



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

February 15, 2000

Susan Gage  
The Oregonian  
1320 SW Broadway  
Portland, OR 97201-3499

Mary T. Danford  
Senior Deputy City Attorney  
Office of City Attorney  
1221 SW 4th Avenue  
Portland, OR 97204

Re: Petition of Susan Gage for the Oregonian received January 21, 2000 to disclose certain records of the City of Portland.

Dear Ms. Gage and Ms. Danford:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Susan Gage for the Oregonian requests the District Attorney to order the City of Portland and the Bureau of Police and their employees to produce the following records:

- 1. Findings regarding the sustained Internal Affairs complaint against Detective Sgt. David Howe**
- 2. Findings of the criminal investigation into Howe's conduct**
- 3. The discipline imposed related to the complaint**

Petitioner made her public records request for information regarding the sustained internal affairs complaint against Sgt. Howe to Detective Sgt. Mike Hefley, Public Information Officer, on December 8, 1999. Debra Haugen, Police Bureau Records Manager, responded to the request in a letter dated December 29. Ms. Haugen cited ORS 192.501(12), Personnel Discipline Actions, and took the position that it was not in the public interest to release the information.

In her petition to this office, Ms. Gage argues that

the public has a serious and legitimate interest in the performance of their public safety employees...A sustained complaint related to a police officer's conduct with a member the public and which resulted in a criminal investigation, an internal affairs investigation and, after many months of leave at taxpayer expense, discipline of an officer clearly rises to the public interest.

On January 27, Senior Deputy City Attorney Mary T. Danford submitted a letter response to the petition. Ms. Danford first notes that the District Attorney's Office declined to issue a criminal case. She then relates that someone made the complaint against Sgt. Howe within the Police Bureau, not a citizen. Ms. Danford then points out that the complaint was sustained on the basis of unsatisfactory performance. Ms. Danford argues that there is no factual record to indicate that Detective Sgt. Howe has engaged in any serious misconduct. She concludes by asserting that disclosure in this instance is not in the public interest.

We have had numerous discussions with Internal Affairs Captain Bret Smith, Records Manager Haugen and Senior Deputy District Attorney Mark McDonnell. This office has corresponded with Janet Hoffman, attorney for Sgt. Howe and with Will Aitchison, attorney for the Portland Police Association. Sgt. Howe, through Ms. Hoffman, requested a personal interview. It was decided this would not be appropriate under the circumstances. We have carefully reviewed the relevant materials provided by both counsel and the arguments presented on behalf of their respective clients.

#### DISCUSSION

ORS 192.501(12) exempts: "A personnel discipline action, or materials or documents supporting that action[.]" This is a conditional exemption that may be overcome if it is shown that "...the public interest requires disclosure in the particular instance [.]" "The policy intended by the legislature, which we enforce, protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes." City of Portland v. Rice, 308 Or 118, 124, n 5 (1989) (PPB Internal Affairs investigation ordered disclosed over claim of personnel discipline exemption). Accord, Oregonian Publishing Company v. Portland School District No II, 144 Or App 180 (1996) (Public interest required disclosure of discipline investigation and sanction of school employees for misuse and theft of school property).

The recent Oregon Court of Appeals decision of City of Portland v. David Anderson and The Oregonian, 163 Or App 550 (1999) discusses allegations of misconduct of supervisory personnel of a law enforcement agency. In that case, the Court upheld the disclosure of the personnel

discipline action materials regarding the sustained discipline of Portland Police Bureau Captain John Michael Garvey. In Anderson, the Court of Appeals identified the presence of a public interest even when dealing with allegations of off-duty, non-criminal and not *per se* illegal conduct of a high-ranking law enforcement manager:

The public has a legitimate interest in confirming his integrity and his ability to enforce the law evenhandedly. The police investigation that resulted in discipline concluded that Garvey had engaged in sexual conduct through an escort service that may serve as a front for prostitution. That information bears materially on his integrity and on the risk that its compromise could affect the administration of his duties. Portland v. Anderson, 163 Or App at 554.

