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February 1, 2023

Salem Reporter
Ardeshir Tabrizian
Les Zaitz
Via Email

City of Salem
Steve Atchison
Via Email

RE: Public Records Appeal Opinion

All:

Thank you for the opportunity to review this information. The following is my decision regarding the current public records appeal.

On December 6, 2022, the Salem Reporter (SR) requested records from the City of Salem (the City) consisting *"of all communications between the city of Salem representatives and Steve Bellshaw, former deputy chief, or any of his agents, from Oct. 1, 2022 to present. This includes but is not limited to letters, memos, emails and any attachment or enclosure sent from the city. If the city elects to withhold any document, we ask that you identify the document generally and the statutory basis for withholding the document"*.

On December 20, 2022, the City declined to release any records citing numerous exceptions under Oregon disclosure statutes. In an email dated December 23, 2022, the City further clarified that three emails containing numerous attachments existed within the request but were withheld under the statutory exemptions. On January 12, 2023, SR appealed this decision to the District Attorney via a letter.

On January 20, 2023, the City provided their response to that appeal and forwarded all the relevant records (including the attachments) at issue for my review. On January 26, 2023, SR provided me additional input.

I will refer to ***the emails themselves*** and **the attachments**. For purposes of this opinion, **the emails themselves** are defined as the narrative communication back and forth between the City and Mr. Thenell, attorney for Mr. Bellshaw, whether those communications are only one direct communication or a series of replies and references (via an “attached” previous email) to earlier email communication. **The attachments** are defined as wholly separate documents (there are 3 of them) prepared independently by the City, its employees, or another party and are distinct from any email communication or attempted communication at any time.

The most compelling and appropriate statutory exemption cited by the City is ORS 192.345(1) which reads, in pertinent part, that the following is exempted from disclosure:

Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur.

I find that this exemption applies to *all of the attachments* as defined by this opinion and therefore SR’s appeal as to those documents is denied.¹ SR argued in its January 26, 2023 response to the City’s letter that “Mr. Bellshaw irrevocably and unconditionally” released the City for any and all claims². This reference to a previous Separation Agreement executed by Mr. Bellshaw is not an accurate reflection of the City’s current exemption argument for reasons which will become obvious should the City release the emails themselves consistent with the remainder of this opinion.

As such, I find the three emails themselves are not covered by any disclosure exemptions. Specifically, the City argues that those emails are confidential communications covered under ORS 40.225.³ I disagree. The emails are communications between the City and Mr. Dan Thenell, attorney for Mr. Bellshaw. They are therefore not lawyer-client communications meant to be protected under that privilege but simply lawyer-lawyer communication. Assuming *arguendo* that they were covered under this privilege, I further find that *in this instance* the public interest in the content of those communications outweighs the need for the exemption. As noted above, SR argues that the City has no concern regarding litigation from Mr. Bellshaw. The emails from his attorney are illuminating as to the potential validity of that concern. Further, SR has made numerous requests of the City for documents related to the departure of Mr. Bellshaw and has expressed frustration in the little information made publicly available. SR has even included calls from readers for city transparency. Not only is the public interest served by the release of the emails, but their contents serve to illustrate both the City’s prior attempts at transparency and their barriers thereto.

¹ The City argues other exemptions apply to the attachments. Specifically, ORS 181A.674(3) & (4), ORS 192.345(12) and ORS 192.355(2)(a). It is not necessary that this opinion address those exemptions given the decision as to protection under ORS 192.345(1).

² See SR January 26, 23 letter, page 2.

³ ORS 192.355(9) exempts communications covered in ORS 40.225.

Please advise whether either party has any questions regarding exactly what documents are to be released consistent with this bifurcated opinion.

As with any District Attorney decision regarding public record appeal matters, should any party disagree, this opinion is further appealable *De Novo* to the Marion County Circuit Court.

Thank you all for your professional communication on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paige E. Clarkson', with a long horizontal flourish extending to the right.

Paige E. Clarkson
District Attorney