



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

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

July 17, 2018

Benjamin Kerensa  
bkerensa@gmail.com (via email only)

Derily Bechthold  
Deputy City Attorney  
Portland City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Benjamin Kerensa Independent Police Review case file 2016-C-0407

Dear Mr. Kerensa and Ms. Bechthold:

In his public records petition, dated July 6, 2018, petitioner Benjamin Kerensa requests that this office order the City of Portland's Independent Police Review (IPR) to disclose "a copy of the entire IPR/CRC file for case 2016-C-0407."

This is the third time petitioner has asked this office to order records from this investigation released, and the second time seeking these exact records. The background is well-known to the parties and will not be restated here. See, *Kerensa I*, MCDA PRO 18-01 (2018), *Kerensa II*, MCDA PRO 18-08 (2018). A party who disagrees with this office's evaluation of a public records issue may seek relief in the circuit court. ORS 192.431.

In both prior orders in this matter we have written, or quoted, the following:

The city is correct that we have generally considered ORS [192.345](12) presumptively applicable to pending disciplinary proceedings. This is because 1) it is not yet possible to determine if discipline will or will not be imposed and 2) many of the factors that relate to assessing the public's interest in disclosure relate to the ultimate resolution of the disciplinary action which, self-evidently, cannot be assessed until the final imposition of discipline.

We do not see any uniqueness here that would demand a different result in this case.

The disciplinary process remains open and we do not find a relevant change in circumstances that would warrant reconsideration of our prior orders in this matter.<sup>1</sup> The city has provided, in confidence, a reasonable explanation for the length of the process in this case. The combination of independent oversight and negotiated due process protections will almost always result in police disciplinary investigations taking longer than those in other agencies. We

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<sup>1</sup> The criminal investigation has now concluded, but the city is no longer asserting any exemption under ORS 192.345(3).

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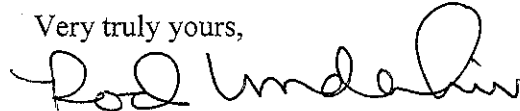
recognize that it is personally frustrating for petitioner, as the complaining party in the underlying disciplinary action, that this process has taken as long as it has. However, this does not in itself create a public interest in access to those records sufficient to override the public records protections afforded by statute to law enforcement disciplinary investigations and actions.

We have previously found that the length of time an agency took to conclude the disciplinary process, in egregious cases, was one factor in assessing whether or not to release materials from the investigation. See, *Petition of Sordyl*, MCDA PRO 17-05 (2017). But we are not aware of a case where this office, the Attorney General, or a court has ordered disciplinary materials released prior to final imposition of discipline. The elapsed time in this case is not so extreme as to make this the first.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is fluid and cursive, with a large initial "R" and "U".

ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon