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August 17, 2006

Sheila H. Potter
Attorney at Law
Bullivant Houser Bailey PC
300 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2089

Randall M. Killinger
Captain, Records Division
Portland Police Bureau
1111 SW 2nd Avenue
Portland, OR 97204

Re: Petition of Sheila H. Potter on behalf of Pooneh Entezari received August 7, 2006 to disclose certain records of the City of Portland

Dear Ms. Potter and Capt. Killinger:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Sheila Potter requests the District Attorney to order the City of Portland to provide copies of the following records:

[A]ll police reports, responses, and records of contacts, including but not limited to case number 06-10662.

Petitioner requested copies of the police reports relating to her client Pooneh Entezari on May 9, 2006. The Portland Police Bureau responded in a form "Police Report Exemption Notice" dated April 26, 2006. Exemption for the entire report was claimed under ORS 192.502(2), Information of a Personal Nature.

In response to the petition, Portland Police Bureau Records Captain Randall Killinger now claims additional exemptions under ORS 192.502(4), Confidential Information, ORS 192.501(3), Criminal Investigatory Material, and ORS 192.501(23), Security Measures. Captain Killinger submitted the three-page report for our confidential review. For the reasons set out below, this office concludes that the Confidential Information in the report is the only valid basis for exemption under the Public Records Law.

DISCUSSION

I. Confidential Submissions

ORS 192.504(4) exempts:

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

As stated in the Attorney General's Public Records and Meetings Manual, 2005, p. 69, there are "no less than five conditions that must be met" for the exemption to apply:

1. The informant must have submitted the information on the condition that the information would be kept confidential.
2. The informant must not have been required by law to provide the information.
3. The information itself must be of a nature that reasonably should be kept confidential.
4. The public body must show that it has obligated itself in *good faith* not to disclose the information.
5. Disclosure of the information must cause harm to the public interest.

On February 1, 2006, NE Precinct Officer C. Panter interviewed a Patricia Anne Schweiger about suspicious activity around her residence. A special report, 06-10662, was prepared and filed by Officer Panter. The report contained information regarding the suspicious activity together with what can be characterized as the extraneous concerns of Ms. Schweiger. She has sworn in a confidential declaration that the latter information was given to the officer in confidence and that she asked the officer to keep it confidential.

The special report itself has the word "confidential" hand-written twice at the top of the first page. In the last line of the report, Officer Panter states: "This case should be considered confidential as the related cases are such." Captain Killinger advised this office that in a telephone conversation Officer Panter told him it was Officer Panter's clear understanding that the information about Ms. Schweiger's concerns was provided and received in confidence. We are satisfied that the first and fourth conditions of the exemption have been satisfied, at least with respect to certain parts of the report.


The second and third conditions have clearly been satisfied. The last condition, harm to the public interest, is more problematical. Whatever use was made of the report by other investigators in the Portland Police Bureau has apparently ended. Nonetheless, it is essential to provide a mechanism for citizens to communicate their concerns to law enforcement with an expectation that the information will be maintained in confidence. The public interest is best served by denying disclosure of the confidential communications. Specifically, page 1, item 1; page 2, paragraphs 3, 4, 5, and 6; and page 3, paragraphs 1 and 4. This material should be redacted in its entirety.

The other claimed exemptions cannot be sustained. The criminal investigatory material regarding the suspicious activity no longer warrants exemption. Certain personal privacy and security disclosures may be of concern but are only found in the confidential parts of the report.

ORDER

Accordingly, it is ordered that the City of Portland promptly disclose the records sought in the above petition subject to redaction of the noted passages on each page of PPB report no. 06-10662. Disclosure of the document ordered is subject to payment of the City's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.