The general rule in Oregon with respect to public records favors disclosure. Portland v. Anderson, 163 Or App at 552. The Anderson decision serves to reinforce the principles enunciated in our Public Records Order, February 6, 1997, *Foster*, involving the disciplinary records of Gresham police Sergeant James Kalbasky (relating to Kalbasky's on and off-duty association and conduct with two different women). Attached is a recent example of our application of the *Foster* guidelines to the noncriminal conduct of two Gresham Fire Department employees (relating to on-duty accessing of pornographic Internet sites), *Esteve*, dated October 20, 1999. In both *Foster and Esteve*, the records supporting the disciplinary sanctions were ordered disclosed in the public interest.

The petition makes certain demands for the production of records possessed by the Portland Police Bureau. This order is necessarily confined to the information specifically requested in the petition.

Petitioner has asked for the findings regarding the sustained Internal Affairs complaint and the discipline imposed for an incident that occurred on October 14, 1998. The Portland Police Bureau has provided for our review seven pages of Internal Affairs records, together with a two-page confidential memorandum dated September 23, 1999. The latter document includes the requested Internal Affairs information.

After a thorough evaluation of the opposing public interest considerations, we find ourselves in substantial agreement with the position asserted by petitioner. We believe a fair reading of the Oregon appellate decisions regarding the public's right of access to discipline records dictates the resolution of this petition and cannot be ignored. Application of the Rice, Anderson, and Portland School District decisions as well as our *Foster* guidelines leads to the inescapable conclusion that it is in the public interest to disclose the information requested by petitioner.

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Petitioner has asked for the findings of the criminal investigation into the October 14, 1999 incident. We are aware that the Internal Affairs file contains the one-page prosecution decline memorandum this office generated relating directly to this investigation. We view it as a public record and see no reason it should not be disclosed by the Bureau.

ORDER

Accordingly, it is ordered that the City of Portland and the Bureau of Police promptly disclose the records<sup>1</sup> listed in Ms. Gage's petition.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County

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 seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

Cc: Debra Haugen

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<sup>1</sup> The two-page confidential memorandum should be redacted to exclude the name of the complainant-witness. See ORS 192.502(2) Personal Privacy Exemption.



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County  
600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

October 20, 1999

Harry Esteve  
East Metro News Bureau  
The Oregonian  
295 NE Second St  
Gresham, OR 97030

**COPY**

Susan G. Bischoff  
Senior Asst. City Attorney  
City Attorney's Office  
City of Gresham  
1333 NW Eastman Parkway  
Gresham, OR 97030-3813

Re: Petition of Harry Esteve for the Oregonian received September 28, 1999, to disclose certain records of the City of Gresham

Dear Mr. Esteve and Ms. Bischoff:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Harry Esteve for the Oregonian requests the District Attorney to order the City of Gresham, and its employees to produce the following records:

- 1. the names of its employees disciplined in the most recent incident involving inappropriate use of city computers by members of the Gresham Fire Department.**
- 2. any investigative reports or investigative findings of the above incident.**

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Petitioner requested these records from Candace Haines, Gresham City Attorney, in a September 21, 1999 letter. Petitioner noted that the Gresham Fire Department "has cited as a reason to withhold the name the fear of embarrassing its employees." Susan Bischoff, the Senior Assistant City Attorney who was in charge of the investigation, claimed exemption from disclosure in an e-mail to petitioner dated September 22, 1999.

Petitioner takes the position that "the public interest in disclosing the information outweighs the more narrow private interest." The Oregonian correctly points out that its readers "have a serious and legitimate interest in the performance of their public safety employees." Petitioner's request for information has been made to provide "means for the public to examine how the city of Gresham and the Gresham Fire Department is conducting the public's business."

The City of Gresham issued the attached press release on September 22, 1999 and provided much of the information sought by petitioner. The investigation involved the conduct of a firefighter and an officer assigned to the Hazardous Materials (HazMat) Team located at Station 73 in Gresham. Both employees had access to the computer located in the HazMat van. The Oregon State Police owns the computer and it is provided to the Gresham Fire Department through an intergovernmental agreement with the State Fire Marshall's Office.

According to the press release, the firefighter accessed chat rooms through his personal America on Line (AOL) Internet account. The "frequent" use of the HazMat computer in chat rooms occurred during stand-by or down time outside the typical eight or ten hour workday. The firefighter admitted his wrongful conduct. This improper computer use resulted in the discipline of a two-step decrease in pay (approximately \$550 per month).

