

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-24-06

(UNFAIR LABOR PRACTICE)

| | | |
|------------------------|---|--------------------|
| BENTON COUNTY DEPUTY |) | |
| SHERIFF'S ASSOCIATION, |) | |
| |) | |
| Complainant, |) | RULINGS, |
| |) | FINDINGS OF FACT, |
| v. |) | CONCLUSIONS OF LAW |
| |) | AND ORDER |
| BENTON COUNTY, |) | |
| |) | |
| Respondent |) | |
| _____ |) | |

This matter was submitted directly to the Board on stipulated facts. The record closed on August 31, 2006, upon receipt of the parties' closing briefs.

Rhonda Ferrich, Attorney at Law, Garrettson, Goldberg, Ferrich & Makler, 423 Lincoln Street, Eugene, Oregon 97401, represented Complainant.

Vance M. Croney, Attorney at Law, 456 S.W. Monroe, #101, Corvallis, Oregon 97339, represented Respondent.

On June 5, 2006, Benton County Deputy Sheriff's Association (Association) filed this unfair labor practice complaint against Benton County (County). On August 8, 2006, the Association amended its complaint. The complaint, as amended, alleges that the County violated ORS 243.672(1)(e) when it refused to comply with the Association's request for the name of the person who initiated a complaint against a bargaining unit member.

The parties waived the filing of an answer. In lieu of hearing, the parties submitted a full fact stipulation and exhibits.

The issue is: Did the County violate ORS 243.672(1)(e) when it refused the Association's request for the name of the person who initiated a complaint against a bargaining unit member?

Having the full record before it, the Board makes the following:

RULINGS

The Board makes no rulings.

FINDINGS OF FACT¹

1. The Benton County Deputy Sheriffs Association (Association) is the certified exclusive bargaining representative of certain employees of the Benton County Sheriff's Office (County), a public employer.
2. Corporal Al Schermerhorn is a member of the Association bargaining unit. At all times relevant, Deputy Stuart Gamble was the President of the Association.
3. Jim Swinyard is the elected Sheriff and the department head for the Sheriff's Office.
4. Diana Simpson is the Undersheriff in the Sheriff's Office.
5. Sheriff Swinyard and Undersheriff Simpson are not members of the Association bargaining unit and are the ultimate supervisors of Schermerhorn and Gamble. Both Schermerhorn and Gamble are directly supervised by sergeants within the Sheriff's Office.
6. Between June 8 and June 12, 2005, Undersheriff Simpson received a series of anonymous e-mails on her home computer alleging that Schermerhorn's work computer contained pornography. The anonymous e-mails do not contain the name of the sender, but do contain the sender's e-mail address. Undersheriff Simpson was aware of the identity of the sender.

¹The facts are derived from the parties' stipulation.

7. In the anonymous e-mail dated June 8, 2005, the sender writes, in relevant part:

“Again I hope I do not get discovered and will provide you with more info if you need it.

“I have info about perjury on the stand / sex on duty / heavy handedness / creative report writing / etc

“A lot of this stuff is kind of old but could lead to more current stuff if you are looking in that direction.

“I do not want and can not personally gain anything from this information shared with you but feel again that I am obligated to let you in on this.....

“You are the only one that I have sent this info to...I don't trust too many people at the office...the ones I do trust ...probably would not agree with the actions I am taking.

“Don't burn me...” (Ellipses in original.)

8. Subsequent to receiving the June 8 e-mail, Undersheriff Simpson responded by e-mail, stating in relevant part:

“* * * I will not burn you or anyone that is willing to come forward to provide information, but I do need help. I have had suspicions on just about everything you have mentioned below. If you have more details particularly regarding the sex on duty, perjury, creative report writing I would like to hear it or see it. If you can give me information about Al's inappropriate emails, etc. get it to me. If there is anything at all that you can get to me that will provide proof, I will take action. [Redacted sentence.] Let me know. I do want to 'clean' up the office, but the 'boys club' is pretty strong.

“Please keep in touch. In the meantime I will be running activity reports, having internet usage audited, and anything else I can think up to work on the problems. I appreciate you coming forward and given the culture of the office, understand completely your need for anonymity.”

9. Within two weeks of the receipt of the anonymous e-mails, the Sheriff's Office initiated a preliminary inquiry into the allegation and requested that the County's Information Resources Management Division (IRM) monitor Schermerhorn's computer, along with two other computers, to determine if improper computer use was occurring in violation of ORS 244.040(1)(a),² County Personnel Policy 24.13,³ and Sheriff's Office Rule of Conduct 7.2.25.⁴

10. The IRM Division Manager informed Schermerhorn that his work computer was about to be monitored. Schermerhorn subsequently sought advice from an IRM employee on how to clean his work computer's internet cache.

11. Sheriff Swinyard believed IRM could not effectively conduct the preliminary inquiry into the contents of Schermerhorn's computer hard drive. On August 4, 2005, he requested that the Corvallis Police Department (CPD) mirror and examine Schermerhorn's work computer hard drive "for evidence of files containing pornography that the employees may have attempted to delete."

12. CPD examined the hard drive of Schermerhorn's work computer on August 11. CPD's report, finalized on August 16, concluded that the allegations of pornography on Schermerhorn's work computer were unsubstantiated and that no evidence existed that the hard drive had been cleaned.

13. As a result of the CPD report, Sheriff Swinyard determined the anonymous e-mail allegations of pornography on Schermerhorn's work computer were unfounded and that nothing had been erased from the hard drive. No disciplinary investigation was initiated or conducted and no discipline or other consequences were imposed on Schermerhorn as a result of the preliminary inquiry into the contents of his computer. The preliminary inquiry was not a disciplinary investigation as described in the Association's collective bargaining agreement or County personnel policies.

14. Sheriff Swinyard did not inform Schermerhorn that his computer hard drive was the subject of a preliminary inquiry, that the preliminary inquiry was

²The statute prohibits public officials from using their office for financial gain, with exceptions for matters such as salary.

³This personnel policy is not part of the record.

⁴The rule allows personnel to use office equipment only for its intended purpose and not for personal gain.

complete, that no substantial evidence of pornography was found on his County computer hard drive, or that no further action would be taken.

15. On September 23, 2005, Gamble met with Sheriff Swinyard who informed Gamble that the computer allegations were not substantiated and that the preliminary inquiry was complete. Gamble requested a copy of the CPD report, but Sheriff Swinyard declined to provide him with the report.

16. On November 18, 2005, the Association filed a hostile work environment complaint against the Sheriff's Office, alleging stress "induced by poor investigative and communication practices by BCSO management" forced Schermerhorn to use 80 hours of compensatory leave and 40 hours of sick leave. The hostile work environment complaint sought the following remedy: "All vacation, sick, and comp time used during the period of the [preliminary inquiry] should be reassigned as administrative leave, due to the stress of an inappropriately conducted investigation, and time used returned to the proper leave banks."

17. Schermerhorn used 44.5 hours of compensatory time between August 1-16; 80 hours of compensatory time between August 17-31; and 40 hours of compensatory time between September 1-16. He used 40 hours of sick leave from September 23-26.

18. In the hostile work environment complaint, neither Schermerhorn nor the Association sought the disclosure of the identity of the sender of the anonymous e-mails. However, such a request is typically not included in the complaint form. The hostile work environment complaint also does not allege that the anonymous e-mails contributed to Schermerhorn's stress claim.

19. County Human Resources Manager Libet Hatch and Public Works Director Roger Irvin investigated the hostile work environment complaint and issued a final report on February 10, 2006 (Hatch/Irvin Report). The investigation included 11 interviews with individuals and generated 126 pages of documents. Hatch and Irvin did not review or consider the anonymous e-mails in their investigation of the hostile work environment complaint.

20. Hatch and Irvin determined "[t]here is no documentation that any of the leave was taken due to stress." However, the investigation did determine that the processes outlined in Sheriff's Office General Order 8, relating to outside agency involvement, "should have been followed and were not" and Article 28 of the Association contract was "violated by a strict reading of the language of the contract."

21. On Feb. 19, 2006, after receiving a copy of the Hatch/Irvin Report, the Association filed a grievance on behalf of Schermerhorn. The grievance requested restoration of 80 hours of compensatory leave and 40 hours of sick leave Schermerhorn alleges he took "due to stress caused by the [preliminary inquiry]." The grievance did not seek disclosure of the identity of the person who sent the anonymous e-mails, nor did the grievance allege Schermerhorn's stress claim was caused by the anonymous e-mails. However, such requests for information are not typically included in the grievance form.

22. On Feb 24, 2006, County Sheriff's Office Lieutenant Ridler denied the step-one grievance.

23. On March 2, 2006, the Association filed a step-two grievance under the collective bargaining agreement on behalf of Schermerhorn. The step-two grievance states: "I [President Gamble] disagree with [Lt. Ridler's] assertion that because Cpl. Schermerhorn cannot prove what leave time was stress related the county has no burden in this manner [sic]. The County's own examination of the incident clearly shows that the investigation into Cpl. Schermerhorn's computer was done in a manner that violated the BCDSA contract and the Sheriff's Office General Orders."

24. The step-two grievance again sought restoration of compensatory and sick leave taken by Schermerhorn. It did not seek disclosure of the identity of the person who sent the anonymous e-mails, nor did it allege Schermerhorn's stress claim was caused by the anonymous e-mails. However, such requests for information are not typically included in the grievance form.

25. On March 8, 2006, Sheriff Swinyard denied the step-two grievance, stating "there is no evidence to support the assertion that Deputy Schermerhorn took Sick or Comp time due to stress related to the computer matter."

26. On March 18, 2006, the Association filed a step-three grievance stating the same facts and seeking the same remedy it did in steps one and two of the grievance process.

27. On March 18, 2006, the Association sent a request for documents to Sheriff Swinyard. The request sought:

"1. Copies of ALL documents relating to the [hostile work environment] investigation, including all reports, investigator notes, emails regarding the investigation or [sic] Corporal Schermerhorn or other involved parties, tape recordings and the like.

“2. Copies of any other investigations or disciplinary actions relied upon by the County in making its decision in this matter.

“3. Copies of any notes, emails, statements, or other documents involving the complainant.”

28. On March 23, 2006, the Association submitted a letter clarifying its March 18 records request stating: “These documents are intended to assist the Association in representation of Cpl Schermerhorn in his on-going complaint and grievance with the County’s handling of this situation. In addition, these documents are necessary for the Association to monitor the County’s actions in this case to determine whether the County has created a past practice regarding outside agency assist that may negatively impact our membership in future investigatory or disciplinary actions.”

29. In response to the Association’s request, the County provided it with 126 pages of documents generated, used, and reviewed by Hatch and Irvin in their investigation of the hostile work environment complaint. This response constituted the entire investigative file of Hatch and Irvin.

30. At the step-three grievance hearing on April 13, 2006, the Association specifically requested a copy of the complaint that was catalyst for the preliminary inquiry, along with any other documents not previously provided to the Association.

31. Sheriff Swinyard repeatedly declined to provide a copy of the anonymous e-mails or any other documents. He also denied having copies of the e-mails.

32. On April 14, 2006, Counsel for the Association submitted a written request to the County’s Counsel for “the e-mail exchanges between the Undersheriff and the ‘anonymous’ complainant and the e-mails between the Sheriff and Corvallis PD.”

33. Also on April 14, 2006, the Association filed a request for arbitration of its grievance.

34. Subsequently, the Association’s counsel and the County’s counsel exchanged communications relating to the request for information. The County initially denied having copies of the anonymous e-mails in electronic or written form.

35. On April 28, 2006, the County provided copies of the following documents to Association Counsel: (1) an e-mail from Schermerhorn dated December 6,

2003; and (2) a series of anonymous e-mails to and from Undersheriff Simpson between June 8 and June 12, 2005.

36. The December 6, 2003 e-mail from Schermerhorn was a scanned copy of the document sent via e-mail by the anonymous sender to Undersheriff Simpson. The name of the e-mail recipient was redacted prior to scanning and Undersheriff Simpson did not receive a “clean” copy of the document. In the June 8-12 anonymous e-mail series, the County redacted the sender’s e-mail address and other identifying information.

37. The substance of both the December 6, 2003 e-mail and the June 8-12 anonymous e-mails was not altered or redacted by Benton County.

38. On May 4, 2006, Counsel for the Association requested the name of the complainant. The Association asserted the “complainant will be called as a witness in the arbitration of this matter, as the e-mails are unclear as to how much of the information contained in this person’s ‘complaint’ is first-hand knowledge and how much was based on office gossip.”

39. On May 22, 2006, the County again declined to disclose the name of the sender of the anonymous e-mails. On June 5, 2006, the Association filed this unfair labor practice complaint seeking release of the complainant’s name.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The County violated ORS 243.672(1)(e) when it failed to give the Association the name of the person who sent the anonymous e-mails.

DISCUSSION

ORS 243.672(1)(e) makes it an unfair labor practice for a public employer to “[r]efuse to bargain collectively in good faith with the exclusive representative.” Good-faith bargaining generally requires the parties to provide each other with requested information that is of probable or potential relevance to a grievance or other contract administration issue. *Deschutes County 911 Employees Association v. Deschutes County 911 Service District*, Case No. UP-32-04, 21 PECBR 416, 428 (2006). In analyzing the duty, we begin with the premise of full disclosure. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-7-98, 18 PECBR 64, 70 (1999).

Here, the Undersheriff received a series of e-mails that led the County to conduct an investigation into bargaining unit member Schermerhorn's use of a work computer. Although the e-mails were anonymous, they contained the sender's e-mail address and the Undersheriff knew who sent them.

After an investigation, the County concluded the allegations were not substantiated. The Association filed a grievance on behalf of Schermerhorn which sought to restore the leave time Schermerhorn used due to the stress caused by the investigation. In conjunction with the grievance, the Association requested information from the County, including "all * * * emails regarding the investigation" and "any * * * emails * * * involving the complainant." The Association explained that the documents were to assist the Association in representing Schermerhorn in the grievance and to determine whether the County had created a past practice that might impact its members.

The County provided some documents but did not include the anonymous e-mails. On April 13, 2006, the Association specifically requested a copy of the complaint that was the catalyst for the inquiry. On April 14, the Association put its request for the complaint in writing. Also on April 14, the Association requested arbitration of the Schermerhorn grievance. The County eventually provided copies of the anonymous e-mails, but it redacted any information that might identify the sender. On May 4, the Association asked the County to provide the name of the complaining party. On May 22, the County refused to provide the name.

This unfair labor practice complaint followed. It asks us to compel the County to release the name of the person who sent the e-mails. The County asserts that we should not order it to release the information because: (1) the information request should be decided by the arbitrator rather than this Board; (2) the requested information is irrelevant because the Association had already decided to arbitrate the grievance; (3) the requested information is not relevant to the grievance; and (4) the information is confidential.

1. *Arbitrator's Jurisdiction*

As a preliminary matter, the County asks us to dismiss this complaint because the question of whether to reveal the e-mail sender's name should be decided by the arbitrator. In *Multnomah County Sheriff's Office v. Multnomah County Corrections Officers Association*, Case no. UP-5-94, 15 PECBR 448, 470 (1994), we stated:

"We believe that consideration by this Board of a
PECBA [Public Employee Collective Bargaining Act]

information request, when the underlying dispute to which the information relates already is under the jurisdiction of an arbitrator, constitutes an unwarranted interference with the arbitrator's authority and responsibility. * * *

“We conclude, therefore, that a party's responsibility to produce information--as a facet of its duty to bargain in good faith under the PECBA--expires when an arbitrator assumes jurisdiction over the underlying dispute to which the information relates. * * * An unfair labor practice complaint charging a refusal to produce information, *when the request for data took place after the underlying dispute was placed in the hands of an arbitrator*, will be dismissed, therefore.” (Emphasis added.)

In *Multnomah County*, we found that at the time of the information request, arbitration had been requested, the arbitrator selected, and the hearing scheduled. We concluded “[t]here is no doubt, then, that the matter was under the arbitrator's jurisdiction,” and we dismissed the complaint. 15 PECBR at 469.⁵ Under *Multnomah County*, our task here is to decide whether the underlying dispute had been placed in the hands of an arbitrator at the time the Association requested the information. If it had, then the question is for the arbitrator;⁶ if it had not, then the question is for this Board to decide under the PECBA.

