



ROD UNDERHILL, District Attorney for Multnomah County

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June 5, 2018

Elliot Njus
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Kimberly Sewell
TriMet
1800 S.W. First Avenue, Suite 300
Portland, Oregon 97201

Re: Petition of Elliot Njus, on behalf of The Oregonian, seeking records of the TriMet Transit Police Division

Dear Mr. Njus and Ms. Sewell:

In his public records appeal, dated May 25, 2018, petitioner Elliot Njus, asks this office to order TriMet to release:

monthly reports that summarize where the Transit Police Division is spending its patrol time for the prior 24 months.

TriMet provides public transportation services within Multnomah, Washington, and Clackamas Counties. Under the auspices of various intergovernmental agreements, many local law enforcement jurisdictions from these three counties provide personnel that, together, form the Transit Police Division (TPD). TPD is administered by the Portland Police Bureau (PPB), which is the largest contributing jurisdiction.

The TPD prepares informational reports documenting where TPD patrol hours are directed. The reports are occasionally sent to TriMet's security director. Each report, broken down by district, indicates how many hours were dedicated to, and arrests made on, buses, transit platforms, and MAX trains. Also noted are hours spent doing specific other types of directed patrol or enforcement work.

In response, and pursuant to ORS 192.355(10), TriMet has adopted and asserted various exemptions raised by PPB as to the underlying record. We reject without further discussion the assertion of the internal advisory communications exemption (ORS 192.355(1)) and specific operational plans exemption (ORS 192.345(18)). However, we do believe that release of these statistical breakdowns would reveal particular security measures taken by TPD and could identify areas of operational vulnerability and, accordingly, deny the petition.

DISCUSSION

A. Transferred Records – ORS 192.355(10)

ORS 192.355(10) exempts from disclosure,

Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

TriMet first asserts that it is not the custodian of these reports because it did not generate them and does not maintain them, with the exception of sporadic receipt and review by its security director. The Attorney General has stated that “in general, any public body that possesses a public record for purposes related to one or more of its particular functions is a custodian of that record.” Public Records and Meetings Manual (2014) at 10. In this case, TriMet’s security director is from time to time sent a report by the Transit Police Division documenting its security operations on the TriMet system. This is directly related to TriMet’s particular functions and, factually, TriMet is in custody of at least some responsive reports as evidenced by providing this office with a copy of one such report for review.

In any event, ORS 192.355(10) authorizes TriMet as the possessor of a record furnished by another agency to assert any exemption that the originating agency could have asserted. The Portland Police Bureau has been consulted, and via counsel, has asserted multiple exemptions that have been endorsed by TriMet.

B. Operational security measures – ORS 192.345(22) & (23)

ORS 192.345(22)(b) conditionally exempts from disclosure,

Records or information that, if disclosed, would allow a person to: [...] identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services

ORS 192.345(23) conditionally exempts from disclosure,

Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect: an individual; buildings or other property [...].

The patrol activities of the TPD are undeniably a “security measure” on the TriMet system. To take a hypothetical extreme, if this report documented that no TPD officers patrolled on busses, but did regularly patrol MAX trains, this would reveal an obvious weakness in system security. That is not the case here, but the relative frequency of police patrols in the various TriMet vehicles and properties, and its monthly fluctuation, would permit a savvy criminal to target his or her activity to the areas of least frequent police presence.

Previously, in *Petition of Handelman*, MCDA PRO 13-22 (2013), we declined to order disclosure of a roster of Portland Police Bureau officers with their specific divisional assignments included. Noting that this office “has always been cautious in disclosing information that could compromise enforcement operations” we concluded that release of these details could reveal information about undercover assignments of particular officers. Although TriMet’s frequency of patrol is different in nature than the divisional assignments of PPB officers, the same reasoning broadly applies.

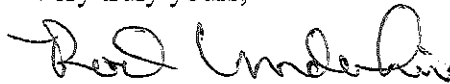
To be sure, the data in these reports are not so granular as to identify specific MAX lines or bus routes patrolled, but they do identify activity by geographic region. However, even identifying the particular frequency of platform patrols as opposed to bus or MAX patrols will provide some measure of information that could identify operational vulnerability. Additionally, the reports identify certain enforcement techniques utilized by TPD, the disclosure of which could reduce their effectiveness.

The public interests identified by petitioner include permitting members of the public to be aware of and choose their mode of transportation in accordance with the highest security presence. This is the logical inverse of the concerns raised by TriMet. That is, to reveal the areas of more frequent patrol to the public would simultaneously permit the law abiding to gravitate in that direction but also allow those seeking to prey on transit riders to flow the other way. And many transit users do not have the luxury of choosing between alternate routes or methods of transportation. We have also considered the asserted interests in public oversight of TriMet’s security spending decisions. On balance, we do not believe the public interest in drilling down on TriMet security allocation outweighs the operational risks in revealing these data publicly.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

18-22

Cc: Mark Amberg, Chief Deputy City Attorney