



ROD UNDERHILL, District Attorney for Multnomah County

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

September 27, 2018

Maylee Siekawitch

Mark Amberg
Chief Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Maylee Siekawitch seeking access to certain records of the Portland Police Bureau.

Dear Ms. Siekawitch and Mr. Amberg:

In her public records appeal, dated September 8, 2018, petitioner Maylee Siekawitch asks this office to order the Portland Police Bureau (PPB) to release:

1. **Detective interviews¹ of Officer Fox and other officers in the OIS [officer-involved shooting] of Michael Irwin Grubbe which occurred on May 28, 2017.**
2. **Email correspondence between Sara Fox from her private email accounts to Sergeant Jeremy Price and Stephen Bourosa to their City email accounts.**
3. **Memorand[a] authored by Sgt. Jeremy Price referencing Liani Reyna, Abby, Sara Fox, and Greg Moore, to his supervisors dated January 2016, December 2016, and July 2017.²**
4. **Notebook entries of Sgt. Jeremy Price and Stephen Bourosa referencing Liani Reyna, Abby, Sara Fox and Greg Moore.**

Petitioner originally made the above request of PPB on March 30, 2018. As the situation stands right now, PPB has denied item one on the merits, has quoted petitioner estimated fees for performing the search on item two, has denied item three on the merits, and indicates it possesses no responsive documents for item four.

¹ We understand "detective interviews" to reference the interviews performed by the criminal investigators in this case as distinct from the interviews performed by internal affairs investigators. To the extent this request is actually seeking internal affairs interviews, we find those interviews to be properly exempted by ORS 181A.830(3).

² PPB has provided us with the January and December memos for review. PPB asserts it does not possess a July memo responsive to this item.

As to items one and three, the interviews and memoranda, PPB asserts that these are exempt as investigations into the behavior of its public safety employees under either ORS 181A.830(3) or 192.345(12). ORS 181A.830(3) exempts records of personnel investigations of public safety employees that do not result in discipline; ORS 192.345(12) conditionally exempts those investigations that do result in discipline.

Officer Sara Fox was one of three PPB officers who discharged their weapons at Michael Grubbe during an incident on May 28, 2017. Mr. Grubbe was not struck by the police gunfire, fled the scene, and was later arrested.³ As is standard practice anytime a PPB officer discharges her weapon at a person, Officer Fox was placed on administrative leave and her actions were investigated by the bureau for compliance with law and policy. Officer Fox was not disciplined as a result of these investigations and returned to duty.

Sergeant Jeremy Price was Officer Fox's supervisor at East Precinct and authored two memoranda recounting reports or concerns brought to his attention, and the steps he took upon receiving those reports, relating to a personal issue involving Officer Fox and her ex-domestic partner, PPB Sergeant Liani Reyna.

Court records indicate that Officer Fox and Sergeant Reyna were at one time domestic partners and that Abby, referenced in items three and four of the public records request, is their daughter. Their domestic partnership ended and litigation ensued regarding child support and custody issues. See, *Fox v. Reyna*, Wash. Cty. Cir. Ct. C160265DRE (2016).

For the reasons discussed below, we make the following dispositions of each item in the petition:

1. ORS 181A.830(3) relates only to personnel investigations and is inapplicable to materials compiled during criminal investigations. These interviews are not made exempt from disclosure by this section.
2. PPB has quoted fees for its work in responding to the second item, as it is authorized to do by ORS 192.324. Unless and until petitioner requests a fee waiver, and that waiver is denied, there is nothing for us to decide.
3. The Sergeant Price memos formed the basis of an ongoing personnel discipline action and, based on their contents, the public interest does not require their disclosure.
4. PPB has responded that it does not possess any notebook entries responsive to this request. There is nothing for us to review or order released.

DISCUSSION

A. Personnel Discipline Action – ORS 192.345(12)

ORS 192.345(12) conditionally exempts from disclosure,

³ See, "Man pointed replica gun at officers before Laurelhurst shootings: police," Oregonlive/The Oregonian, Jun. 1, 2017 (oregonlive.com)

A personnel discipline action, or materials or documents supporting that action.

The Sergeant Price memos requested in item three relate to, and formed the initial basis of, a personnel investigation that, at present, is ongoing. ORS 192.345(12) thus exempts them from disclosure unless the public interest requires otherwise.

Having reviewed the memoranda, they relate to a private domestic situation playing out in the former couple's shared workplace. We do not independently see any public interest in their release and, in any event, petitioner has provided no indication that their release would further the public interest as opposed to her personal interest. Accordingly, ORS 192.345(12) exempts the requested memoranda from release.

B. Investigations of Public Safety Employees - 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.

In any incident involving a police use of deadly force two investigations are undertaken by PPB. One, by homicide detectives, evaluates whether or not the officer's use of force violated any criminal law. A second, by Internal Affairs (IA), assesses whether the officer's conduct complied with applicable PPB policies and, if not, whether the officer should be disciplined as a result. Information gathered by the criminal investigators is available to the IA investigators once the criminal investigation is concluded, but the converse is not true.

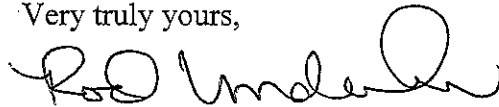
An officer can be ordered to provide testimony regarding her actions in an internal affairs investigation, but the Oregon and United States constitutions prohibit such compulsion in a criminal investigation. As a result, the criminal investigation is walled off from the IA investigation and reaches its conclusions and results without any input from the IA team. See, *Garrity v. New Jersey*, 385 U.S. 493 (1967); *State v. Soriano*, 298 Or 392 (1984).

It is of critical public importance that the criminal investigation of an officer-involved shooting be performed independently of any internal personnel investigation. And it is this office's understanding that PPB's investigation protocol is bifurcated for just this reason. However, this structure also compels the conclusion that investigative material compiled by the detectives is not "information about a personnel investigation" but rather information about a criminal investigation. ORS 181A.830(3) is inapplicable to the detective interviews performed during the criminal portion of the investigation.

ORDER

Accordingly, the petition is denied in part and granted in part. PPB is ordered to promptly provide petitioner the any interviews of police officers performed by the criminal investigation team. This release is subject to the payment of fees, if any, not to exceed PPB's actual costs in making the records available. As to the memoranda at issue in item three, 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 loop at the end.

ROD UNDERHILL
District Attorney
Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(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.

18-45