



MIKE SCHMIDT, District Attorney for Multnomah County

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May 25, 2021

Tess Riski
Willamette Week
Tess@wweek.com (VIA EMAIL ONLY)

Linda Law
Chief Deputy City Attorney
Portland Office of City Attorney
1221 SW 4th Avenue, Suite 430
Portland, Oregon 97204
Linda.Law@portlandoregon.gov (VIA EMAIL ONLY)

Re: Petition of Tess Riski requesting 911 audio recordings of April 16, 2021 preceding the death of Robert Delgado.

Dear Ms. Riski and Ms. Law:

In her public records petition dated April 26, 2021, petitioner Tess Riski, a staff writer at Willamette Week, asks us to order the release of records that the Portland Police Bureau, through the City of Portland, claims are conditionally exempt under ORS 192.345(3). The records described in her request of April 19, 2021, to the City of Portland's Bureau of Emergency Communications (BOEC), are as follows:

Relating to the shooting death of Robert Delgado: The audio recordings of any and all 911 calls received by BOEC on the morning of April 16, 2021 in which the caller reported a man causing a disturbance at Lents Park.

On April 23, 2021, the City denied the request, indicating that the records were with the Portland Police Bureau and that the records were exempt from disclosure per ORS 192.345(3), as there was an open investigation.

Petitioner asserts that there is an overwhelming public interest in the content of the 911 calls, that the calls will provide a greater understanding of the events that led up to the fatal shooting, and that it is an unreasonable delay to release these records after the records have been presented to a grand jury.

The City has stated that this is not a permanent denial of release of the records, but that the records should not be released while the investigation is open.

For the reasons discussed below, we deny the petition.

DISCUSSION

A. Criminal Investigatory material – ORS 192.345(3)

ORS 192.345(3) conditionally exempts from disclosure, “investigatory information compiled for criminal law purposes.”

This office and the Attorney General have followed the lead of the Oregon Court of Appeals and 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). *Petition of Shepherd*, MCDA PRO 19-01 (2019) (the release of 911 calls gathered by law enforcement during an investigation prior to the conclusion of enforcement proceedings could jeopardize the integrity of the investigation).

This matter remains under active investigation by the Portland Police Bureau, this office, and the Oregon Department of Justice. Although this office remains committed to a public 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 release of the 911 calls today.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Mike Schmidt', written over a horizontal line.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon