



MIKE SCHMIDT, District Attorney for Multnomah County

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February 16, 2021

Jake Dockter
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Carlos Calandriello
Sr. Assistant County Attorney
501 S.E. Hawthorne, Suite 500
Portland, Oregon 97214

Re: Petition of Jake Dockter seeking a copy of an internal Multnomah County Sheriff's Office investigation

Dear Mr. Dockter and Mr. Calandriello:

Petitioner, Jake Dockter, has filed a petition with this office under the Oregon Public Records Law requesting that we order the Multnomah County Sheriff's Office (MCSO) to release "a copy of the report that Sheriff Reese completed at the request of Chair Kafoury, discussing the allegations his officer supported check points and militia activity." MCSO initially denied this request, indicating that the records are subject to ORS 181A.830(3) in that they related to an investigation of public safety employees that did not result in discipline.

This summer, as fires raged throughout the state, certain individuals, some of whom were armed, took it upon themselves to conduct checkpoints and patrol areas of east county in a misguided attempt to protect their community. MCSO deputies responded and investigated. Subsequently, at the request of the County Chair, MCSO initiated a personnel investigation to determine if any MCSO deputies violated agency rules or laws in their interactions with others during this time.

Petitioner clarified with both MCSO, and again with this office, that he had no objection to the names of individual deputies being redacted from the production. He was instead interested in information about MCSO's process in response to a complaint of this nature.

For the reasons discussed in more detail below, the public interest is advanced by release of this information, and the countervailing policy concerns supporting confidentiality under this section are not present here. Accordingly, the petition is granted.

DISCUSSION

A. 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.

The Supreme Court has stated that, among other interests, ORS 181A.830 “evidences a legislative intent to protect the privacy of officers whose alleged misconduct is not substantiated.” *ACLU v. City of Eugene*, 360 Or 269, 295 (2016). However, ORS 181A.830(4)(a) further provides that “this section does not apply [...] when the public interest requires disclosure of the information.” The Supreme Court has instructed that, in evaluating such a claim, the appropriate question is “whether the public interest in disclosure outweighs the competing interest in confidentiality, with the presumption in favor of disclosure.” *ACLU*, 360 Or at 285.

In *Petition of Shepherd*, MCDA PRO 18-43 (2018), we applied these standards and concluded that,

the purposes of ORS 181A.830(3) can be served by simply redacting the names of the two officers from the sentence that begins “I heard there names were...” Under the *ACLU* standard, the interest in confidentiality, once this redaction is made, is minimal.

Shepherd dealt with a situation where context made it next to impossible to identify the officers if the names were omitted. We recognize that that will not always be the case.

We turn then to applying these standards to the documents at issue in this case. MCSO has provided us two sets of documents: 1) a PowerPoint presentation used to brief Chair Kafoury on the results of the investigation; 2) the internal MCSO paperwork that documents the investigative work done.

As an initial matter, unlike ORS 192.345(12,) which applies only to a disciplinary action, ORS 181A.830(3) applies to “information about a personnel investigation.” Under this, broader, standard the PowerPoint presentation summarizing the investigation fits within its scope.

In this case, however, the “competing interest in confidentiality” is minimal at best. Having reviewed the materials submitted, they do not trespass significantly on the involved deputies’ privacy, even if identified, which petitioner has not requested. Allegations, even by implication, that members of our local law enforcement were complicit in militia activity are serious indeed. So too is it of utmost public interest that a law enforcement agency faced with such an allegation get to the bottom of it.

Having reviewed the materials submitted to us by MCSO, and particularly given petitioner’s concession that the names of the individual deputies may be redacted, it is not a particularly close call that the balance identified in *ACLU* tips in favor of disclosure in this instance. The contents of these records are not explosive, but the public has an equal interest in documentation defusing such an allegation as it does in records confirming it.

ORDER

Accordingly, the petition is granted. MCSO shall promptly provide petitioner with a copy of all materials responsive to this request subject only to the redaction of deputy names, consistent with the initial request in this matter. This release is subject to the payment of fees, if any, not to exceed those authorize by ORS 192.324(4).

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mike Schmidt", with a long horizontal flourish extending to the right.

MIKE SCHMIDT

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.

21-07