The Association first requested the e-mails from the anonymous sender on March 18, nearly four weeks before it initiated arbitration. It requested “all * * * emails regarding the investigation” and “any * * * emails * * * involving the complainant.” On April 13, also before the request for arbitration, the Association specifically asked for a copy of the complaint that was the catalyst for the inquiry by the County. Both requests were broad enough to include information about the identity of the anonymous e-mailer.

⁵In contrast, the National Labor Relations Board (NLRB) has long had a policy against deferring to an arbitrator in Section 8(a)(5) complaints alleging a failure to provide requested information. See *U.S. Postal Service*, 302 NLRB 918 (1991); and *Daimler Chrysler Corporation*, 331 NLRB 1324 n. 3 (2000), *enfd.* 288 F 3d 434 (D C Cir. 2002). However, some recent Board members have criticized this policy *Pacific Bell Telephone Co.*, 344 NLRB No. 11, fn. 3 (2005).

⁶This Board does not lose jurisdiction over these information disputes. Instead, we choose to defer them to the arbitrator to further the policy that favors arbitration. In appropriate circumstances, however, we may exercise our discretion to decide an information dispute even though the information was requested after the arbitrator assumed jurisdiction.

Thus, unlike *Multnomah County*, the matter here was not in the hands of an arbitrator at the time the Association requested the information, so the holding and rationale in *Multnomah County* do not apply. This Board, and not an arbitrator, will decide the information dispute.

The County also notes that the Association made an even more specific request for information about the identity of the e-mailer on May 4, several weeks after it initiated arbitration. This does not change our analysis.

The May 4 request was necessary only because the County, when it finally responded on April 28 to the Association's earlier requests, provided copies of the e-mails in which it redacted any information that would identify the sender. Only then did the Association see any reason to specifically request the name of the complainant. The May 4 request did not seek new information; it merely followed up on the earlier requests. As described, the Association's earlier requests were sufficient to include the unredacted versions of the e-mails. The County's delayed and incomplete response does not alter the fact that the initial information requests occurred before the Association requested arbitration.

The result is no different if we rely on the May 4 request alone. Under *Multnomah County*, we defer to an arbitrator only on those information requests a party makes after the arbitrator assumes jurisdiction over the underlying dispute. Our cases do not explicitly state when an arbitrator assumes jurisdiction. There are a number of possibilities: when a party requests arbitration; when the parties select an arbitrator; when the selected arbitrator accepts the appointment; when a hearing is scheduled; or when a hearing commences.

The County argues that an arbitrator assumes jurisdiction when a party requests arbitration. We disagree. We hold that for the purpose of deferring information requests, an arbitrator assumes jurisdiction when the arbitrator accepts the appointment. Until this event occurs, there is no arbitrator in place to resolve the parties' information dispute.

The record here is devoid of evidence that an arbitrator had accepted appointment on or before the May 4 information request.⁷ Based on these facts, we

⁷The County's brief states that the parties chose an arbitrator. There is no evidence in the record to support this statement, and we may not rely on it. *Arlington Education Association v. Arlington School District No. 3*, 177 Or App 658, 668-69, 34 P3d 1197 (2001), *rev den* 333 Or 399, 42 P3d 1242, 1243 (2002). In any event, merely selecting an arbitrator is not enough. The

conclude that this matter was not under the jurisdiction of an arbitrator at the time the request was made. We therefore do not defer to the arbitrator and will proceed to the merits of the complaint.

2. *Relevance*

Relevance is a threshold issue in all duty to provide information cases. As pertinent here, an employer must provide requested information that is “of probable or potential relevance to a grievance.” *Washington County School District v. Beaverton Education Association*, Case No. C-169-79, 5 PECBR 4398, 4405 (1981). The County raises two separate relevance defenses. First, it asserts that the identity of the e-mailer is not relevant to the Schermerhorn grievance. Second, it asserts that even if the information was generally relevant when the grievance was filed, it was no longer relevant at the time of the request because the Association had already decided to proceed to arbitration.

