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May 27, 2020

Patrick Cashman  
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Anika Bent-Albert  
Deputy City Attorney  
Portland City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Patrick Cashman challenging redactions to a Portland Police After Action Report

Dear Mr. Cashman and Ms. Bent-Albert:

In his public records petition, Patrick Cashman, has requested that this office order the City of Portland to release an unredacted (or less-redacted) version of a Portland Police After Action Report that was provided to him under the public records law. Petitioner had requested the debriefing document, known as an After Action Report, that addresses the 2018 World Naked Bike Ride.

The Naked Bike Ride is a protest event that has occurred annually during the summer in varied locations throughout Portland. The event involves thousands of cyclists, in various states of undress, biking on a planned route through the city. Event organizers have had a collaborative relationship with PPB, which has historically staffed the event with officers to perform traffic control to help ensure the event goes safely. The route is not publicized ahead of the event.

After the 2018 event Sgt. Barnum, of the PPB Traffic Division, prepared a five-page After Action Report documenting the police response to this event, the cost of that response, areas of potential concern, and recommendations for police coordination with the event in the future. The copy of this report released to petitioner is mostly unredacted, however specific recommendations and opinions by Sgt. Barnum and details on the precise number of officers involved were redacted by PPB. PPB asserts these redactions are justified by the public records exemptions applicable to internal advisory communications (ORS 192.355(1)), public safety action plans (ORS 192.345(18)), and security reports and measures (ORS 192.345(22) & (23)).

For the reasons discussed below, although we generally agree with the premises behind PPB's asserted exemptions, we do not agree that all of the redacted material meets the criteria for exemption. Accordingly, we grant the petition in part.

### **DISCUSSION**

PPB's claims of exemption in this matter flow from three premises: 1) information that will permit potential counter-protesters to have information about the likely route of the bike ride

before it happens is exempt from disclosure; 2) information that would reveal areas of operational vulnerability to city infrastructure is exempt; and 3) the on scene supervisor should not be constrained in making frank, non-factual, recommendations to PPB command staff regarding the event. We agree that all of these premises are supported by the public records law, but conclude that PPB's application of these premises to this document are insufficiently narrow.

Attached to PPB's copy of this order is a version of the After Action Report with redactions that we find supported indicated in red. Redactions that we do not find supported are highlighted. We discuss them in generalities below because we cannot, in a public facing order, disclose the disputed contents as public bodies have a right of appeal from our decisions.

PPB appears to have redacted, pursuant, to 192.355(1) all statements of opinion or recommendation by Sgt. Barnum. Such opinions are only subject to redaction if "the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure." ORS 192.355(1).

As to recommendations, and factual discussion, relating to the route of the event PPB has made sufficient showing. So too with information about the precise number of PPB officers deployed. PPB has not met its burden as to recommendations relating to cost or outside agency assistance. Further, a few of the opinions expressed are so benign that it is difficult to see how their disclosure would chill future written debriefing.

The command review sections appearing on pages four and five do not express any opinion other than a notation that the reviewing supervisor agreed or disagreed with the recommendations of Sgt. Barnum and, factually, whether or not that person had reviewed any police reports generated during the event. PPB has not made sufficient showing that these chain-of-command notations fit within this exemption.

### **ORDER**

Accordingly, the petition is granted in part. The City shall promptly provide petition with a copy of the After Action Report redacted consistent with the discussion above. This release is subject to the payment of fees, if any, not to exceed the City's actual cost in producing the records.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon