



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

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May 11, 2021

Kyle Iboshi  
KGW News  
1501 SW Jefferson Street  
Portland, Oregon 97201

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

Re: Petition of Kyle Iboshi requesting police reports from the Israel Berry investigation

Dear Mr. Iboshi and Ms. Johnston:

Petitioner Kyle Iboshi, on behalf of KGW news, has submitted a public records petition in which he asks that this office order the Portland Police Bureau (PPB) to release the police reports related to the May 31, 2020, death of Israel Berry. Mr. Berry was shot and killed by a City of Gresham police officer. Because the incident occurred within the city limits of Portland, PPB conducted the resulting investigation.

PPB has asserted that these reports are presently exempt from disclosure as investigatory information gathered for criminal law purposes. ORS 192.345(3). There is no question that the exemption applies. Petitioner does not dispute this. Rather he argues that the public interest nonetheless requires release.

For the reasons discussed below, we deny the petition.

**DISCUSSION**

A. Criminal Investigatory Information – ORS 192.345(3)

ORS 192.345(3) conditionally exempts from disclosure,

Investigatory information compiled for criminal law purposes.

Following the lead of the Oregon Court of Appeals, both this office and the Attorney General have consistently found that public interest balancing under ORS 192.345(3) supports confidentiality while enforcement proceedings are pending. *Jensen v. Schiffman*, 24 Or App 11, 16 (1976) (“investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings.”) *Petition of Smith*, MCDA PRO 21-21 (2021) (noting the attorney general and this office have “uniformly concluded” that police reports on pending matters are not subject to release).

This matter remains under active investigation and we have publicly announced that grand jury proceedings are imminent. Although this office remains committed to a public

Page 2  
May 11, 2021  
Petition of Kyle Iboshi

disclosure and examination of all of the investigative materials in this case upon the conclusion of enforcement proceedings, we find that the public interest does not require their release today.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Schmidt", with a stylized flourish at the end.

MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon

21-32