



MIKE SCHMIDT, District Attorney for Multnomah County

1200 SW First Ave, Suite 5200 • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

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Alex Zielinski
News Editor
Portland Mercury
P.O. Box 86208
Portland, Oregon 97286

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

Re: Petition of Alex Zielinski, on behalf of the Portland Mercury, seeking more refined residence information about Portland Police Bureau officers

Dear Ms. Zielinski and Ms. Niedrist:

Petitioner, Alex Zielinski, requested that the City of Portland Bureau of Human Resources (BHR) provide her with “a list of ZIP codes for the listed residence of every sworn officer within the Portland Police Bureau.” BHR compiled the requested list and provided it to petitioner. However, citing officer safety concerns, where there were five or fewer officers living in a particular ZIP code BHR reported that as “1 to 5.” It is this detail that petitioner appeals – specifically, the withholding of the precise number of officers living in these ZIP codes.

Petitioner is seeking this information for the purposes of reporting the geographic distribution of where the police officers serving the City of Portland reside. Petitioner observes that due to the way that BHR has elected to respond to this request, the geographical distribution data she is trying to report could be substantially incorrect depending on where in the “1 to 5” range a particular ZIP code actually fell.

The City responds that it “determined it would be too risky to officers to disclose exact number of officers living in a ZIP code when less than five officers resided there.”¹ As a legal matter, the City further asserted that, in order to obtain a ZIP code of an officer, petitioner would have to follow the process outlined in ORS 192.363, which she did not. Lastly, the City argues

¹ The City did not explain in more detail *how* disclosing that 1 or 2 officers lived in a ZIP code would put those officers at greater risk than disclosing that 7 or 20 did. We are familiar with the landscape of these concerns and have previously discussed these safety risks in detail. See, *Petition of Bernstein*, MCDA PRO 20-46 (2020) (identifying specific incidents involving officers and their families being subject to targeted personalized threats). However, a determination of whether or not release of this information would increase the risks of officers being subject to targeted threats to their and their families' safety is not necessary to resolve this petition.

that the record it provided to petitioner was not pre-existing and that it elected to create it in response to this request, something it was not required to do. As such, the City asserts, it is not required to create the more detailed record requested by petitioner.

Because we agree with the City's last argument, we must deny the petition.

DISCUSSION

A. Contents of Certain Requests for Disclosure – ORS 192.363

ORS 192.363 requires that an individual making a public records request for, as relevant here, public employee "residential addresses" must provide in her request:

1. The names of the individuals for whom personal information is sought;
2. A statement describing the personal information being sought; and
3. A statement that shows by clear and convincing evidence that the public interest requires disclosure in a particular instance.

In support of its position that a request for employee ZIP codes must follow this procedure, the City relies on our prior decision in *Petition of Hinkle*, MCDA PRO 05-03 (2005). In *Hinkle* this office stated: "disclosure of [a ZIP code] would be tantamount to disclosing the full address itself. [...] The zip code and state are part of the [employee's] address[.]" *Id.* at 5. While this administration is not privy to the briefing or reasoning behind this order, the quoted conclusion only makes sense if *Hinkle* were discussing nine-digit ZIP codes (often referred to as "ZIP+4") as opposed to the five-digit ZIP codes at issue in this appeal.

We continue to agree with *Hinkle's* premise that disclosure of residential address information that is "tantamount to disclosing the full address" is covered by ORS 192.363 even if some trivial component were omitted. However, we do not believe that a person's five-digit ZIP code would provide any realistic ability to locate their residence. Thousands of people reside in each ZIP code. To the extent that *Hinkle* held otherwise, we disavow its holding and find ORS 192.355(3) and ORS 192.363 inapplicable to this request for the five-digit ZIP codes of public employees.

B. Creation of Records / Analysis of Records

In the public records law there is a subtle, but critical, distinction between "information" and "records." A record is a "writing that contains information." ORS 192.311(5). Public bodies are required to provide records; they are not required to provide information. That many public bodies employ Public Information Officers who routinely *do* provide information on request often confuses this distinction.

It is likewise well-settled that the public records law does not require a public body to perform analysis of records or information in its possession or create new records in response to a public records request. Attorney General's PUBLIC RECORDS AND MEETINGS MANUAL (2019) at

7; *Petition of Kessler*, MCDA PRO 19-13 (2019) (“The public records law does not require a public body to create new records in response to a request, nor does it require it to produce records that it does not have.”)

As applied in this case, petitioner asked for “a list of ZIP codes for the listed residence of every sworn officer within the Portland Police Bureau.” BHR did not, at the time of the request, possess such a list and would have been within its right under the public records law to respond as such and close the request. ORS 192.329(2)(d). That is not, however, how it chose to proceed.

Instead of closing the request, BHR elected to compile certain relevant information in its possession into a new record, which it then provided to petitioner. This record is not responsive (completely) to petitioner’s request because it does not provide the level of detail requested, which is the subject of the present appeal.

Having explained the distinction between information and records, and the treatment of each under the public records law, we must conclude that, although BHR undoubtedly possesses the information necessary to create the precise record that petitioner is requesting, the public records law does not obligate it to do so.

ORDER

Accordingly, the petition is denied because BHR does not possess a record responsive to petitioner’s request.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon