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

Re: Petition of Diane Sykes, on behalf of Liani Reyna, seeking access to certain records of the Portland Police Bureau.

Dear Ms. Sykes and Mr. Amberg:

In her public records appeal, dated May 28, 2019, petitioner Diane Sykes, an attorney representing Portland Police Sergeant Liani Reyna, asks this office to order the Portland Police Bureau (PPB) to release "all letters of disposition to PPB Officers Sara Fox and Greg Moore for IA [Internal Affairs] complaints lodged against Liani Reyna, including case numbers 2016-B-0050 and 2017-B-0033."

The petition in this case states that Sgt. Reyna is seeking these documents in support of a pending grievance relating to the imposition of discipline on her. Petitioner states that the discipline Sgt. Reyna is challenging resulted from the off duty interactions between herself, her former domestic partner and a person her ex-partner is now in a relationship with. All involved parties are PPB officers.

PPB has provided this office with two letters responsive to this request, which we refer to hereafter as the 16B0050 and 17B0033 letters, and asserts that the combination of ORS 192.345(12) and ORS 181A.830(3) exempt these letters from disclosure.

As we discuss below, consistent with a prior ruling, we conclude that one document is exempt, but that under the unique circumstances of this case, the other is not.

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.

We have previously concluded that the 16B0050 letter comes within the scope of this exemption. *Petition of Siekawitch*, MCDA PRO 18-49 (2018) (concluding that this letter was a “portion of the disciplinary action” and thus exempt from disclosure under this section).

In *Siekawitch* we further concluded that the public interest did not require disclosure. As in *Siekawitch*, the interest here too appears personal: Sgt. Reyna would like this document to further her own interest in challenging the imposition of discipline. Under the public records law this is a personal as opposed to public interest and insufficient to override the general applicability of this exemption.

We recognize the oddity in finding that an exemption, the purpose of which is to protect public employees from ridicule at having been disciplined, would prevent a public employee from obtaining records relevant to her own discipline. But having previously found this record within the scope of ORS 192.345(12), there is no legally supportable path to making a different finding under this section based solely on the identity of the requestor.

As to the 17B0033 letter, that complaint did not result in a personnel disciplinary action, so the provisions of ORS 192.345(12) cannot apply to it and we turn to PPB’s alternate asserted exemption.

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.

Investigations of public employees that do not result in discipline are generally subject to disclosure, but the same is not true of police officers; ORS 181A.830(3) affords police officers heightened protection. However, ORS 181A.830(4)(b) provides that this exemption does not apply “when the employee consents to disclosure in writing.”

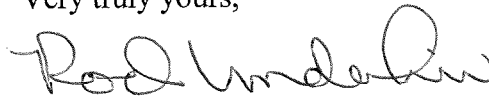
Here Sgt. Reyna’s attorney, has requested in writing that these records be released. If the initial public records request were not sufficient to notice PPB as to Sgt. Reyna’s consent, then the petition submitted to this office, and provided to PPB, certainly is.

The 17B0033 letter discusses a disciplinary complaint that had been made, but which PPB declined to pursue beyond a preliminary investigation. This letter is undoubtedly “information about a personnel investigation of a public safety employee” within the meaning of ORS 181A.830(3), but ORS 181A.830(4)(b) renders this section inapplicable on the facts of the present petition. The 17B0033 letter must be released to petitioner.

ORDER

Accordingly, the petition is denied in part and granted in part. PPB is ordered to promptly provide petitioner the 17B0033 letter. 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,



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.

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