A. Relevance to the Grievance

The County asserts that the requested information is irrelevant to the Schermerhorn grievance. According to the County, to be successful in the Schermerhorn grievance, the Association must prove both that the investigation violated the parties’ contract and that Schermerhorn took leave as a result of stress caused by the investigation. The County argues that the complainant’s name has no relevance to either of these portions of the Association’s case. We disagree.

First, the County applies the wrong standard. It asserts that it need not provide the requested information because it is not relevant. Actual relevance to the grievance proceeding is a question for the arbitrator in light of all the evidence presented at hearing. *Olney Education Association v. Olney School District*, Case No. UP-37-95, 16 PECBR 415, 419 (1996), *aff’d* 145 Or App 578, 931 P2d 804 (1997). In a duty to supply information case, we apply a more liberal discovery-type standard where even potential relevance is sufficient. *Deschutes County 911 Employees Association v. Deschutes County 911 Service District*, 21 PECBR at 428. The grievance here involves the County’s inquiry into Schermerhorn’s computer use and the injury he allegedly suffered as a result of the inquiry. The complaint that was the impetus for the inquiry is central to the grievance. It strikes us as obvious that the identity of the person who made the complaint, if not relevant in its own right, might at least lead to relevant evidence.

County must also show that the arbitrator accepted the appointment and that the acceptance occurred before the Association requested the information. The record fails to establish any of these crucial facts.

Second, a party that objects to supplying information on relevance grounds must do so at the time the request is made. *Marion County Law Enforcement Association v. Marion County*, Case No. UP-58-92, 14 PECBR 220, 226 (1992). Here, the County did not make a timely relevance objection. In response to the Association's initial request for information, the County failed to provide the e-mails at all. When the Association again requested the e-mails, the County provided copies in which it redacted any information that might identify the sender. The County did not raise its relevance concerns until several months after the initial request. It was not timely.

We conclude that the identity of the person who sent the e-mails that led to the inquiry is of probable or potential relevance to the Schermerhorn grievance.

B. Relevance After the Arbitration Request

The County next asserts that the Association requested the complainant's name after it requested arbitration, and it argues that the information no longer has probable or potential relevance to the grievance. We disagree with the underlying factual premise of the County's argument. As discussed earlier, the Association made its first two requests for the information long before it requested arbitration.

We also disagree with the legal premise of the County's argument. The County relies on *OPEU v. Department of Administrative Services and Department of Transportation*, Case Nos. UP-23/44-97, 17 PECBR 593 (1998) for the proposition that the requested information is no longer relevant to evaluating the grievance because the Association had already decided to pursue the grievance to arbitration.⁸ Reliance on *OPEU* is misplaced. In *OPEU*, we held that an employer's decision to not arbitrate a grievance terminated the grievance process. We dismissed the employer's information request complaint because there was no potential grievance or other asserted contractual matter to meet the threshold relevance test. The same is not true here. The Association continued to pursue its grievance, so *OPEU* does not apply.

In *Oregon State Police Officers' Association v. State of Oregon*, Case No. UP-24-88, 11 PECBR 718, 725 (1989), we stated that "[t]he duty not only applies to discovery of information for purposes of initiating grievances, it also applies for purposes

⁸The County also cites *Oregon Education Association and Moberg v. Salem-Keizer School District*, Case No. UP-55-96, 17 PECBR 188 (1997). Contrary to the County's assertion, *Moberg* does not require the Association to identify a contract provision that obligates it to provide information. In addition, unlike in *Moberg*, the Association requested information in relation to an identified grievance.

of processing grievances up to and through arbitration.” This is consistent with the basic purpose of the right to information under the PECBA, which is to allow the parties to make informed decisions about their grievance. The need to make an informed evaluation of a grievance does not cease simply because arbitration has been initiated.

We reject the County’s assertion that the request for information was no longer relevant once the Association initiated arbitration.