The press release revealed that the Station 73 officer was "surfing the Internet" on various topics ranging from woodworking to bird watching. In addition, access was made to some "sexually oriented" Internet sites. An international chat room software program was also downloaded to the HazMat computer. Again, the improper personal use was outside the typical department workday. The officer was stripped of his supervisory rank, pulled from the HazMat team, and transferred to another fire station. The financial impact was in excess of \$800 a month.

Ms. Bischoff, on behalf of Gresham, submitted a confidential letter response to the petition on October 4, 1999. The City of Gresham has claimed exemption from disclosure of the name of its employees as well as the investigation itself under ORS 192.501 (12), Personnel Discipline Action. Ms. Bischoff has also provided copies of various warnings, rules, and policies of the City of Gresham and the Oregon State Police relevant to the use of computers and the Internet. We were also given access to the confidential investigative report relied upon by Ms. Bischoff.

### DISCUSSION

ORS 192.501(12) exempts: "A personnel discipline action, or materials or documents supporting that action[.]" This is a conditional exemption that may be overcome if it is shown that "...the public interest requires disclosure in the particular instance [.]". The exemption only applies when discipline has been imposed. "The policy intended by the legislature, which we enforce, protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes." City of Portland v. Rice, 308 Or 118, 124, n 5.

The Attorney General's Public Records Manual, 1997, page 34, provides some guidance in the application of the Personnel Discipline Action exemption:

Consistent with this policy, there are situations when the public interest in disclosure outweighs the public interest in confidentiality, despite the imposition of a disciplinary sanction. For example, the public interest typically favors disclosure if the conduct potentially constitutes a criminal offense or if the records relate to alleged misuse and theft of public property by public employees. Other factors to consider in weighing the public interest in disclosure against the employee's interest in confidentiality include the employee's position, the basis for the disciplinary action, and the extent to which the information has already been made public.

Ms. Bischoff made it clear in her October 4 letter that her investigation was not criminal in nature. There were no allegations of theft of software or illegal conduct while in chat rooms or at Internet sites. Rather, the discipline was predicated on the violation of rules of access and usage of the computer owned by the Oregon State Police, provided by the State Fire Marshall, and operated by the HazMat Team of the Gresham Fire Department. It should be emphasized that both employees were being paid at the time of the improper computer use. Ms. Bischoff has represented that there had been no prior violations of a similar nature by either employee.

Ms. Bischoff has provided to this office the following documents: the City's various warnings of disciplinary action for unauthorized computer use, the rules governing the use of City Resources, a list of what is considered inappropriate use of computer resources, the limits on Internet use, and the separate requirements for use of State owned computer equipment.

City of Gresham policy defines inappropriate use of City computing resources to include:

- Accessing data and files to which explicit authorized access has not been given.
- Sending electronic mail, posting, or accessing materials which are obscene, abusive, threatening, harassing, or otherwise objectionable.
- Loading unauthorized personal software on City computers.
- Wasting work time by accessing non-work related information.

The City Internet Use policy includes the following admonitions:

- Internet use shall be for City-authorized purposes only.
- There is a wide variety of information on the Internet. Much of this information is inappropriate for the workplace and offensive or otherwise objectionable.
- Internet resources which are not used for a City-authorized purpose must not be accessed or downloaded.

The Department of State Police policy is more explicit:

- Personal Use: The use of Department microcomputer equipment including hardware, software, documentation, and data is limited to the support of agency functions. Any unauthorized personal use is strictly prohibited.

It is clear that anything more than incidental personal use of computer resources will not be tolerated by these public agencies. Certainly the on-duty chronic "surfing" of the Internet and frequent trips to sexually-oriented "chat rooms" is far out-of-bounds under either the State Police or the City of Gresham computer use policy. The severe discipline imposed on the two Gresham employees is without doubt intended to send a strong message not only to the two firemen but also to other Fire Department and City of Gresham employees.

