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HOLLANDER, LEBENBAUM
& GANNICOTT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DOUGLAS SQUIRREL,

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

Case No. 9411-08031

DEFENDANT'S RESPONSE TO DAN
HANDELMAN'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS

INTRODUCTION

Defendant files this Memorandum in response to Dan Handelman's Motion to Compel. Defendant urges the Court to deny Handelman's motion on the ground that it is premature because: (1) the Court has not determined whether it has jurisdiction over this case; and (2) even if it has jurisdiction, the Court has not made its threshold determination as to whether the document that formed the basis for Handelman's Motion for Order to Show Cause violates ORS 181. 575.

ARGUMENT

1. Handelman's request for discovery is premature because the Court has not determined that it has jurisdiction over this case. Handelman was not a party to this case. Plaintiff Squirrel has not filed a motion.

This Court lacks jurisdiction to pursue the contempt proceedings sought by Handelman. Defendant articulated this argument in a brief submitted to the Court on February 17, 2000. The Court ordered the parties to agree to a briefing schedule to resolve this issue. Handelman's

1 response to defendant's February 17, 2000 brief was due on April 1, 2000. To date, Handelman
2 has not submitted a brief. It would be premature to require defendant to provide any discovery
3 until the Court rules on this jurisdictional issue.

4 2. Defendants are not required to produce additional documents unless the Court
5 makes a threshold determination that the document that formed the basis for Handelman's
6 Motion for Order to Show Cause violates ORS 181.575.

7 It is the understanding of defendant's counsel that the Court has ruled that, pending its
8 determination as to whether the document that is the subject of Handelman's Motion for Order to
9 Show Cause violates ORS 181.575, defendant need not respond to additional discovery requests.
10 The Court has not yet made that determination and Handelman's discovery requests are
11 premature.

12 **ADDENDUM**

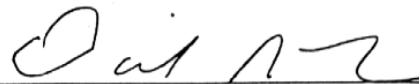
13 For the Court's information, defendant believes the Criminal Intelligence Division has no
14 documents that are within the scope of Handelman's broad discovery request. The Portland City
15 Attorney's Office does have a small number of documents, previously held by the Criminal
16 Intelligence Division, that may be within the scope of the request. Those documents are
17 available for in camera inspection if the Court believes that would assist in ruling on the motion.

18 **CONCLUSION**

19 For the foregoing reasons, defendant respectfully requests that the Court deny
20 Handelman's Motion to Compel.

21 DATED this 14 day of July, 2000.

22 Respectfully submitted,

23 

24 Nancy E. Martin, OSB #90332
25 David N. Lesh, OSB #90479
26 Deputy City Attorney
Of Attorneys for Defendant City of Portland