



ROD UNDERHILL, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

July 27, 2020

Alan Kessler
Law Office of Alan L Kessler
2725 SE 36th Ave
Portland OR 97202

Re: Petition of Alan Kessler requesting the identity of a police officer depicted in a photograph

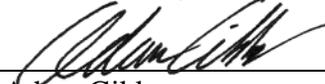
Dear Mr. Kessler:

In one of your two public records petitions dated July 20, 2020 you challenge the City of Portland's refusal to provide information responsive to a request to identify a police officer. Specifically, on July 9, 2020 you made the following request to the City of Portland: "Please provide any one document or set of documents sufficient to identify the name and email address for the person depicted in the attached photo." The photograph, attached as Exhibit A, is of a police officer, wearing protective equipment, with the number "12" written on tape obscuring his name patch. You further indicated to the City that you would accept any subset of information that accomplished your stated goal in the narrowest way possible. The City denied your request, asserting that it was not required to answer the question that you posed.

A public body is not required by the public records law to answer questions about its operations or records. It may choose to do so, if it wishes, but that is its decision. See, *Petition of Merrick*, MCDA PRO 16-05 (2016); PUBLIC RECORDS AND MEETINGS MANUAL (2019) at p.7 ("The Public Records Law does not require public bodies to [...] answer questions about their records; [or] analyze their records.") Although, most likely, some city employee could recognize and identify this officer, the Attorney General states that the public records law does not require them to do so. *Petition of Andrade*, Att'y Gen. PRO (5/26/2005) ("The Public Records law does not require a public body to create a record to disclose the [...] 'knowledge' their staff might have.") While I understand that you have not asked the City to create a new record, you have requested that they identify and provide an existing record that answers your question, that is the argument this office rejected in *Merrick*. *Merrick's* holding was based on the structure of the public records law, not the subject matter of any particular request. Absent legislative amendment or a contrary judicial interpretation, it remains binding in this jurisdiction.

Regards,

ROD UNDERHILL
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Senior Deputy District Attorney

Cc: Jenifer Johnston

Exhibit A