The question is whether the public interest requires further exposure of the conduct of two members of the Gresham HazMat Team and Fire Department to public scrutiny. Absent appellate case law setting forth different criteria, the circumstances here will be evaluated under the guiding principles enunciated by this office in our Public Records Order, February 6, 1997, *Foster*, involving the disciplinary records of Gresham police Sergeant James Kalbasky:



1. Serious misconduct by a government employee should be disclosed in the public interest; relatively minor misconduct need not be disclosed if the public interest would not be significantly promoted by doing so.
2. Generally, termination from employment or other discipline for cause is serious misconduct if it is based upon corruption in the discharge of the public's business (including theft of the public's property), abuse of official power by employing such power for a purpose not related to any lawful government objective or by use of illegal or impermissible means in the pursuit of a governmental objective, misconduct which impairs or imperils the mission of the government agency, or criminal behavior (particularly when job-related) which constitutes proper ground for discharge from employment or other discipline.
3. Discipline for acts or faults of government employees falling short of the preceding kinds of serious misconduct may also be determined to require disclosure if the cumulation of repeated disciplinary violations fairly raises the issue whether continued employment of the particular employee in itself constitutes an imprudent or improper management decision not to impose more severe sanctions or termination of employment.
4. Discipline cases that evidence systematic misconduct, i.e., misconduct affecting multiple employees and involving similar improper acts or omissions may require disclosure even when the acts or faults in question do not individually rise to the level of the serious misconduct described in points 1 and 2, where the overall pattern of disciplinary violations indicates there may be a concentrated personnel problem in a particular agency or part of any agency, or sheds light on the effectiveness of management's efforts to properly control the behavior in question.
5. Other cases of disciplinary records may merit disclosure in the public interest even though the conduct of the disciplined employee is not serious misconduct as previously described, where circumstances raise an issue of unduly harsh (or unduly lenient), arbitrary, irrational administration of discipline by management and thus illuminate management's conduct of the public business.
6. Finally, public employees should not be subjected to public disclosure of disciplinary violations not of the kind specified in the preceding guiding principles, when such disclosure would merely subject the employee to added humiliation and would not significantly promote the public's understanding of the manner in which the programs and services of government are being carried out. Part of the purpose of employee discipline is to encourage the employee's morale while correcting undesirable conduct, which goal is not promoted, as we think, by a process of indiscriminate public pillory -- and which consideration presumably was part of the

Legislative Assembly's motivation for the enactment of the "discipline action" exemption in the first place.

The City argues that there is no public interest whatsoever in the actual names of the two employees disciplined. Ms. Bischoff has asserted the privacy interests of the disciplined employees as well as their families. In addition, the City has expressed a concern for the government interest in the preservation of healthy labor-management relations. Ms. Bischoff notes that the IAFF supports the City in its efforts to avoid disclosure of both the names of the employees and any investigative reports. The City takes the position that its press release has provided sufficient information to satisfy whatever public interest the public may have in the disciplinary processes of the City of Gresham.

At the request of this office, petitioner has provided further reasons that the public interest requires the release of the names of the employees as well as the investigative reports. He argues that the names are a matter of public record and without the names, The Oregonian cannot pursue comments from the two firefighters who were disciplined. Petitioner notes that their individual judgments are critical to their jobs and that without the names The Oregonian has no way of knowing whether either of the two employees has a history of such behavior.

With respect to disclosure of the investigative report, petitioner maintains that the full report is necessary to judge the appropriateness of the City's actions. Petitioner expresses the concern that there have been rumors that some of the Internet sites were more extreme than those sites the City has commented on. In spite of the city's determination that none of the employee's actions were criminal, petitioner contends there is still a valid interest in obtaining the details that led to the disciplinary action.

Quinton Smith, Bureau Chief of East Metro News at The Oregonian, directed this office to the Oregon Supreme Court opinion in Oregonian Publishing Company v. Portland School District No II, SC S45020, decided October 7, 1999. The Supreme Court upheld disclosure of an investigative report and rejected the application of the Teacher Personnel File exemption. The Supreme Court noted that the subject of the investigation by the Portland School Police was the misuse and theft of school district property at Benson High School without reference to individual school district employees. The Supreme Court concluded that the investigative report was "not the type of document that the legislature intended to be exempt from disclosure as part of a teacher personnel file. The personnel disciplinary action exemption was not discussed."<sup>1</sup>

We have thoroughly reviewed the fifteen-page report detailing the forensic examination of HazMat Computer data provided to this office as a confidential document. We have had numerous conversations with Ms. Bischoff as well as an extensive interview with Rich Boyd, the Gresham

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<sup>1</sup> The Court of Appeals opinion in Oregonian Publishing Company v. Portland School District No II, 144 Or App 180, 187 (1996), rejected the District's contention that the records were exempt as relating to a personnel disciplinary action. "The public interest in this case is significant and requires disclosure. The records at issue involve misuse and theft of public property by public employees. That is a matter of legitimate public interest."

