

OREGON GOVERNMENT ETHICS COMMISSION

PRELIMINARY REVIEW

CASE NO: 22-078XTS

DATE: June 03, 2022

RESPONDENT: PANKEY, Sr., Buster, President, Board of Directors,
Central Oregon Coast Fire & Rescue

COMPLAINANT: KNUDSON, Erich, Public Information Officer, Central
Oregon Coast Fire & Rescue

RECOMMENDED ACTION: Move to Dismiss the Complaint

1 **PRELIMINARY REVIEW:** The Oregon Government Ethics Commission (Commission)
2 received a complaint from Erich Knudson on April 5, 2022 alleging that Buster Pankey,
3 Sr., President of the Board of Directors (Board) for the Central Oregon Coast Fire &
4 Rescue, along with other Board Members, may have violated the executive session
5 provisions of Oregon Public Meetings law by participating in an executive session when
6 the Board discussed topics that did not correspond to the statutory authority cited. (#PR1).
7 Receipt of the complaint was acknowledged in letters to Buster Pankey and Erich
8 Knudson. The Commission provided Mr. Pankey with the information received in the
9 complaint and invited him to provide any information that would assist the Commission in
10 conducting its preliminary review.

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12 **Background**

13 The Central Oregon Coast Fire & Rescue (COCFR) is a fire district serving the City of
14 Waldport and portions of Lincoln County. The COCFR is governed by a five-person Board
15 of Directors and managed by a Fire Chief. Currently, the Fire Chief is Jamie Mason.
16 (#PR2). According to comments in the Yachats News article provided with the complaint,
17 it appears that the COCFR has had an intergovernmental agreement (IGA) with the Seal
18 Rock Fire District to share personnel and equipment. (#PR3).

1 Complaint

2 The complaint in this case asserts as follows:

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4 On March 16th, 2022 at 5:30 pm the Central Oregon Coast Fire & Rescue Board
5 conducted an Executive Session pursuant to ORS 192.660(2)(f), [t]o consider
6 information or records that are exempt by law from public inspection, doing so
7 under the direction of Buster Pankey Sr., Todd Holt and Kathryn Menefee. * * *
8 They held the meeting instead under 192.660(2)(b), [t]o consider the dismissal or
9 disciplining of, or to hear complaints or charges brought against, a public officer,
10 employee, staff member or individual agent who does not request an open hearing.
11 It was reported on in the Yachats News and by the Newport News Times * * *. It
12 was also admitted to Chief Jamie Mason of the violation of the Executive Session
13 Law by Reda E[c]kerman and Kevin Battles which are two other board members.
14 They did not allow or give the proper notice to the public per their agenda nor did
15 they give proper notice and allow Chief Jamie Mason the ability to request it be
16 held in public session. * * * (#PR1).

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18 With the complaint, Mr. Knudson provided a link to a Yachats News article reporting that
19 in the March 16, 2022 executive session, COCFR Board members had intended to
20 dismiss Fire Chief Jamie Mason but backed off that decision. The article noted that the
21 executive session had been held under ORS 192.660(2)(f) to consider a memo the Board
22 received from its legal counsel and that the attorney was present by telephone during the
23 executive session. According to the article, members of the Seal Rock Fire District Board
24 reported that their counterparts on the COCFR Board had "intended to let [Fire Chief]
25 Mason go 'and then it got down to a vote, and they decided to go to mediation.'" The
26 article went on to quote a statement from COCFR Board President Pankey: "Following
27 the closed, executive session last week, Pankey said in open session that "[i]f we can
28 work it all out, that would be wonderful." (#PR3).

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30 As part of its report, the Yachats News published a partial transcript of the Seal Rock Fire
31 District Board meeting. The Seal Rock Fire District Board discussed suspending
32 negotiations on its IGA with COCFR. One Board member stated of the COCFR Board

1 and Fire Chief Mason, “[T]hey’re gonna mediate [pause] they were gonna, I guess they
2 were gonna to let him go, and then it got down to a vote, and they decided to go to
3 mediation. For whatever reason. And so now he’s in limbo.” The Seal Rock Fire District
4 Board then discussed whether their Fire Chief would have to step in to cover COCFR if
5 its Board fired Chief Mason. (#PR4).

6
7 Mr. Knudson also provided a copy of the March 16, 2022 meeting agenda for the COCFR
8 Board, showing that the Board held a stand-alone executive session under ORS
9 192.660(2)(f), to “consider information or records that are exempt by law from public
10 inspection.” (#PR5).

