

CHALLENGE MULTNOMAH CO DA'S ORDER TO
RELEASE PUBLIC RECORDS IDENTIFYING UNION MEMBER STATUS
TO FREEDOM FOUNDATION

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (PRINT)

ADDRESS AND ZIP CODE (Optional)

Email (Optional)

✓ Star Stawfer		
Ted Bryan	21	
Amit Zell		

Parsons, Susan

From: Ben Straka <BStraka@freedomfoundation.com>
Sent: Wednesday, October 25, 2017 8:33 AM
To: Council Clerk – Testimony
Subject: City Council testimony
Attachments: Resolution 1162 - FF testimony.PDF

Dear Council Clerk,

Please include the attached PDF as my written testimony on Item/Resolution 1162, in today's City Council meeting. I would appreciate confirmation that this has been done.

Thank you,

Ben Straka

Policy Analyst | Freedom Foundation

BStraka@FreedomFoundation.com

503.951.6208 | PO Box 18146 Salem, OR 97305

FreedomFoundation.com



To: Portland City Council
From: Ben Straka, Freedom Foundation
Date: October 25, 2017
Re: Resolution 1162

Mayor Wheeler and Members of the Council,

Unfortunately, I could not attend the meeting in person today. The following is my written testimony on Resolution 1162, which would authorize the Portland City Attorney to challenge the Multnomah County District Attorney's order to disclose the names of employees represented by Laborers' Local 483.

For your convenience, I have also attached the Multnomah County DA's order.

There is hardly a need to defend this request on its legal merits. The law clearly favors disclosure in this case, and the DA agrees. It appears the City Attorney's Office also realizes this, because it seems intent on providing this Council with a misleading resolution that completely ignores the proper application of the law.

In fact, the misleading nature of Resolution 1162 makes almost as compelling a case for disclosure as does the actual law. Therefore, the purpose of this testimony is to highlight the falsehoods and instances of poor advice contained in Resolution 1162. I believe the Council should be presented with accurate information.

First, the resolution repeatedly claims – indeed, is almost entirely based upon the claim – that my public records request will identify union membership status; i.e. who is a union member vs. a fair share employee.

That is false. The request is for the names of employees "represented by" the union. Because unions are "exclusive representatives" under Oregon law, that simply refers to everybody in the bargaining unit, regardless of membership status. Disclosure will not indicate membership status one way or another.

Second, the resolution claims disclosure might constitute an Unfair Labor Practice [ULP] against the City.

That is also false, or misleading at best. Disclosure would not be a ULP. Although the union has apparently threatened to file a ULP, the complaint would almost certainly be dismissed. As the DA correctly explained in page 3 of his order, complying with Public Records Law is not a ULP.

More importantly, why would the City Attorney's Office acquiesce to a threat from Local 483 in the first place? Prioritizing the demands of labor union leaders above the Public Records Law is concerning, to say the least.

Finally, is the City Attorney's Office unconcerned with asking the Council to devote public resources to this? Although the resolution explains there would be no "incremental expense" for City Attorneys, that is hardly the issue. They could be spending the same time and resources on something else.

Because the law is so clearly in favor of disclosure – and because Local 483's threat of a ULP carries no weight – it would be wasteful of existing taxpayer resources to authorize the City Attorney's Office to further challenge this request.

To summarize, Resolution 1162 contains no valid reasons for challenging this request. I'd like to encourage the Council to accept the Multnomah DA's order.

However, if the DA's order and other existing legal precedence does not provide the Council with enough evidence, you need only turn to your own City Attorney's Office. Less than two months ago, the City properly applied the law and disclosed virtually identical records (names of AFSCME-represented employees) without any objection. Now, it appears the City is ignoring its own precedent.

The City Attorney's Office should explain to the Council why this case is different. If the answer is anything other than "the law has changed," you should strongly question your attorneys' legal advice.

Thank you,



Ben Straka

Policy Analyst | Freedom Foundation

BStraka@FreedomFoundation.com

503.951.6208 | PO Box 18146 Salem, OR 97305



ROD UNDERHILL, District Attorney for Multnomah County

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www.mcda.us

37324

October 13, 2017

Ben Straka
Freedom Foundation
P.O. Box 18146
Salem, Oregon 97305

Heidi Brown
Senior Deputy City Attorney
City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Ben Straka, on behalf of the Freedom Foundation, requesting a list of members of Laborers' Local 483 represented city employees

Dear Mr. Straka and Ms. Brown:

In his public records petition, dated October 4, 2017, petitioner Ben Straka, on behalf of the Freedom Foundation, requests that this office order the City of Portland to disclose the following records:

the names of all City of Portland employees who are represented by Laborers' Local 483, excluding Seasonal Maintenance Workers and Recreation Employees.

