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January 27, 2021

Meghan Utzman
mutzman@pdx.edu [via email only]

Carlo Calandriello
Senior Assistant County Attorney
501 S.E. Hawthorne Boulevard, Suite 500
Portland, Oregon 97214

Re: Petition of Meghan Utzman seeking Multnomah County Sheriff's Office records from the investigation of the disappearance of Kyron Hormon

Dear Ms. Utzman and Mr. Calandriello:

Petitioner Meghan Utzman, has filed a public records petition with this office asking that we order the Multnomah County Sheriff's Office (MCSO) to provide her with: "investigative interview notes spanning from 6/6/10 through 9/6/10 with [four named individuals.]" In her initial request petitioner states that she is an independent writer and student and is working on a research project relating to the disappearance of Kyron Hormon on June 4, 2010.

MCSO responded that the investigation in this case remains open and, as such, all responsive records were exempt from disclosure pursuant to ORS 192.345(3).

For the reasons discussed below we agree with MCSO's position and 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.

Witness interview notes are unquestionably "investigatory information compiled for criminal law purposes." The only question, then, is whether or not the public interest nonetheless requires disclosure.

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 of an open criminal investigation. *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 criminal investigation, though more than ten years old, has a detective actively assigned who continues to pursue leads.

Petitioner counters MCSO's reliance on ORS 192.345(3) by arguing that the information she seeks would not impair MCSO's ability to protect the victim and that what she seeks is not one of the categories of information listed in ORS 192.345(3)(a)–(g). This is factually correct, but misreads the statute.

After stating the general exemption for investigatory information, ORS 192.345(3) goes on to clarify that the fact that someone has been arrested or that a crime has been reported must be released “unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim.” The statute then defines in (a)–(g) the types of information that can constitute the “record of arrest” or “report of a crime.”¹

In this case it is no secret that no arrest has been made nor has MCSO withheld that a crime has been reported and what that crime is. What petitioner seeks in her request are “investigative interview notes,” which are neither a “record of arrest” nor a “report of a crime.” As such, the limitation that the record of arrest or report of crime may only be withheld for a limited period in limited circumstances is inapplicable.

ORDER

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

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¹ For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
(b) The offense with which the arrested person is charged;
(c) The conditions of release pursuant to ORS 135.230 (Definitions for ORS 135.230 to 135.290) to 135.290 (Punishment by contempt of court);
(d) The identity of and biographical information concerning both complaining party and victim;
(e) The identity of the investigating and arresting agency and the length of the investigation;
(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.