11
12 March 16th Meeting Minutes

13 Commission staff retrieved draft minutes from the March 16th Board meeting from the
14 COCFR website. The minutes indicate all five Board Members were present and that:

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16 At 5:31 the [public] meeting was closed and an Executive Session was called
17 under ORS 192.660(2)(f) “To consider information or records that are exempt by
18 law from public inspection”, in consultation with legal counsel via telephone. No
19 decisions were made. At 6:24 the Executive Session ended and the meeting
20 returned to open session. (#PR6).

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22 The minutes go on to indicate that there was no action taken following the executive
23 session. (#PR6).

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25 Response

26 Board President Buster Pankey Sr. e-mailed a brief response to the complaint, writing:

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28 I am board chair for Central Coast Fire district here in Waldport Oregon. I have
29 received an ethics violation complaint from a staff member. The executive meeting
30 in question was attended by our legal coun[sel] via phone for the duration of the
31 meeting. I followed her advice in the setting up of the executive meeting. (#PR7).

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1 Commission staff held a telephone interview with Buster Pankey. He explained that at the
2 March 16th executive session, the Board was considering a legal memo from its lawyer,
3 Lori Cooper, who was present by telephone. He explained that the legal memo presented
4 six options relating to dismissing the Fire Chief. He described the memo as having
5 “different levels/options that they could use to fire the Chief.” He said that the Board
6 looked at all of the options but none of them seemed to fit, because on paper the Chief
7 does his job, but the issues are about what is happening behind the scenes. Mr. Pankey
8 reiterated that “the discussion was about the dismissal of the Fire Chief or how to continue
9 on with him.” He indicated the Board discussed getting counseling from the Special
10 Districts Association of Oregon (SDAO), and that coming out of the meeting he said, “I
11 really don’t know what we can do. Maybe let’s see if SDAO can help.” (#PR8).

12
13 When asked if the Board had given any notice to Chief Mason that it would be considering
14 complaints or charges against him or his discipline or dismissal, Mr. Pankey said that no
15 notice was given to Chief Mason. He said that if they had decided to pursue one of the
16 dismissal options, the Board would then have given him notice and allowed him to have
17 it heard in open session. (#PR8).

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19 Commission staff spoke with attorney Lori Cooper. She confirmed that she did attend the
20 COCFR Board’s March 16th executive session by phone and that she had provided a
21 legal memo to the Board in advance of the meeting. (#PR9).

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23 **RECOMMENDATIONS:** Buster Pankey Sr. is an elected member and President of the
24 COCFR Board of Directors. He held this position during the period relevant to this
25 preliminary review and was a public official as defined by ORS 244.020(15). The COCFR
26 is a public body and the Board is its governing body. [ORS 192.610(3) and (4)]. As a
27 member of the governing body of a public body, Mr. Pankey is required to comply with
28 the executive session provisions of Oregon Public Meetings law found in ORS 192.660.

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30 In this case, the COCFR Board held the March 16th executive session under ORS
31 192.660(2)(f), which provides that a governing body may hold an executive session to
32 “consider information or records that are exempt by law from public inspection.” The

1 record exempt by law from public inspection appears to have been a legal memo from
2 the Board's counsel.

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4 In discussing the authority of a public body to convene an executive session to discuss
5 attorney-client privileged advice, the AG Manual provides:

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7 A governing body also has the authority to meet in executive session to obtain
8 other professional legal services from its legal counsel. For example, confidential
9 written legal advice from counsel is a privileged record that is typically exempt from
10 disclosure under Public Records Law. * * * Considering records that are so exempt
11 provides authority to meet in executive session [under ORS 192.660(2)(f)]. * * *
12 Accordingly, if a governing body takes appropriate steps, it may use an executive
13 session to discuss any legal matter of a confidential nature absent the existence
14 or likelihood of litigation. The governing body should return to public session for
15 any discussion of policy.

16
17 Some might argue that allowing executive session to discuss privileged matters is
18 an open invitation to evade the purposes of the Public Meetings Law. But when a
19 need for confidential discussion of legal issues arises, even in the absence of a
20 threat of litigation, we see no reason why a governing body should not take
21 advantage of the attorney-client privilege. Because it is unclear whether the ability
22 to meet in executive [session] to discuss exempt records or information applies
23 absent the existence of an exempt physical record, a governing body should not
24 cite the privilege as a basis for executive session unless there is a written record
25 of a privileged attorney-client communication, or the body's legal counsel has
26 advised that the executive session is appropriate.* * * (AG Manual §II.E.1.h).