October 20, 1999

Re: Petition of Harry Esteve

police officer who authored the report. It is our conclusion that the report was generated as part of a Personnel Discipline Action and not as a criminal investigation into misuse of public property.

This office is mindful, however, that a police officer was assigned the task of examining the HazMat computer. It is reasonable to expect that the officer would have (and should have) been looking for evidence of criminal activity<sup>2</sup>, especially in the area of child pornography. As a consequence, we discussed this issue specifically (and exhaustively) with both Ms. Bischoff and Officer Boyd. It is their position (which we will accept) that there is nothing in the investigation to indicate either firefighter visited illegal Internet sites or chat rooms or downloaded child pornography. Further, there is no indication of other illegal activity at the Internet sites or in the chat rooms identified in the HazMat computer data.

We are now in a position to apply the guiding principles outlined in this office's 1997 Public Records Order in *Foster*. It is a difficult task to evaluate and judge the misconduct of public employees without being disappointed, upset, and even disgusted at certain behavior. These feelings must be put aside when balancing the public interest in disclosure against the privacy rights of individuals who happen to work for the public.

The fundamental question is whether this is serious misconduct as defined in *Foster*. Admittedly, there was no termination of employment and the discipline for cause was not based upon "corruption in the discharge of the people's business" or abuse of power. Further, there was no indication that the mission of the HazMat Team or the Fire Department was impaired or imperiled and there was no evidence of criminal behavior.

The principles enunciated in *Foster* are no more than helpful guidelines. Serious misconduct is not limited to narrowly defined activity. An analysis of the behavior of the two fire department employees discloses the following facts: 1) pornographic and sexually explicit chat rooms and Internet sites were accessed; 2) the visits to these sites were chronic and over an extended period of time; 3) both employees were on duty and paid by the City of Gresham for this unauthorized computer activity, 4) the HazMat computer was entrusted to their safekeeping by the State Police and the State fire Marshall's Office, and 5) the computer was located in the City owned HazMat van.

Charles Hinkle, Stoll Rives LLP, submitted a letter on October 19, 1999 in support of The Oregonian's petition for disclosure of the requested records. Mr. Hinkle notes that "the inappropriate use of computers in the workplace has become an important issue for many public and private employers." He then makes the important point that firefighters are entrusted with enormously important public health and safety duties. Mr. Hinkle concludes that there is "clearly a strong public interest in knowing how firefighters are spending their time on the job, and that interest is even stronger in circumstances in which the firefighters have been abusing their privileges

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<sup>2</sup> We have found no evidence of criminal law violations such as theft or misapplication of entrusted property prevalent in the Benson High School investigation. The Oregonian has not made such a contention in either its written submissions to us or in telephone conversations regarding this petition.

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as public employees." We concur with the position asserted by Mr. Hinkle on behalf of The Oregonian.

We are persuaded that the conduct here is serious and is of such a nature that the public interest would be significantly promoted by disclosure of the investigative report. Both the firefighter and the officer were severely disciplined and their continued employment is subject to immediate termination for misconduct of a similar nature. We are confident that the harsh sanctions were not imposed merely for late night accessing of Internet chat rooms or sites on subjects such as woodworking or bird watching. Subjecting the disciplinary process of the City of Gresham to public review will, in the long run, affirm confidence in City government.

The *Foster* guidelines close with the admonition that public employees should not be subjected to public disclosure of disciplinary violations when such disclosure would merely subject the employee to added humiliation. It is significant to our decision that the violations never went beyond the confines of an internal disciplinary investigation. The City of Gresham determined that the conduct of its two employees was not criminal. Based upon our discussions with Ms. Bischoff and Officer Boyd and a review of the documents provided, we must concur with that judgment. Under these circumstances, the severe and appropriate punishment meted out should not be compounded by publication of the names associated with the investigative report.

