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July 14, 2020

Liani Reyna
2282 Vermont Lane
Naples, Florida 34120

Fallon Niedrist
Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Liani Reyna seeking access to disciplinary histories of nine Portland police officers and command staff

Dear Ms. Reyna and Ms. Niedrist:

In her public records appeal petitioner, Liani Reyna, asks this office to order the Portland Police Bureau (PPB) to provide the complete Internal Affairs/Commendation histories for "Officer Sara Fox, Officer Gregory Moore, Sergeant Jeremy Price, Assistant Chief Chris Davis, Commander Jeff Bell, Commander Michael Krantz, Captain Brian Parman, Captain Clifford Bacigalupi, and retired Captain Mike Crebs."

In response to her request for these records, PPB provided petitioner with a print out of all commendations for the above named individuals. PPB withheld records documenting complaints against them, citing ORS 192.345(12) and ORS 181A.830(3). These statutes collectively exempt investigations into allegations of misconduct by police officers from disclosure unless the public interest requires otherwise in a particular instance.

Petitioner argues that our 2001 decision in *Petition of Woodcock*, MCDA PRO 01-05 (2001), in which we held that certain data fields relating to disciplinary procedure (but not substantive allegations or dispositions) should be released, requires that the City provide additional information in response to her request.

As discussed below in more detail we affirm the principle of *Woodcock* that the public has a right to procedural information about police disciplinary cases, but on account of the clear, and as-of-yet unmodified, language of the governing statutes, significant additional information now regularly published by the City on police disciplinary matters, and the nature and context of this particular request, we must deny the petition.

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.

This exemption, which applies only to instances of discipline imposed on an employee, is only at issue as to a single entry in the records at issue here. Given the nature of that particular allegation, we do not see a public interest in release of information on its face.

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.

In *Petition of Woodcock*, MCDA PRO 01-05 (2001), this office addressed a similar request for the IAD printouts of 32 different PPB officers. Although the factual and legal context have changed somewhat over the last 19 years, the analysis in *Woodcock* remains instructive. In resolving that petition we wrote:

The Attorney General has taken the position that the exemption for completed disciplinary actions is to be narrowly construed and draws a distinction between the protection of the public employee from ridicule for having been disciplined and the need for public access to government process. We would draw such a distinction here.

This office reviewed the case history print-outs and would note that much of the information is in code. A case history documents both sustained and non-sustained complaints and lists both open and closed investigations. There are thirteen listed categories in a standard IAD case history, only eleven of which appear to be used.

The following headings arguably refer to the particular complaint and data under those headings should be considered exempt information about a [personnel] investigation: Alleg. No., Reported, Complainant, Race, Type, and Disp. On the other hand, the following headings more correctly relate to the IAD process itself and data under those headings should be made available to the public: Complaint, Division, Assigned, Stat, and Closed. We conclude that the IAD case histories should be disclosed after redacting the exempt material.

Id. at 3-4.

Woodcock thus concluded that Oregon law, which remains unchanged in this area in the intervening period, requires release of information that relates only to governmental process and exempts information that would reveal any detail of an investigation that can be tied to an individual officer without a case-specific public interest.

Since then, the City of Portland has begun publishing the procedural information we ordered released in *Woodcock* on its own through the Independent Police Review.¹ This release of data includes additional information as well. Because it is not tied to an identifiable officer,

¹ See, <https://www.portlandoregon.gov/ipr/article/688265>

the City may lawfully provide the nature of the allegation along with dispositional information and dates that show the timeline of each case. The Police Review Board separately posts anonymized factual summaries of disciplinary cases that come before it. Whether intentional or not, the City has taken to heart the process/substance analysis we set out in *Woodcock* and implemented it broadly.

The Oregon Supreme Court has also more recently addressed the intersection of police disciplinary investigations and the public records law. *ACLU v. City of Eugene*, 360 Or 269 (2016). The Supreme Court acknowledged that, among other interests, ORS 181A.830 “evidences a legislative intent to protect the privacy of officers whose alleged misconduct is not substantiated.” *Id.* at 295. The Supreme Court further noted that “when it comes to complaints about the use of force and the review of those complaints, the public interest in oversight is particularly strong.” *Id.* at 299.

This office has applied *ACLU* in the context of a request from a reporter seeking complaints about police misconduct during a protest and, with minimal redaction, ordered release due to public interest. *Petition of Shepherd*, MCDA PRO 18-43 (2018). None of the incident-specific interest factors we found in *Shepherd* are present here.

In the context of past public records petitions made to this office by petitioner, a retired PPB sergeant, or individuals connected to her, it is apparent to us that petitioner’s interest in these particular police officers and commanders is personal.² See, *Petition of Reyna*, MCDA PRO 19-60 (2019) (seeking correspondence between many individuals including Sara Fox, Gregory Moore, Jeremy Price, Cliff Bacigalupi, Jeff Bell, Mike Crebs, and Chris Davis); *Petition of Reyna*, MCDA PRO 19-53 (2019) (seeking records relating to Officer Fox); *Petition of Sykes*, MCDA PRO 19-21 (2019) (seeking records relating to Officers Fox and Moore); *Petition of Siekawitch*, MCDA PRO 18-45 (2018) (seeking records relating to petitioner, Officer Fox, Officer Moore, and Sgt. Price); *Petition of Siekawitch*, MCDA PRO 18-49 (seeking records relating to (then) Lt. Bacigalupi and Officer Fox). From reviewing the records underlying these prior petitions, it is apparent that each of the police employees named in the present petition was either connected to petitioner personally or involved, in some fashion, in complaints made by or against petitioner.

While we are mindful of the intense public interest at this unique moment in all matters relating to police, the current state of Oregon law is unchanged with respect to police disciplinary investigations. Unless the public interest as to any particular record requires otherwise, ORS 192.345(12) exempts from disclosure those records of completed disciplinary actions and ORS 181A.830(3) exempts records of disciplinary investigations that do not result in discipline. It may well be that the legislature will choose to amend the police disciplinary exemptions to rebalance the competing interests, but until such time as it does we may not interpret that exemption out of existence. The public interest we evaluate must be as to the specific record in

² This is not to say that a personal interest prevents someone from using the public records law to access documents. *Petition of Riddell*, MCDA PRO 20-18 (2020) (“Individuals may utilize the public records law to advance private interests. Weighing the motivation behind a request only becomes relevant when evaluating fee waivers (not at issue here), or when determining whether or not an otherwise applicable exemption must yield in the face of an overriding public interest.”)

the context of a specific request, and not as to an entire category of records that the legislature has recognized as exempt. See, ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL (2019) at 32.

Having reviewed the complaint histories at issue here through the lens of *ACLU v. City of Eugene* and with an awareness of the connections between petitioner and the parties at issue, we conclude that the public interest does not require release of these complaint histories.

We still agree that the information that *Woodcock* indicated must be released under the public records law, should be released. And currently, that information is automatically released by IPR in an anonymized fashion. Because of this practice, the public interest identified in *Woodcock* in police disciplinary process is satisfied on an ongoing basis. As a consequence, further release of officer-specific procedural information makes it the work of a few minutes to connect individual officers to specific allegations by cross-referencing case numbers and case closure dates.

We must consider this "matrix effect" when evaluating whether or not public records are exempt from disclosure. That is, a piece of information may not be intrinsically exempt, but if it may be connected with other publicly available data to reveal information the legislature has clearly indicated should be exempt, it too should be treated as exempt. *Petition of Floum, MCDA PRO 17-28* (2017).

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon