



ROD UNDERHILL, District Attorney for Multnomah County

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October 29, 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 October 18, 2018, petitioner Maylee Siekawitch asks this office to order the Portland Police Bureau (PPB) to release:

all letters of correspondence from Lieutenant Clifford Bacigalupi to Officer Sara Fox including, but not limited to dates of: Nov 15, 2017.

This request relates to a PPB Internal Affairs (IA) investigation of Sgt. Liani Reyna that addressed allegations that she had behavior improperly toward Ofc. Sara Fox, her ex-domestic partner. As a part of the resolution of this investigation, IA formally notified Ofc. Fox of its determinations as to each allegation against Sgt. Reyna. Certain allegations resulted in the imposition of discipline, others did not.

During the course of domestic relations litigation relating to Sgt. Reyna and Ofc. Fox's separation, Ofc. Fox was deposed and asked about communications she received from PPB relating to the IA investigations and, specifically, whether or not those communications characterized Ofc. Fox as a "complainant." As the litigation was winding down, with only attorney's fees still at issue, petitioner made the above described public records request of PPB seeking a copy of the communication referenced in the deposition.

PPB has identified, and produced for this office's review, one responsive document: a November 15, 2017 letter from Lt. Bacigalupi to Ofc. Fox. PPB asserts that this letter was a part of the personnel disciplinary process and, accordingly, exempt from disclosure by operation of ORS 192.345(12).¹ For the reasons discussed below, we agree with PPB and deny the petition.

¹ The city also claims exemption under ORS 181A.830(3) because not all investigated allegations resulted in discipline. We reject this assertion without extended discussion because some discipline did result from the investigation, rendering this section inapplicable.

DISCUSSION

A. Personnel Discipline Action – ORS 192.345(12)

ORS 192.345(12) conditionally exempts from disclosure,

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

The letter to Ofc. Fox does not conclusively identify her as the complainant who initiated the IA investigation of Sgt. Reyna, however PPB has identified her as such in its response to this office. Additionally, it does appear to be an ORS 181A.830(5) notification, which may only be provided to the complainant.

Sgt. Reyna was disciplined as a result of this investigation. The notice to Ofc. Fox at issue in this case, made pursuant to ORS 181A.830(5), was one portion of that disciplinary action. Petitioner argues that such a notification should not be exempt from re-disclosure. She cites an example from earlier this year of an unrelated complainant who publicized his notification in the local media. Because, petitioner argues, PPB has lost control of whether or not this information is publicly released by providing it to a third party it has waived any claim of exemption. While a complainant could independently chose to release such a notification, this does not mean that PPB has waived its claim of exemption by providing her with a statutorily authorized notification.

The only question remaining is whether or not the public interest nonetheless requires disclosure in this instance. In short, we conclude that release of the record at issue would not primarily benefit the general public.

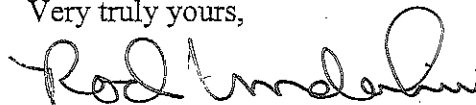
The public records request and petition in this case were made by Maylee Siekawitch, not Liani Reyna. However, given the nature and timing of this request, petitioner's prior request relating to Ofc Fox,² and petitioner's access to materials from the domestic relations case that do not appear in the public court record, the interest in this matter appears to be personal.

Having reviewed the limited portion of the deposition transcript (two pages) submitted by petitioner and the letter at issue, we do not find an interest in the release of this document that would override the general applicability of ORS 192.345(12).

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon