

ROD UNDERHILL, District Attorney for Multnomah County

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November 2, 2017

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

Carlo Calandriello
Assistant County Attorney
Multnomah County Attorney's Office
501 S.E. Hawthorne, Suite 500
Portland, Oregon 97214

Re: Petition of Katie Shepherd, on behalf of Willamette Week, seeking personnel investigations of three Multnomah County Sheriff's Deputies

Dear Ms. Shepherd and Mr. Calandriello:

In her public records petition, dated October 23, 2017, petitioner Katie Shepherd requests that this office order the Multnomah County Sheriff's Office (MCSO) to release:

a copy of the investigation report related to the Close Street Deputies who shared information with ICE agents last year.

As a result of various public records requests for MCSO emails earlier this year, it came to the public's attention that three MCSO deputies assigned to the pre-trial supervision unit had communicated with Immigration and Customs Enforcement (ICE) agents on multiple occasions, resulting in at least one supervised defendant being taken into ICE custody. At the time, multiple news stories ran publicly identifying the involved deputies and publishing the contents of emails showing collaboration between them and ICE.¹

MCSO began disciplinary investigations into all three involved deputies and recently concluded that the conduct did not warrant discipline. MCSO's determination not to impose discipline has also been publicly reported.²

MCSO has submitted the relevant disciplinary investigation records to this office for review and asserts that they are exempt as personnel investigations of law enforcement employees not resulting in discipline. For the reasons discussed below, we grant the petition and order the reports released.

¹ See, among others, "Deputies skirt state rules to help ICE deport suspects," PORTLAND TRIBUNE (Feb. 27, 2017) (portlandtribune.com); "A Multnomah County Sheriff's Deputy Allegedly Aided Federal Agents in Courthouse Immigration Sting," WILLAMETTE WEEK (Jan. 31, 2017) (wweek.com).

² "Multnomah County deputies cleared in investigation of tipping off ICE agents," THE OREGONIAN (Oct. 20, 2017) (oregonlive.com)

DISCUSSION

A. Law Enforcement Personnel Investigations – ORS 181A.830(3)

ORS 181A.830(3) provides that:

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.

ORS 181A.830(4) provides that:

Subsection (3) of this section does not apply: (a) When the public interest requires disclosure of the information [...].

The requested records are, as petitioner acknowledges, subject to the exemption in ORS 181A.830(3). The dispute is whether or not the public interest nonetheless requires the disclosure of these records as provided in ORS 181A.830(4)(a). In making a public interest determination under this section, the Supreme Court has instructed that we “must balance the public’s interest in disclosure against the public body’s interest in confidentiality, with the presumption in favor of disclosure. *ACLU v. City of Eugene*, 360 Or 269, 280 (2015)

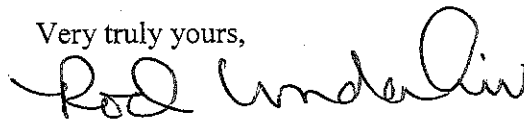
One of the legislative purposes in enacting ORS 181A.830 was to protect the privacy of officers whose alleged misconduct was unsubstantiated. *Id.* at 295. Here, the identities of, and any facts that would tend to reflect negatively on, the involved deputies are already publicly available. In such circumstances, the court held, “[t]he public body’s interest in protecting the privacy of officers whose conduct was questioned was substantially diminished because the identity of those officers and their alleged misconduct had already been made a matter of public record.” *Id.* at 299. In this case, the internal investigation reports provide context essential to understanding the actions of these three deputies and also serve to inform the public on the progression of policy and training by MCSO in the area of its interactions with ICE.

There are few issues in this county of as great interest and debate today as the activities of federal immigration authorities and their relationship with local law enforcement. Having weighed this intense interest against the limited potential for negative effect on the individual deputies involved we conclude that these reports must be released to petitioner.

ORDER

Accordingly, the petition is granted. The Multnomah County Sheriff’s Office is ordered to promptly provide petitioner with a copy of the reports at issue. This disclosure is subject to payment of fees to the county, if any, not exceeding the actual cost in making the information available.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

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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'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.

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