3. *Confidentiality*

After we determine that the requested information has probable or potential relevance, the next step in the analysis is to consider four factors to determine whether the requested information must be provided: (1) the reason given for the request; (2) the ease or difficulty in producing the data; (3) the kind of information requested; and (4) the history of the parties’ labor-management relations. *Oregon School Employees Association, Chapter 68 v. Colton School District 53*, Case No. C-124-81, 6 PECBR 5027 (1982). Only the third factor is at issue.⁹ Specifically, the County asserts that the requested information is confidential. We now turn to that defense.

In analyzing a party’s PECBA duty to provide information, the Board begins with the premise of full disclosure. A party asserting confidentiality has the burden of proving that the requested information need not be provided. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-7-98, 18 PECBR 64, 70 (1999). When addressing claims of confidentiality, “this Board is required to balance a union’s need for information against any legitimate and substantial confidentiality interests established by the employer.” *Association of Oregon Corrections Employees*, 18 PECBR at 71.

The County asserts that the name of the anonymous e-mail sender should not be disclosed because it is exempt from disclosure under Oregon’s Public Records Law, specifically ORS 192.502(4). That law exempts from disclosure:

“Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith

⁹In its brief, the County raises one of its relevance arguments under the first *Colton* factor. We already rejected the relevance argument as a threshold matter. The County concedes that *Colton* factors two and four are not at issue.

not to disclose the information, and when the public interest would suffer by the disclosure.”

The County argues that the public interest would suffer if the complainant’s name is disclosed because of potential harassment, retaliation, or physical harm to the e-mailer; and because it “would deter others from seeking to confidentially put forth concerns, evidence of wrongdoing or inappropriate behavior of colleagues.” (County Brief, page 7.)¹⁰ The County also points out that providing the redacted e-mails was its attempt to accommodate the Association’s request in a way that addressed the interests of both parties.

We narrowly construe the confidentiality exemption in ORS Chapter 192. *Oregon AFSCME Local 3581 v. State of Oregon, Real Estate Agency*, Case No. UP-42-03, 21 PECBR 129 (2005) (citing cases). Thus, in *Beaverton Police Association v. City of Beaverton*, Case No. UP-60-03, 20 PECBR 924 (2005), we rejected a similar public records confidentiality defense to a refusal to provide information. We stated:

“This Board has held that, where the Public Records Law provides for an exemption from disclosure, as here, and not a prohibition against disclosure, PECBA requirements for disclosure take precedence over the exemption. *Oregon State Police Officers’ Association v. State of Oregon*, Case No. UP-24-88, 11 PECBR 718 (1989); and *In the Matter of OSEA and Pleasant Hill School District*, Case No. DR-5-86, 9 PECBR 9054 (1986). We view the PECBA as one source of the ‘public interest’ identified in the Public Records Law. The legislature expressly found that the public benefits from ‘the development of harmonious and cooperative relationships between government and its employees.’ ORS 243.656(1). The exchange of information between the parties to collective bargaining fosters the type of cooperation the legislature envisioned. * * *” 20 PECBR at 933.

The same rationale applies here. On balance, we conclude the public interest would not suffer from the disclosure.

¹⁰Because of our disposition of the issue, we need not decide whether, under ORS 192.502(4), an e-mail from the undersheriff constitutes an obligation by “the public body” not to disclose the informant’s identity.

In addition, the County has provided only pure speculation, but no concrete evidence, that the complainant would likely be subjected to harassment or retaliation, or that future informants would be chilled. In *Real Estate Agency*, 21 PECBR at 135, we dismissed a similar confidentiality claim when the party raising it showed no basis for its fears of retaliation. The same is true here. The County has failed to carry the burden of proving its confidentiality defense.

The County's refusal to provide the Association with the name of the person who sent the e-mails violated ORS 243.672(1)(e).

ORDER

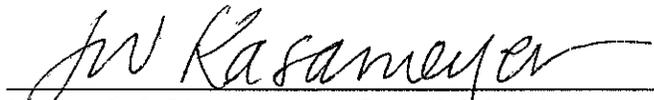
1. The County violated ORS 243.672(1)(e) when it refused to provide the Association with the complainant's name.

2. The County shall cease and desist from refusing to provide the Association with the complainant's name and shall immediately comply with the Association's request for such information.

DATED this 14th day of May 2007.



Paul B. Gamson, Chair



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.