



ROD UNDERHILL, District Attorney for Multnomah County

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

January 17, 2019

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

Andrea Barraclough
Deputy City Attorney
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Katie Shepherd, on behalf of Willamette Week, seeking copies of 911 call recording relating to a January 6, 2019 officer-involved shooting

Dear Ms. Shepherd and Ms. Barraclough:

In her public records petition, dated January 8, 2019, petitioner Katie Shepherd requests this office to order the City of Portland to disclose the following records:

the 911 call(s) related to a call for service on the 9600 block of SE Market Street, where a woman named Lidiya Omalchenko called to report a man lying in front of a property she rents.

Petitioner made her request on January 8, 2019. The City denied petitioner's request, asserting that the records related to an active criminal investigation and were exempt by operation of ORS 192.345(3).

The Portland Police Bureau (PPB) has publicly released that on January 6, 2019 Officer Consider Vosu responded to a call for service by a resident in the 9600 block of Southeast Market Street. The resident reported that a subject was outside the caller's home and would not leave. During the ensuing encounter, Officer Vosu discharged his firearm. The subject died of gunshot injuries sustained in the encounter.

At least one of the witnesses has spoken to the media and given an account of the event. This matter remains under criminal investigation and has yet to be referred to the district attorney's office for review.

PPB has stated that its investigative files will be released upon completion of the investigation and legal process. During the course of this appeal, PPB has clarified that any claim of exemption as to the 911 recordings will likewise go away once the legal process has

concluded.¹ This office has been informed by PPB that, absent unforeseen developments, we will receive a submission for review within 60 days.

As discussed below, we agree with PPB that, although the public interest does require disclosure of these calls, it does not require such disclosure immediately.

DISCUSSION

A. Criminal Investigatory Material – ORS 192.345(3)

ORS 192.345(3) conditionally exempts from disclosure,

Investigatory information compiled for criminal law purposes.

The 911 calls at issue in this case have been gathered by the investigating detective and have been submitted to this office. Senior Deputy District Attorney Dave Hannon, the prosecutor assigned to the review of this death investigation, states that these calls do relate to the ongoing investigation and that he has concerns about the integrity of the pending investigation if those calls are released prior to the conclusion of the legal process. It is essential that witnesses who may be called to testify are able to testify from their own recollection without consciously or unconsciously conforming their testimony to the perceptions of other witnesses.

We agree with petitioner that cases involving police use of deadly force are of paramount public interest. *City of Portland v. Oregonian*, 200 Or App 120 (2005) (“It is beyond dispute, however, that the public’s (and the police bureau’s) need to have complete confidence that a thorough and unbiased inquiry has occurred is most urgent and compelling in ‘high profile’ cases where a police officer has killed a citizen in the line of duty.”). This office has reached the same conclusion in prior public records orders. See, e.g., *Petition of Bernstein for The Oregonian*, MCDA PRO 12-10 (2012); *Petition of Bottomly for The Oregonian*, MCDA PRO 10-06 (2010).

Petitioner additionally argues that these calls do not relate to the officer involved shooting and, rather, relate only to a trespass incident that preceded the shooting. We respectfully disagree with this characterization; a thorough investigation of a death involves all aspects. In this case that includes the observations and reports that led to the initial police response. Petitioner also observes that at least one of the callers has spoken extensively to the media, and that, as a result, the interest in confidentiality is less in this case than it might be in others. Although investigators cannot control what a witness does after the fact, recordings of statements made during or in the immediate aftermath of an event are of a different nature than subsequent interviews given to the press.

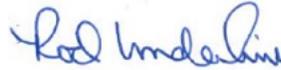
¹ It is unclear at this time if PPB also intends to continue asserting this exemption pending resolution of any related internal investigation. Here, PPB has not asserted, and we have not evaluated, any claim of exemption under ORS 192.345(12). Our order today focuses only on the pending criminal investigation and should not be taken as expressing an opinion on the public interest analysis as applied to any other exemption.

While we do find a public interest in release of any related 911 call or calls, we do not find that the public interest compels immediate release of those materials. The interests in accountability for all involved government actors, transparency, and integrity of whatever legal process results from this investigation are not harmed by maintaining these materials as confidential until after the criminal matter has reached a resolution.

ORDER

Accordingly, the petition is denied at this time.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon