



24 Or App 11 **MICHAEL D. SCHRUNK**, District Attorney for Multnomah County
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January 22, 2008

Peter G. Johnson
Compliance Specialist
PHC Property Management
5312 NE 148th Ave
Portland, OR 97230

Christopher T. Paille
Program Specialist, Records Division
City of Portland
Bureau of Police
1111 SW 2nd Avenue
Portland, OR 97204

Re: Petition of Peter Johnson received January 11, 2008 to disclose certain records
of the Portland Police Bureau

Dear Mr. Johnson and Mr. Paille:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Peter Johnson for PHC Property Management requests the District Attorney to order the Portland Police Bureau and its employees to make available for inspection or produce copies of the following record:

Case Number 07-107333

On December 19, 2007, Stephanie Gray of PHC Property Management submitted a written request by to the Portland Police Bureau Records Division for a copy of records relating to the November 18, 2007 assault of Yolanda Magule. On December 21, 2007 the Police Bureau denied the request by letter noting that "information contained in the record relates to a current/ongoing investigation." Exemption from disclosure was claimed under ORS 192.501(3), Criminal Investigatory Material.

In a January 21, 2008 letter response to the petition, Program Specialist Christopher Paille continued to claim an exemption under ORS 192.501(3), but stated that the Police Bureau would not oppose disclosure if this office concluded that "disclosure of the requested record will not impede law enforcement proceedings." Mr. Paille included the reports in question for our review.

ORS 192.501(3) conditionally exempts:

Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute to disclosure or discovery in criminal cases.

An application of the criminal investigatory material exemption requires identification and balancing of the various purposes for secrecy and a determination of the stage of the investigation or prosecution. See Jensen v. Schiffman, 24 Or App 11 (1976). This is a conditional privilege designed to protect active police investigations. The court in Jensen adopted the then federal law in the area: "investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely 'interfere with enforcement proceedings.'" 24 Or App at 16.

Deputy District Attorney Darien Stanford is assigned to the prosecutions arising from the November 18, 2007 incident. He advised me that disclosure at this stage of the criminal proceedings would not impede the investigation and that he had no objection to the release of the reports. A review of the reports leads me to concur with Mr. Stanford.

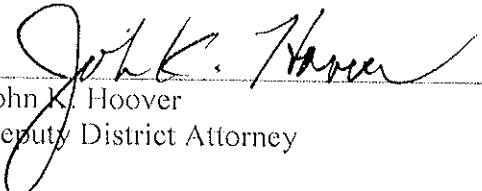
ORDER

Accordingly, it is ordered that the Portland Police Bureau Records Division promptly disclose the records sought in the above petition. Disclosure of the documents ordered is subject to payment of the Police Bureau'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

By: _____


John K. Hoover
Deputy District Attorney

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 court action within 7 additional days thereafter.