We conclude that the embarrassment and ridicule that the already disciplined members of the Gresham Fire Department (and their families) would suffer as a result of disclosure of their names outweighs the public interest asserted by petitioner. It is therefore necessary to redact all references in Officer Boyd's report to the identities of the Gresham firefighter and officer.

One final word of caution is in order. It is certainly in the public interest for The Oregonian to judge the fairness of the disciplinary process itself and the sanctions imposed by the City of Gresham whether or not the salacious material ever finds its way into print. Petitioner assures us that The Oregonian "makes judgments all the time about what is newsworthy and takes into account issues of fairness, accuracy and privacy." We accept and applaud the position of The Oregonian.


However, it will be difficult even for a technologically knowledgeable and critical reader of the investigative report to understand the meaning of the data retrieved from the HazMat computer. The report does not make clear what degree of access was obtained or the length of a particular visit. Certain pornographic advertisements and teasers have been captured without any helpful context or explanation. It would be an ambitious (and perhaps unfruitful) undertaking to attempt to report the extent to which either Gresham firefighter misused the public trust. We leave this responsibility and decision to the professional judgment of The Oregonian.

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Re: Petition of Harry Esteve

ORDER

Accordingly, it is ordered that the City of Gresham promptly disclose a redacted version of the Forensic Examination of HazMat Computer Data. The petition of Harry Esteve for The Oregonian to disclose the names of the disciplined employees is denied.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County

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 seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

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City of Gresham Press Release  
September 22, 1999

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The City of Gresham Department of Fire and Emergency Services announced today that an investigation into allegations of improper use of the city's computer resources has been completed.

The Investigation. The investigation into improper computer usage began when it came to the fire department's attention that an employee (a firefighter) was using the computer in the Hazardous Materials (HazMat) van to participate in Internet "chat rooms." These chat rooms were accessed using the employee's personal America on Line (AOL) Internet account. The investigation revealed that although this employee used the HazMat computer to "chat" frequently, all use occurred during stand-by or down time which is outside the typical 8 or 10 hour workday.

During the course of the investigation it was learned that in addition to this firefighter's personal use of the HazMat computer to "chat" on the Internet, an officer at Station 73 had been using the HazMat computer for personal use. The personal use of the computer by this officer included "surfing the Internet" on various topics ranging from some that were sexually oriented to others relating to woodworking and bird watching. The web surfing occurred during station stand-by or down time which, as noted above, is outside the typical department workday. The investigation also revealed that this officer downloaded an international chat room software program (mIRC) onto the HazMat computer, which was contrary to the rules and regulations of the State Fire Marshall and State Police and the Gresham Administrative Rules.

The investigation did not reveal that anyone in the Department of Fire and Emergency Services had improperly used the HazMat computer or other city computer resources to access Internet web sites relating to white supremacy or activities of the Aryan nation.

The HazMat Team is located at Station 73, on SW Pleasant View Dr., in Gresham. The HazMat computer is owned by the Oregon State Police and utilized by the City of Gresham through an intergovernmental agreement with the State Fire Marshall's Office. The State Fire Marshall's Office was notified of the pending investigation prior to its commencement and has now been informed of the investigation results. The improper computer use was limited to the HazMat computer and did not involve any other city computer resources.

The Discipline. Both employees admitted their wrongful conduct and have been disciplined. The firefighter involved received a two-step pay decrease which amounts to a loss of approximately \$550.00 per month. The officer involved was stripped of all

supervisory rank, pulled from the HazMat team and transferred to another fire station. The financial impact to the officer is in excess of \$800.00 per month. Neither employee will be considered for salary increases or promotion until at least July 2000. In addition to the financial sanctions imposed, both employees will be subject to a "last chance agreement" which provides that any future misconduct of a similar nature may result in immediate termination of without grievance rights under the collective bargaining agreement or other rights of appeal.

The city believes that the disciplinary sanctions imposed were both reasonable and warranted under the circumstances. The behavior of these employees put the HazMat program in jeopardy, violated city and state rules and procedures, demonstrated exceptionally poor judgment and subjected the department and the city to unnecessary ridicule. The International Association of Firefighters and the employees involved have agreed that the discipline will not be appealed.

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