



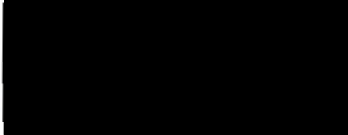
Patricia W. Perlow
Lane County District Attorney

LANE COUNTY DISTRICT ATTORNEY'S OFFICE
125 EAST 8th AVENUE, ROOM 400
EUGENE, OREGON 97401-2926
FAX ONLY (541) 682-3890
(541) 682-4261

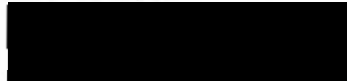
October 11, 2022

SENT VIA EMAIL ONLY

Patrick D. Albright



Eric S. DeFreest
Luvaas Cobb



edefreest@luvaascobb.com

RE: Appeal of Public Records Denial by Eugene School District 4J

Gentlemen:

This letter will serve as the Order regarding Mr. Albright's appeal of the denial of access to records by Eugene School District 4J (the District) for records regarding a complaint by Dr. Andy Dey against then Interim Superintendent Cydney Vandercar. The District acknowledged possession of three records responsive to the request identified as:

1. Initial complaint form filed April 30, 2022;
2. The document of findings by the investigation that specifies the type of alleged violation; and
3. The letter approved by the Board to be placed in the employee's file.

There were two more requests that have been deemed moot.

At the core of Public Records Law in Oregon is the principle that government operations be open and transparent and that the public has a right to access the records of government agencies subject to certain exemptions. Some of those exemptions are qualified and can be overcome by a showing that the public interest in disclosure outweighs the exemption (ORS 192.345). Other exemption are called "non-qualified," but even they may be overcome and require to disclosure (ORS 192.355).

The Initial Complaint Form

The District acknowledges possession of a document responsive to the request for what the District has identified as "the initial complaint form filed April 30, 2022. The District relies

Patrick Albright
Eric DeFreest
October 11, 2022
Page 2

on ORS 192.345(12), ORS 342.850(7&8) and rules promulgated by the District School Board limiting disclosure of personnel disciplinary records. ORS 192.345(12) is a conditional exemption, requiring a weighing of the public interest in disclosure against the purpose of the exemption. If the exemption does not apply, the referenced statute and rules do not apply.

Per the Attorney General's Public Records and Meetings manual at page 65, "The significance of the public interest in disclosure typically depends on the seriousness of the employee's alleged misconduct and on the employee's position. In this circumstance, a District administrator and finalist for the highest position in the organization made a complaint against the acting superintendent, also a finalist for the position. That complaint resulted in a letter being placed in the employee's file, presumably a letter of discipline. I find that the case has been made that the public interest in the complaint outweighs the conditional exemption and the document is Ordered to be disclosed.

The Document of Findings by the Investigation That Specifies the Type of Alleged Violation
Regarding the Investigation, the District relies on ORS 192.355(9), other statutes establishing specific exemptions, in this case the attorney/client privilege, in its denial of the public records request. Per the Attorney General's Public Records and Meetings manual at page 111, to overcome the privilege requires all of the following criteria to be met when a record is covered by the attorney/client privilege:

1. The information is not otherwise exempt from disclosure;
2. The information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;
3. The information was not compiled in preparation for litigation, arbitration, or an administrative proceeding likely to be initiated or actually initiated; and
4. The holder of the privilege has made or authorized a public statement characterizing or partially disclosing the factual information.

After a review of the document in question, I do find that it is protected from disclosure by the attorney/client privilege. Doing an analysis using the Attorney General's criteria, I am unable to find that the holder of the privilege has made or authorized a public statement characterizing or partially disclosing the factual information. Therefore, this record is **not** Ordered to be disclosed.

The Letter Approved by the Board to be Placed in the Employee's File

The same analysis applies to the Letter as to the Complaint. For the same reasons, the Letter is Ordered to be disclosed.

Patrick Albright
Eric DeFreest
October 11, 2022
Page 3

Therefore, it is hereby Ordered that the District shall disclose the documents identified as #1 and #3 above. The District is not ordered to disclose the document identified as #2. Either party may appeal this decision by filing an appeal in Lane County Circuit Court.

Thank you both for your courtesies as this appeal progressed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patricia W. Perlow". The signature is written in a cursive style with a large initial "P".

Patricia W. Perlow, District Attorney