The city denied petitioner's request, asserting that the names are exempt from disclosure by operation of ORS 192.502(2), the personal privacy exemption, and ORS 192.502(9) to the extent it incorporates the unfair labor practices prohibitions of ORS 243.672(1).

In addition to the submissions from the Freedom Foundation and the city, we have also received a letter from counsel on behalf of Laborer's 483 supporting the city's position that disclosure of these records would be an unfair labor practice under Oregon law.

For the reasons discussed below, we conclude that petitioner is entitled to the records he seeks.

DISCUSSION

A. Information of a Personal Nature -- ORS 192.502(2)

ORS 192.502(2) exempts from disclosure

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 party seeking disclosure shall

have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

Any claim of exemption under this section must be individualized to the person affected by the disclosure. *Mail Tribune v. Winters*, 236 Or App 91 (2010). The city, correctly, observes that we have not required an individualized determination in the context of medical information. See, *Petition of Hinkle for The Oregonian*, MCDA PRO 05-03 (2005) ("Disclosure of any medical information is presumptively an unreasonable invasion of privacy.") We have not previously extended this rational beyond the realm of medical information and decline to do so in this case. Certain union members are indeed proud and public about their union membership whereas others may wish to keep it private. This varying response is precisely what motivates the requirement of an individualized basis for non-disclosure.

The city asserts anticipated harassment of union members by the Freedom Foundation as justification for withholding the list of names. We have previously ordered names of non-union members released to union organizers despite generalized employee concerns about harassment and retaliation by union organizers. *Petition of Driesch for IUOE Local 701*, MCDA PRO 06-08 (2006) (employee records of non-union city contractors ordered released to union organizers despite expressed concerns of harassment); *Petition of Barbara Diamond*, MCDA PRO 97-02 (1997) (request for information about substitute teachers made by a teachers union made in the lead-up to a strike). We cannot in good faith reach a different result simply because it is a union that now objects to the information being released.

The city has informed us that fifteen employees provided reasons why disclosure would particularly violate their privacy. We have not reviewed these asserted individualized bases for exemption because petitioner has agreed, without conceding that these names are actually exempt under the public records law, that the city may withhold these fifteen names at this time.¹

In addition to the city's arguments, counsel for Laborer's 483 asserts that the city is contractually obligated to release these names only to the employees' authorized representative (Laborer's 483). Whether accurate or not, and we express no opinion on that question, the city may not supersede state law by contract. *Guard Publishing v. Lane County School Dist.*, 310 Or 32 (1990) ("Disclosure is the norm; exclusion is the exception that must be justified by the public body. Nor may a public body exempt public records from disclosure simply by promising the contributor confidentiality.") The terms of the city's agreement with Laborer's 483 are irrelevant to the public records analysis.²

B. Unfair Labor Practice – ORS 243.672(1) / 192.502(9)

ORS 192.502(9) exempts from disclosure

Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

¹ We take petitioner's concession in the spirit it was offered: to expedite consideration of the matter at hand and as a good faith point of compromise. We note that any subsequent proceedings in this matter in the circuit court would be considered *de novo* and the parties would not be bound by positions taken or arguments made before this office.

² Because we find that the city has not established an individualized basis for non-disclosure, evaluation of the public interest is not triggered and, accordingly, we may not consider whether providing these names to petitioner is in the public interest.

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October 13, 2017
Petition of Ben Straka

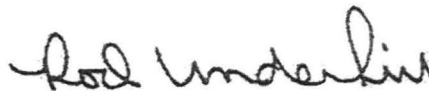
The city anticipates that the Freedom Foundation will use these names in an attempt to convince members to leave the union. As such, it asserts that providing these names would constitute an unfair labor practice in violation of various provisions of ORS 243.672(1), including the requirement that the city not "interfere with or assist in the formation, existence or administration of any employee organization." We disagree.

If the records at issue are not exempt under ORS 192.502(2) then disclosure is required by state law. See, *OHSU v. Oregonian*, 278 Or App 189 (2016) ("if the information is not otherwise exempt from disclosure under the [public records law], its disclosure is 'required by' ORS 192.420" and thereby not subject to HIPAA). The provisions of ORS 243.672(1) nowhere expressly make any particular records confidential and we decline to read in such an exemption. *Colby v. Gunson*, 224 Or App 666, 676 (2008) ("if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails.") And if disclosure is required by law, it would be perverse to conclude that complying with a legally mandated obligation is an unfair labor practice.

ORDER

Accordingly, the petition is granted. The City of Portland is ordered to promptly disclose the requested records with the exception of the names of the fifteen employees who asserted individualized basis for nondisclosure. This disclosure is subject to payment of fees to the city, if any, not exceeding the actual cost in making the information available.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

17-44

Notice to Public Agency

Pursuant to ORS 192.450(2), 192.460, and 192.490(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.

