



**ROD UNDERHILL**, District Attorney for Multnomah County

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August 22, 2017

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Willamette Week  
2220 N.W. Quimby Street  
Portland, Oregon 97210

Aimee Green  
The Oregonian  
1500 S.W. First Avenue, Suite 400  
Portland, Oregon 97201

Carlos J. Calandriello  
Multnomah County Attorney's Office  
501 S.E. Hawthorne Boulevard, Suite 500  
Portland, Oregon 97214

Re: Petition of Katie Shepherd, for Willamette Week, and Aimee Green, for The Oregonian, requesting the Multnomah County Sheriff's Office release the names of all sworn officers currently on administrative leave

Dear Ms. Shepherd, Ms. Green and Mr. Calandriello:

In her public records petition, dated August 11, 2017, petitioner Katie Shepherd requests this office to order the Multnomah County Sheriff's Office (MCSO) to disclose:

**The names of any sworn officer currently on administrative leave, the date each was placed on leave and their duty assignments.<sup>1</sup>**

In her public records petition, dated August 15, 2017, petitioner Amiee Green requests this office to order MCSO to disclose:

**The names of all sheriff's office employees who are on administrative leave, as well as their job title, reason on leave, dates they were put on leave, and whether they are on paid or unpaid leave. Alternatively, petitioner requests the names of all sheriff's employees on paid leave.**

Given the similarity, the petitions have been consolidated into one petition.

The list of MCSO employees currently on administrative leave includes only two deputies.<sup>2</sup> This list also contains the dates that they were placed on administrative leave. The County Attorney's Office argues that "disclosing the identity of the two public safety employees that have been placed on administrative leave for disciplinary investigation purposes could

<sup>1</sup> Ms. Shepherd is not requesting the reason for which the employee has been placed on administrative leave.

<sup>2</sup> Declaration of Lieutenant Chad Gaidos.

unfairly tarnish their reputations and deprive them of the privacy right the legislature sought to confer on them if they are ultimately not disciplined.”

Petitioners assert that the request falls outside of ORS 181A.830(3), as a list of employees on administrative leave does not qualify as a record of a personnel investigation. Petitioners argue in the alternative that if the information is within the bounds of ORS 181A.830(3), it is in the public interest to know “which officers are placed on paid administrative leave and when.”<sup>3</sup> “The public has a right to know when a sheriff’s employee is being paid with taxpayer dollars but not showing up to work or performing the duties for which s/he is being paid.”<sup>4</sup>

## DISCUSSION

### A. Disclosure of information about certain public safety employees – ORS 181A.830(3)

ORS 181A.830(3) conditionally exempts from disclosure information in the following circumstance:

A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.

This statute is similar to ORS 192.501(12), which conditionally exempts from disclosure records pertaining to, “A personnel discipline action, or materials or documents supporting that action.” The primary difference is that ORS 192.501(12) conditionally exempts records “when a public employee is subjected to discipline, [while ORS 181A.830(3) conditionally exempts records from] disclosure when a public safety employee is not subjected to discipline.” *ACLU of Oregon v. City of Eugene*, 360 Or. 269, at 283 (2016). These are converse exemptions that address both potential outcomes of a personnel investigation.

The County Attorney’s Office suggests that the language in ORS 181A.830(3) is broader, in that it addresses “a personnel investigation,” while ORS 192.501(12) only addresses “discipline action, or materials or documents supporting that action.” To connect names and dates to both the fact that the person is on administrative leave, as well as the person is under investigation, would reveal “a personnel investigation.”

Petitioners have cited this office’s previous decision *In re Petition of Kim Sordyl*, MCDA PRO 17-15 (March 20, 2017). We determined that a list of employees on paid administrative leave was not a document supporting a personnel disciplinary action.

The chief difference is that Portland Public Schools did not state for what reasons the public employees were placed on paid administrative leave. The reason could have been a pending disciplinary action, or it could have been a medical reason. MCSO has already revealed to the petitioners that two deputies are currently on administrative leave due “to unrelated ongoing disciplinary investigations for alleged violations of MCSO personnel rules.”<sup>5</sup> That is a

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<sup>3</sup> Petition of Ms. Shepherd.

<sup>4</sup> Petition of Ms. Green.

<sup>5</sup> Response by the Office of Multnomah County Attorney (August 16, 2017).

bell that has been rung and which we cannot unring for these deputies. MCSO has not revealed their names, duty assignments, the specific allegations against the deputies, dates of leave, or whether the administrative leave is paid or unpaid.

We find that ORS 181A.830(3) does not exempt from disclosure a list of names, duty assignments, dates of leave, and whether the public safety employee is on paid or unpaid administrative leave. This sort of information does not, in and of itself, reveal that a public safety employee is under a personnel investigation, as there are many reasons a person could be on administrative leave.

However, we also find that a general or specific list of allegations against public safety employees is covered by ORS 181A.830(3). These are ongoing investigations that may result in no discipline. As this is a conditional exemption, we must now consider the public interest.

“The scale that a court uses to measure the relative weight of competing interests is [...] a scale that determines which of two legal interests predominate.” *ACLU*, at 31. The nature and significance of the public interest, as argued by petitioners, is that the public has a right to know why a person is placed on administrative leave, due to tax dollars that are still being paid to the public employee. Transparency of this nature is an important public interest.

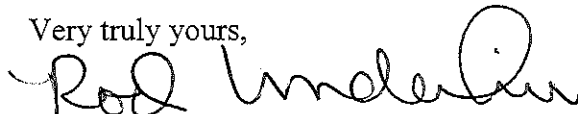
The interest against disclosure is the privacy afforded the employees from public ridicule in matters that may result in no discipline, which is equally important. It should be noted that, although the fact that they are under a personnel investigation has already been revealed, the specific facts and allegations of the pending investigation have not been revealed. This means that there is still some opportunity to maintain a level of privacy for the deputies.

The final piece of information, which weighs in favor of non disclosure, is that they are not “high ranking officers or elected officials.”<sup>6</sup> Taking all of these facts together, we find that petitioners have not met their burden to demonstrate it is in the public interest to reveal at this time the nature of the allegations and that the privacy of the deputies predominates.

### ORDER

Accordingly, the petition is granted in part. MCSO is ordered to promptly disclose the names, duty assignments, dates of leave, and whether the public safety employees are on paid or unpaid administrative leave. The petition is denied in part, as MCSO is not required to reveal the nature of the allegations.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon

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<sup>6</sup> Declaration of Lieutenant Chad Gaidos.

**Notice to Public Agency**

Pursuant to ORS 192.450(2), 192.460, and 192.490(3) your agency may become liable to pay petitioners' attorney's 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.

**17-42**