



MIKE SCHMIDT, District Attorney for Multnomah County

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February 5, 2020

Liani Reyna
2282 Vermont Lane
Naples, FL 34120

Jenifer Johnston
Portland Office of City Attorney
1221 SW 4th Avenue, Suite 430
Portland, OR 97204

Re: Petition of Liani Reyna challenging the City of Portland's determination that it has no responsive documents

Dear Ms. Reyna and Ms. Johnston:

Ms. Reyna filed a public records appeal with this office challenging the City of Portland's determination that it has no documents that are responsive to her request for a copy of "the criminal investigation conducted by the Portland Police Bureau and . . . a copy of the District Attorney's charging decision" relating to allegations that two Portland Police Bureau (PPB) captains committed the crime of official misconduct against Ms. Reyna in 2019. Ms. Reyna asserts that Independent Police Review Director Ross Caldwell testified in a public hearing that a criminal investigation had been initiated by PPB. Conversely, the City informed Ms. Reyna "[t]here was no criminal investigation though this was criminally evaluated . . . After a reasonable search, you have been provided with all records PPB was able to locate."

In *Petition of Siekawitch*, MCDA PRO 18-45 (2018), we examined the bifurcation of investigations into allegations of officer misconduct at PPB and explained that, while *criminal* investigations conducted by police detectives are typically not exempt from disclosure once the investigation has concluded, *personnel* investigations conducted for the purpose of evaluating the potential need for internal discipline are usually exempt from public records disclosure under ORS 181A.830(3) or ORS 192.345(12). In this matter, the City asserts that there was no criminal investigation, but rather the investigation was conducted as an internal personnel matter and, thus, there are no documents responsive to this request.

This office has repeatedly held that we are not equipped legally or practically to resolve a dispute of fact over whether certain documents exist within an agency's possession or whether an agency has produced all relevant documents in response to a request. *See, e.g., Petition of Kessler* MCDA PRO 18-28 (2016); *Petition of Monahan*, MCDA PRO 16-25 (2016).

We do, however, note the City has already provided petitioner with a copy of a December 10, 2019 memorandum documenting the review of the underlying allegations made by Ms. Reyna by representatives from this office, PPB's detective division and internal affairs, and the Independent Police Review. That memorandum states in part, "[i]f additional information is

developed that would warrant a criminal investigation the matter will be returned to Detectives and the District Attorney for further review.”¹ This implies that no criminal investigation occurred. Rather, the agency representatives who signed this document determined that an internal personnel investigation was sufficient and criminal investigation was not necessary at that time.

ORDER

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

21-02

¹ We do note that the form language used in this memorandum includes the phrase “it was unanimously determined that no further criminal investigation is necessary...” which could imply that there was some initial criminal investigation of this matter. The City asserts that, in this case, that was not the case. This is consistent with this office’s experience in similar staffings on other matters: sometimes a report has been taken, or preliminary investigation done, by a criminal investigator, sometimes this has not happened.