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28 In this case, it appears there was a written record of a privileged attorney-client
29 communication. The Board's attorney confirmed that she provided a legal memo in
30 advance of the March 16th meeting and she did attend the executive session by
31 telephone. The attorney-client privileged legal memo from the Board's counsel would
32 appear to qualify as a confidential record exempt by law from public disclosure. And ORS

1 192.660(2)(f) is the appropriate statutory authority for holding an executive session to
2 consider such an attorney-client privileged record.

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4 Under the Administrative Rules adopted by the Commission, when a governing body
5 convenes an executive session, it must cite the appropriate statutory authority or other
6 lawful basis for holding the executive session. [OAR 199-040-0015(2)]. And it must
7 ensure that the discussion does not exceed the scope permitted by the provision(s) cited.
8 [OAR 199-040-0020(1)]. The question in this case is whether the Board in the March 16th
9 executive session went beyond the scope of ORS 192.660(2)(f) and a discussion of an
10 attorney-client privileged document, such that the Board also needed to cite ORS
11 192.660(2)(b).

12
13 In pertinent part, ORS 192.660(2)(b) authorizes a governing board to hold an executive
14 session to "consider the dismissal or disciplining of, or to hear complaints or charges
15 brought against, a public officer, employee, staff member or individual agent who does
16 not request an open hearing." The AG Manual advises that "[i]n order to permit the
17 affected person to request an open hearing, the governing body must give sufficient
18 advance notice to the person of the right to decide whether the performance evaluation
19 will be conducted in open session." (AG Manual § II.E.1.i). OAR 199-040-0030 sets forth
20 the notice requirements, which include that it be in writing and given at least 24 hours in
21 advance of the meeting. In his interview, Mr. Pankey explained that if the Board had felt
22 it could pursue one of the dismissal options outlined by their attorney, they would have
23 provided the requisite notice to Chief Mason and allowed him to request the matter be
24 considered in open session.

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26 In this case, ORS 192.660(2)(b) was not cited as authority for the March 16th executive
27 session, and Board President Pankey confirmed that no written notice was given to Fire
28 Chief Mason. A determination of whether citation to ORS 192.660(2)(b) and notice to
29 Chief Mason were required rests upon a showing that the Board's discussion in the
30 executive session went beyond consideration of the attorney-client privileged record.
31 Information available in this preliminary review does not show that to be the case.

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1 Rather, it appears in this case that the executive session discussion focused on the Board
2 reviewing written legal advice from its counsel. According to Mr. Pankey, the legal memo
3 presented advice on the different options the Board had for dismissing the Fire Chief.
4 Consideration of legal advice relating to the grounds upon which the Board could pursue
5 dismissal appears to fit within the scope authorized by ORS 192.660(2)(f). As a
6 consequence there does not appear to be sufficient evidence from which to conclude that
7 the executive session exceeded the scope of ORS 192.660(2)(f) and necessitated
8 compliance with ORS 192.660(2)(b).

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10 Based on the information available in this preliminary review, there does not appear to be
11 a substantial objective basis to believe that violations of ORS 192.660 may have occurred
12 at the COCFR Board's March 16, 2022 executive session.

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14 The Oregon Government Ethics Commission should move to dismiss the complaint.
15 (Motion 2).

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1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Erich Knudson, dated 4/5/2022.
- 3 #PR2 Information available on the Central Oregon Coast Fire & Rescue District
4 website at <https://centralcoastfire.net>
- 5 #PR3 Yachats News article, "Did Central Oregon Coast fire board back off firing
6 their chief last week? In public meeting, two Seal Rock board members say
7 yes," published 3/24/2022.
- 8 #PR4 Partial transcript of Seal Rock Fire District Board meeting, 3/16/2022,
9 published with the Yachats News article.
- 10 #PR5 COCFR Board Meeting Agenda, 3/16/2022.
- 11 #PR6 Draft Minutes for COCFR Board Meeting, 3/16/2022.
- 12 #PR7 E-mail response from Buster Pankey Sr., received 4/18/2022.
- 13 #PR8 Memorandum re contact with Buster Pankey Sr., dated 5/31/2022.
- 14 #PR9 Memorandum re contact with attorney Lori Cooper, dated 6/2/2022.

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17 PREPARED BY Susan Myers, Investigator *SM 4/2/2022*

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19 APPROVED BY Ronald A. Bersin, Executive Director *Approved via email 4/3/2022*

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21 REVIEWED BY Joshua Nasbe, Assistant Attorney General *JNA 4-2-2022*