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April 15, 2021

Michael Kessler
mikepk@gmail.com [via email only]

Jenifer Johnston
Sr. Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Michael Kessler seeking review of redactions made to a public records request response

Dear Mr. Kessler and Ms. Johnston:

Petitioner, Michael Kessler, has asked this office to review redactions applied by the Portland Police Bureau (PPB) to its response to his public records request for: "all text messages to and from Daryl Turner from August 1st to August 16th [2020]." Daryl Turner was, during the relevant period, the president of the Portland Police Association (PPA), the union representing PPB officers and sergeants. PPB produced to petitioner a spreadsheet containing a header row and 72 rows of responsive messages, with one message per row. Seven of the messages, appearing at lines 13 and 21-26, were redacted in full or in part

PPB has asserted the redaction to line 13 is supported by ORS 192.355(12), the personnel disciplinary exemption, and the others by ORS 192.345(3), the criminal investigatory information exemption. PPB has made available for our review a copy of the unredacted messages. Having reviewed them, and as discussed below, with the exception of an overly broad redaction to line 13, the redactions are narrowly tailored and supported by the cited statutes.

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.

The City has asserted that the unredacted release of the message in line 13 would disclose the existence and nature of a personnel discipline action against an employee. This is readily apparent from the face of the record. The request seeks records contemporaneous with demonstrations and vandalism of the PPA office building during the first part of August, 2020. Line 13 has nothing to do with those events. It is a communication to Daryl Turner, in his capacity as PPA president, regarding an unrelated disciplinary matter involving a PPA member.

Petitioner does not argue there is a particular public interest in this disciplinary matter and, having reviewed it, we see none.

Although it will disclose no information of value to petitioner, the redaction is slightly broader than necessary to serve its purpose. The city should release the first “word” (which is actually initials) and the last six words of line 13.

B. Criminal Investigatory Material – ORS 192.345(3)

ORS 192.345(3) conditionally exempts from disclosure,

Investigatory information compiled for criminal law purposes.

The redactions to lines 21-26 were made pursuant to ORS 192.345(3). It is apparent from the substance and context of these lines that they contain investigative information relating to an open criminal investigation. The material is factual, not opinion or speculation, and is narrowly focused on the investigation of a criminal offense. As such, we conclude it is properly redacted at this time.

ORDER

Accordingly, the petition is granted in part. Consistent with the discussion above PPB is ordered to provide petitioner with a less redacted version of line 13. Otherwise the petition is denied.

Very truly yours,



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.

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