



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

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January 17, 2000

Catherine N. Carroll  
Attorney at Law  
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3718 SW Condor Avenue  
Portland, OR 97201

Mary T. Danford  
Senior Deputy City Attorney  
City of Portland  
Office of City Attorney  
1221 SW 4<sup>th</sup> Avenue  
Portland, OR 97204

Re: Petition of Catherine Carroll received January 4, 2001 to disclose certain records of the City of Portland

Dear Ms. Carroll and Ms. Danford:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Catherine Carroll requests the District Attorney to order the Portland Police Bureau and its employees to produce the following records:

1. **Information report, October 18, 2000, Report #0010299.**
2. **Report re assistance rendered, September 28, 2000, Report #0095373.**
3. **Report re attempted suicide, February, 2000, Report #0019650.**

On November 16, 2000, petitioner submitted a public records request to the Portland Police Bureau. The request was denied in an exemption letter dated November 28, 2000, which cited ORS 192.496(1), records less than 75 years old regarding physical or mental health or psychiatric care or treatment of living individual.

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In her petition, Ms. Carroll relates that she represents a "Shana Diffely in proceedings for the dissolution of her marriage to Henry Diffely, who is the subject of the requested reports." The Diffely's are parents of a five-year old daughter. There is a present controversy over parenting time, "due to Mr. Diffely's psychiatric condition." Petitioner believes the police reports "will be of direct relevance to the parenting time issue, and may provide evidence which is not available by any other means, such as the names and addresses of witnesses." Petitioner believes the invasion of privacy issue is moot in this case because of the parties' relationship and the location of the incidents themselves.

On January 10, 2001, Senior Deputy City Attorney Mary Danford responded to the petition and again asserted the physical or mental health exemption. Ms. Danford noted the pending divorce proceedings but did not directly assert the exemption for litigation records contained in ORS 192.501(1). The exemption, of course, is not applicable since the City is not a party to the marriage dissolution proceedings.

The city relates that typically, "a party to a divorce proceeding who believes police reports are relevant to his/her lawsuit, issues a subpoena for the reports." The city would then, if necessary, file a motion to quash, which would allow "for a judicial determination of whether public disclosure of the police reports would constitute an unreasonable invasion of privacy." The court would be in a position to issue any necessary protective orders.

#### DISCUSSION

ORS 192.496(1) conditionally exempts:

Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would no constitute an unreasonable invasion of privacy.

The city has provided the three police reports for our confidential review. Two of the reports concern police contacts initiated by Mrs. Diffely at or near their residence. The third report involves a parent-teacher meeting attended by both Mr. and Mrs. Diffely. All three reports can be fairly characterized as containing information relating to either medical or mental health issues. However, the psychiatric or mental health references in the reports are not exceptional and reflect the normal observations and inquiries of a police officer responding to a radio call or citizen contact.

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Two questions must be answered. First, does the public interest require disclosure of these reports? Second, would public disclosure of the reports constitute an unreasonable invasion of privacy? We would note that under the Public Records Law the public is entitled to information "that will facilitate their understanding of how public business is conducted." Guard Publishing v. Lane County School Dist., 96 Or App 463, 468-469. The term 'public' means that the "focus is on the effect of the disclosure in general, not disclosure to a particular person at a particular time." Morrison v. School Dist., 53 Or App 148, 156 (1981).

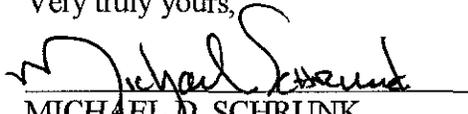
We conclude that, with one exception,<sup>1</sup> disclosure of the reports is in the public interest and would not constitute an unreasonable invasion of privacy. The focus of the reports is the police response to reported problems of a citizen in the community. The references to mental health treatment and medications are anecdotal and not the kind of primary psychiatric or medical records that would require a stronger showing of public interest or lack of unreasonable invasion of privacy.

A word of caution, however. The city makes a valid point that the family law court is probably in the best position to regulate the use of physical or mental health information in police reports. Petitioner should exercise discretion in the disclosure of the contents of the reports and limit their use to the purposes described in her petition.

ORDER

Accordingly, it is ordered that the City of Portland and the Bureau of Police promptly disclose the records (as redacted) sought in the petition.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County

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<sup>1</sup> The fourth sentence in PPB #00102999 refers to a complaint unrelated to Mr. or Mrs. Diffely. With the consent of petitioner, we have taken the liberty to redact that sentence. The reports will be returned to the City as redacted together with the \$30 check submitted by Ms. Carroll with the petition.

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NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney 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.

Cc: Debra Haugen

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