



MIKE SCHMIDT, District Attorney for Multnomah County

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July 19, 2022

Amanda Nicusor
sharkfinsoupkitchen@protonmail.com [via email only]

Re: Petition of Amanda Nicusor requesting records from the Portland Police Bureau

Dear Ms. Nicusor:

You submitted a petition to this office challenging the Portland Police Bureau's response to a public records request dated October 28, 2021 for various communications between Officer Chase Bryson and Jeffrey Swaney or other residents of the Jantzen Beach Moorage.

Your points of dispute, in summary, are that 1) PPB's response that it does not possess any notes taken by Ofc Bryson is false because you personally observed him take notes; 2) that the search terms that PPB used to fulfill your request were too narrow; and 3) that certain responsive emails that you know to exist were not included in PPB's production of records to you.

As to the first point, PPB has informed us that preliminary officer notes are often not retained once they have been used to create a police report. PPB's denial of your request is not an assertion that Ofc Bryson never created notes of any sort, rather it is an assertion that as of today PPB does not possess any notes that he took. The role of the district attorney in public records disputes does not extend to factual challenges to the truth of a public body's assertion that it does not possess a requested record. See *Petition of Barnes*, MCDA PRO 17-25 (2017) ("this office is not statutorily empowered to investigate or challenge a public body's factual assertion that it does not have a requested public record.") See also, *Petition of Apanel*, MCDA PRO 17-57 (2017) ("We do not have the jurisdiction to determine if an agency is required by law to possess a particular record.")

As to the second point, in response to your request broad request for communications between Ofc Bryson, Mr. Swaney, and any other resident of the Jantzen Beach Moorage, PPB proposed specific search terms to search its electronic data archives and then quoted you fees for completion of the search on those terms. You state that you objected to the narrowing of your request in an email, but you also paid the fee to proceed with the search as PPB proposed it.¹ I cannot say that PPB has denied your request for the more expansive request as initially framed, because it has proceeded with the search that you paid for. PPB could reasonably conclude (as it in fact did) that your payment of the estimated fee was an expression of your intent that they produce the records covered by that estimate.

¹ I will note that a records request for communications with any "resident of the Jantzen Beach moorage" is almost certainly insufficiently precise under the public records law as it would require PPB to conduct investigation and external research to determine what search terms might fulfill this portion of the request. To the extent you wish a more expansive records search done by PPB you will need to submit a more precise request.

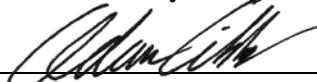
Lastly, you have in your possession certain records that you believe should have been produced to you even under the narrower search proposed by PPB that were not. Counsel for PPB, Ms. Johnston, has emailed both of us explaining why the proposed search did not turn up that particular email and explaining her intent to re-open the request, modify the search terms to capture Mr. Swaney's email address (rather than just the word "swaney"), and re-run the search. Under these circumstances that portion of the request is currently active and has not been denied. See *Petition of Barnes*, MCDA PRO 17-25 (2017) ("Our evaluation of a public records petition is not based on the process that preceded the filing of the petition, but rather on the circumstances as they exist on the date of our order.")

ORDER

Accordingly, the petition is denied as to the first two issues and, as to the third, the request has not been denied, so we do not yet have authority to review it as a denial of a records request.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Sr. Deputy District Attorney

Cc: Jenifer Johnston

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