



**MIKE SCHMIDT**, District Attorney for Multnomah County

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March 3, 2021

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Portland, Oregon 97205

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

Re: Petition of Alan Kessler seeking disciplinary history of Portland Police Officer Brent Taylor

Dear Mr. Kessler and Ms. Niedrist:

Petitioner, Alan Kessler, has asked this office to order the Portland Police Bureau (PPB) to provide him: "All disciplinary records (whether or not a given complaint, investigation, etc., resulted in the imposition of discipline) for Brent M. Taylor (DPSST #51250)." Petitioner had previously requested these materials from PPB by way of a public records request. PPB denied that request, asserting any responsive materials were exempt by operation of ORS 181A.830(3), which exempts personnel investigations of public safety employees that do not result in discipline. This appeal ensued.

Ofc Taylor, the subject of the request, is a PPB officer who participated in crowd control deployments during the unprecedented civil unrest that gripped our community this past summer. Participants in those demonstrations allege that Ofc Taylor was particularly aggressive and have presented video of multiple incidents of him attacking vehicle tires with a knife. Petitioner also observes that Ofc Taylor's conduct was the direct cause of the City of Portland being found in contempt of court by U.S. District Court Judge Hernandez for failing to comply with his orders limiting the use of crowd control munitions. *Don't Shoot Portland v. City of Portland*, 2020 U.S. Dist. LEXIS 223729 at \*24-26 (D. Or. 2020) (finding two separate deployments of impact munitions by Ofc Taylor in violation of the court's prior order).

Petitioner acknowledged in his request that conditional public records exemptions likely applied to the material he sought, however he argued that the public interest nonetheless required release:

While these records may include conditionally exempt material, Officer Taylor has become famous for his extraordinary brutality against non-violent protesters and wanton destruction of property (especially automobile tires). Understanding what complaints have been made by the public against this officer, and the details of how internal review systems have failed to protect the public from his violent

impulses are of extraordinary public importance and outweigh any interest Officer Taylor may have in avoiding (deserved) public shame for his outrageous acts.

PPB has provided this office with the single memorandum that it withheld in response to this request. At a very high level, with sufficient detail only to inform our resolution of this petition, the record reveals the following: 1) there is a single incident; 2) Ofc Taylor was not disciplined as a result; 3) the incident has nothing to do with use of force; and 4) the incident predated this summer's demonstrations by about three years.

Given the unusual context of this matter, we grant the petition notwithstanding the insignificance of the record.

## DISCUSSION

### A. Information about public safety officers – 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.

As petitioner surmised in his initial request, ORS 181A.830(3) is facially applicable in that the record contains information about a personnel investigation of a police officer. However, this exemption applies only unless the public interest requires otherwise. *Petition of Kessler*, 20-49 (2020).

Given the existence of Judge Hernandez's order, petitioner has sufficiently articulated some level of public interest in PPB's processes with respect to Ofc Taylor. Ofc Taylor has also been called out by name online, in videos, and in posters posted around town. This is not simply a case of a handful of interested parties raising unvalidated concerns. The contempt order referenced above provides objective context to the crowd-sourced material submitted in support of the petition in this case.

Having reviewed the record at issue, we cannot say that, in itself, it will particularly illuminate this interest. At the same time, it is so mundane that release of it would not implicate any of the policy rationales behind the personnel investigation exemptions articulated by the Supreme Court. See, *ACLU v. City of Eugene*, 360 Or 269, 297 (2016). (181A.830(3)'s purpose is to protect "the privacy of its police officers and in effectively disciplining, evaluating, and training those officers.")

Here, Judge Hernandez's order is critical to our conclusion that an otherwise trivial record should nonetheless be released, not because of what it contains, but because of what its production conveys about what does *not* exist. Given the extraordinarily minimal additional invasion of Ofc Taylor's privacy that release of this record would cause, we find the balance in this case tips in favor of disclosure.

**ORDER**

Accordingly, the petition is granted. The Portland Police Bureau is ordered to promptly provide petitioner with a copy of the record responsive to his request. This release is subject to the payment of fees, if any, not to exceed those authorized 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.

**21-09**