney-client privilege into the public records law by way of ORS 192.502(9)).

Where the subject line of an email provides any information about the contents of the email (and a good subject line should do precisely that) it is subject to attorney-client privilege if the other requirements are met. *Petition of Barnes*, MCDA PRO 17-03 (2017); *Petition of Henig*, MCDA PRO 17-55 (2017). In order to streamline the initial document review (and reduce cost) Mr. Brynelson agreed that the subject lines of any email involving an attorney could be redacted, which the City did. OPB agrees that subject lines within those parameters are not at issue here and I do not consider them further.

A single redacted subject line does not involve a lawyer, but does involve a lawyer's legal assistant and in context it is privileged.

The City also redacted subject lines where no legal staff were involved. While it is not categorically impossible that such communications would be privileged, these ones are not. Specifically, the following lines in the spreadsheet must have their subject lines unredacted: 223, 370, 371, 4306, 4343, 4359, 4360, 4733, 4734-6, 5610, 6155.

C. Information about Undercover Police – ORS 181A.672(2)

With qualifications not relevant to this petition, ORS 181A.672(2) provides:

> a law enforcement agency may not disclose information about an employee of the agency while the employee is assigned duties the agency considers undercover investigative duties and for a period of six months after the conclusion of those duties.

ORS 181A.672(1)(b) defines "information" as "includ[ing], but not limited to, an address, telephone number, date of birth and photograph." At issue in this petition is whether the legislature intended an undercover officer's name to be covered by the prohibition on disclosing "information" about them. This office has previously concluded that it did. *Petition of Handelman*,

MCDA PRO 21-19 (2021) ("Whatever the policy merits of the underlying law, PPB's current interpretation of ORS 181A.825(2)[2] is sound…[t]he statute is clearly worded, and prohibits PPB from releasing any information about [undercover] officers meeting this description."); *Petition of Bernstein*, MCDA PRO 20-46 (2020) (the name redactions under ORS 181A.825(2) are "technically proper"). OPB acknowledges these decisions, but argues that they were the result of non-adversarial briefing and urges that they be reconsidered on a fully briefed record.

State v. Gaines, 346 Or 160 (2009), sets out the Oregon procedure for construing statutory language. Under *Gaines* a court "seeks to ascertain the intent of the enacting legislature by examining the disputed provision's text and context, as well as any helpful legislative history." *Mouton v. TriMet*, 331 Or. App 247, 251 (2024).

OPB points to the absence of "name" from the enumerated list as evidence that it falls outside the statute's reach. There is a facial attractiveness to this position: it would indeed have been easy for the legislature to include it within the list had it intended the statute to be so applied.

The phrase "includes, but is not limited to" signals a non-exclusive list. *State v. Kurtz*, 350 Or 65, 75 (2011) ("Typically, statutory terms such as 'including' and 'including but not limited to,' when they precede a list of statutory examples, convey an intent that an accompanying list of examples be read in a nonexclusive sense.") The examples here—address, telephone number, date of birth, photograph—share a common characteristic: each is a form of identifying information that could confirm or reveal the identity of an undercover officer. A name shares that characteristic entirely.

OPB urges that, in the event I conclude that a name is information for this purpose, the exemption should be construed narrowly as only applying when disclosure would jeopardize an undercover operation. The policy logic is sound. The release of a name from a general email metadata log or salary table poses little to no risk to an officer's safety or the integrity of an operation. An exemption conditioned on operational impact would be more precisely targeted and support the general principle that the public records law is a disclosure law and that exemptions should be narrowly drawn.

The statute does not contain that condition nor does the scant legislative history bear such a departure from its plain language. ORS 181A.672(2) provides that a law enforcement agency "may not disclose information" about an undercover officer. There is no language, express or implied, conditioning the prohibition on whether disclosure would affect operational safety.

Prior to *Gaines*' clarification of the role of legislative history, the Attorney General's office examined the text and context of this section and concluded that it shows that "the legislature intended to provide law enforcement agencies with a means to protect the true identity of officers engaged in undercover activities." *Petition of Forgey*, Att'y Gen. PRO (11/13/2001) (ultimately concluding that a name is covered by this exemption).

Unlike in *Forgey*, that does not end my analysis; *Gaines* dictates that I must examine any helpful legislative history, whether or not there is a facial ambiguity in the statute. OPB has not

[2] ORS 181A.825 was subsequently renumbered ORS 181A.672 without substantive change.

offered any legislative history in support of its position. Rather it argues as a matter of logic that there are multiple possible interpretations of the language in ORS 181A.672 and ambiguity is resolved in favor of disclosure.

SB 975 (1999), the bill that became ORS 181A.672, generated a sparse legislative record. No witness, no legislator, and no staff counsel addressed whether the exemption should turn on a showing of operational risk or addressed names one way or the other. The security of undercover operations undoubtedly was the impetus for legislative action, as recognized by *Forgey*. But that does not inform whether the legislature intended to address that problem with an absolute rule against disclosure or intended to create a subjective standard against which the prohibition on disclosure is weighed in the individual context of each disclosure. The plain text of ORS 181A.672 describes an absolute prohibition and no legislative history has been offered, nor have I independently located any, that implies an intent to enact a case-specific standard.

OPB correctly states the interpretive framework from *Colby v. Gunson*, 224 Or App 666, 676 (2008), which provides that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." I do not find it plausible that the legislature intended to require public bodies to engage in subjective analysis of the risk of individual disclosures without even hinting as much in the text of the statute or proceedings that led to it. Where the legislature has intended such balancing, as it has done in multiple places in the public records law, it has stated so expressly.[3]

OPB is right that unnecessary anonymization can erode community trust and reduce accountability. OPB is also right that ORS 181A.672 as written gives law enforcement agencies broad discretion to assign officers to undercover operations and withhold their information accordingly. OPB is *also* right that the fact of mandatory redaction could itself create a situation where the officer is identified as a result of the redaction.[4]

These are all legitimate policy objections to the statute. They are not a basis for me to rewrite it. The City's undercover officer redactions are supported by ORS 181A.672 as the Attorney General has interpreted it, as this office has previously interpreted it, and as I have re-confirmed based on a thorough review of the parties' briefings and the legislative record.

---

[3] For example, ORS 192.345(18) exempts "Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, *if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity*;" ORS 192.345(4) exempts "Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, *to the extent that disclosure would create a risk that the result might be affected*;" and ORS 192.355(5) exempts Department of Corrections records "*to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department* or substantially prejudice or prevent the carrying out of the functions of the department…"

[4] I will not restate the precise mechanism of this in this order, but I agree with OPB that someone seeking this information could compel a public body to provide by making very specific records requests and watching for redactions over time.

ORDER

Accordingly, the petition is granted in part. The City shall promptly disclose the email addresses of federal and out-of-state government employees that were redacted under ORS 192.355(40), and the subject lines of spreadsheet entries 223, 370, 371, 4306, 4343, 4359, 4360, 4733, 4734 through 4736, 5610, and 6155. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4). The petition is otherwise denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
General Counsel

25-73