Parsons, Susan

Subject: FW: Testimony regarding agenda item 1162

-----Original Message-----

From: Muir, David On Behalf Of City Info

Sent: Wednesday, October 25, 2017 9:52 AM

To: Moore-Love, Karla <Karla.Moore-Love@portlandoregon.gov>; Wheeler, Mayor
<MayorWheeler@portlandoregon.gov>; Commissioner Eudaly <chloe@portlandoregon.gov>; Commissioner
Fish <nick@portlandoregon.gov>; Commissioner Saltzman <dan@portlandoregon.gov>; Gates, Janine
<Janine.Gates@portlandoregon.gov>

Subject: FW: Testimony regarding agenda item 1162

-----Original Message-----

From: Toby [mailto:runmtg@gmail.com]

Sent: Wednesday, October 25, 2017 8:37 AM

To: City Info <cityinfo@portlandoregon.gov>

Subject: Testimony regarding agenda item 1162

Please forward to council clerks email as testimony today.

Letter to City Council regarding Freedom Foundation request for Union

To Mayor Wheeler, Commissioners, (in order of service on Council) Saltzman, Fish, Fritz and Eudaly regarding agenda item 1162,

Council members, i write to you urgently in an effort to support your rejection of the Freedom Foundation's bid to have you release City of Portland personal information to them or any agents acting on their behalf.

Before I begin to address the matter at hand, I would like to take a brief detour and point out the self-evident.

A Union is a democratic organization. It's members and non members all receive the benefit of the collective voice and power of this thing we call a Union. All contribute financially because of this undisputed benefit that contributes to relative harmonious work places in Union workplaces.

Much in the way that a Portlander receives the benefit of the City, it's roads, it's fire and emergency services not to mention the all important service of what happens after a toilet flushes.

What would happen if all the people who are unhappy in this wonderful City were able to stop paying taxes? How quick would this City collapse?

Yet, it is to this level that the Freedom Foundation seeks to take society all under the guise of individual freedom. The government soon under the Trump administration will make this the law of the land. The government at all levels is holding worker democracy to a level that it in its own form could not meet. Does that seem fair?

But maybe I am being too hard on the Freedom Foundation. After all is it the Freedom Foundation that is pushing a rather benign District Council of Trade Unions to possibly strike next month over what appears from the outside as relatively small differences?

Or is this something the Council is unaware of and can plead ignorance while it is that mean nasty Bureau of Human Resources who carries out that grim work.

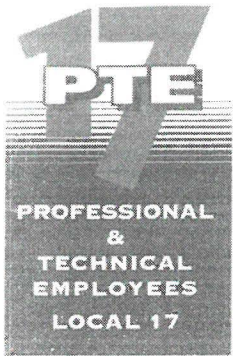
Think of all that Schnitzer tax money that could be saved. How happy will the Port of Portland be! If the public employee unions were busted up then you could really get into concessionary bargaining!

What a delicious piece of irony it is that workers who opt out of the Union could save on their Union dues and give those savings right back to the city in the form of wage and benefit concessions! This seems like a sound economic development plan the City could get behind!

Fortunately, Portlanders has a council that has currently rejected that view. We have a council who remembers the United Nations Declaration of Human Rights article 23.4 specifically states that everyone has the right to form and join in Unions. By rejecting the Freedom Foundation you have avoided what would be in my eyes and others be nothing more then cut rate human rights violators. You would be interfering with workers rights to form or join meaningful unions such as Laborers' 483.

Your direction that the City Attorney office fight this is a good first step. As your workers and other workers are continuing to be placed under attack by the President and his trained puppy Supreme Court, I ask that you take more steps. Please also settle the DCTU contract fairly.

Thank you for your time,
Toby Green
Formerly of 220 SE 154th street.



37324

October 24, 2017

Commissioner Chloe Eudaly
Portland City Council
1221 SW Fourth Avenue – Room 210
Portland OR 97204

Dear Commissioner Eudaly:

On behalf of the Professional and Technical Employees Local 17, which represents approximately 850 City of Portland employees, I'm writing to urge City Council to maintain the privacy of City employees against the recent information request filed by the Freedom Foundation.

The Freedom Foundation has clearly shown malevolent intent towards public employees, their democratically selected representatives, and the collective bargaining process as a whole across the Northwest. Their tactics include harassment, denigration, exaggeration, and hostility. We do not believe that releasing private information to this group serves the public interest, but instead exposes the City's workforce to contact from an organization that will mistreat them in an attempt to achieve a purpose wholly outside of the good of the community. We hope that you will stand with your employees in protecting them from this exposure.

Thank you.

Sincerely,

Paul Cone
Portland Chapter President

Rachel Whiteside
Portland Chapter Union Representative

Elliot Levin
Research Director and Oregon Legislative Advocate

PC/RW/EL:dc
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