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September 21, 2022

VIA EMAIL ONLY

Liani Reyna
cougar1225@yahoo.com

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

Re: Petition of Liani Reyna seeking access to investigative reports from an officer-involved shooting investigation.

Dear Ms. Reyna and Ms. Johnston:

Petitioner, Liani Reyna, has petitioned this office under the public records law for an order compelling the Portland Police Bureau (PPB) to release a complete copy of the case file relating to the July 2012 shooting of Juwan Blackmon.

According to the "Incident Summary" published on PPB's website, on July 17, 2012, Juwan Blackmon was non-compliant during a high-risk traffic stop, fled, and was shot by police once in the leg.¹ The summary goes on to recount that Mr. Blackmon was 17 years old at the time; that after being detained he was lodged at the juvenile detention facility on two counts of Unlawful Possession of a Firearm; that a Multnomah County Grand Jury reviewed the incident; and that a subsequent administrative investigation by PPB found the shooting to be "in-policy."

Under current PPB practice the investigative files from officer-involved shootings are made available to the public on PPB's website. However, in this case, PPB states that it believes it is legally prohibited from releasing the reports on account of the subject's age.

For the reasons discussed below we grant the petition in part.

DISCUSSION

A. Juvenile Court Records – ORS 419A.255(2)

ORS 419A.255(2) provides that,

Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the record of the case or the supplemental confidential

¹ OIS Incident Summary – Juwan Blackmon (wounded), <https://www.portlandoregon.gov/police/index.cfm?&a=537919>

file are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection[.]²

i. Legal framework

ORS 419A.255(2) sets out two elements that must both be present for the mandatory withholding of records: 1) the requested record is in a juvenile court supplemental confidential file; and 2) the record relates to the youth whose file it is in.

The juvenile court maintains two files of records involving each youth or child that has appeared before it. The first, the “record of the case,” includes traditional court filings and other materials directly related to legal proceedings. ORS 419A.252(4). The second, the “supplemental confidential file” (formerly known as the “social file”), “includes reports and other material relating to the child, ward, youth or youth offender’s history and prognosis.” ORS 419A.252(5). This commonly includes, among many other types of records, police reports from incidents involving the youth.

Although petitioner has not requested the copies of the records held by the Juvenile Court, the Court of Appeals has concluded that “if any ‘history and prognosis’ material is located in either the supplemental confidential file or the record of the case, the privilege attaches to this material, and it applies regardless if these same materials exist in duplicate elsewhere.” *Matter of S. J.*, 316 Or App 537, 549–50 (2021). As such, if a police report relating to a youth is in that youth’s supplemental confidential file, all copies of it are exempt from disclosure, whatever agency may have custody of it.

As an initial matter, PPB notes that it sought permission from the Juvenile Department to release this information, and that permission was denied. The statutory confidentiality provisions relating to children are complex, overlapping, and, importantly, have different requirements. ORS 419B.035, which restricts release of reports documenting investigations of child abuse, does require permission of the responsible agency prior to release. See, *Petition of Reyna*, MCDA PRO 20-35 (2020) (“ORS 419B.035 requires that reports of child abuse be confidential and vests Oregon’s Department of Human Services with sole authority to authorize the release of any report of child abuse.”) ORS 419A.255(6)-(7), which governs release of “record of arrest” information about juvenile court prosecutions, on the other hand, mandates that *only* the responsible juvenile agency may release information, absent court authorization. *Petition of Larson*, MCDA PRO 18-10 (2018) (“ORS 419A.255(8) clearly provides that only the Juvenile Court, the Juvenile Department, the Oregon Youth Authority, or another agency authorized by the juvenile court may release information pursuant to ORS 419A.255(6) or (7).”)

The present case, however, does not involve a request falling under either ORS 419B.035 or ORS 419A.255(6)-(7). Petitioner’s request for specific reports is controlled by ORS 419A.255(2). Under this section, there is no requirement that any agency external to PPB grant permission prior to releasing material that PPB has determined is subject to release. That is not to

² A judge of the Juvenile Court may authorize release of a record to any party, but this is outside the public records law. ORS 419A.255(2)(b)(O). A person seeking such an authorization may do so by inquiring of the Juvenile Department records division and completing the necessary paperwork specified in ORS 419A.258.

say that the Juvenile Department has no role in the process. That a police report mentions or relates to a youth is not in itself sufficient to exempt it from disclosure. An agency in receipt of a request for reports it believes relate to a youth about whom the juvenile court possesses records must consult with the Juvenile Department to determine if they are contained in the youth's file.

ii. Many of the reports are contained in the supplemental confidential file.

This office has communicated with Stacy Minger, the manager of the Multnomah County Juvenile Department records division, who confirmed that under this police case number there are 577 pages of police reports contained in the youth's supplemental confidential file. PPB, however, possesses 764 pages of documents responsive to petitioner's request that were provided to this office for review. The 187 pages of records that are not contained in the youth's supplemental confidential file cannot be exempt under ORS 419A.255 and must be released whether or not they relate to Juwan Blackmon.

iii. Many of the reports relate to the history of Juwan Blackmon, then a youth.

Regarding the contents of the reports, petitioner asserts that they relate to the investigation of a police officer's discharge of their firearm and, as such, should not be within the scope of this section. The Court of Appeals has recently noted that ORS 419A.255(2) "references a broad range of materials that can qualify for the privilege." *Matter of S. J.*, 316 Or App 537, 549–50 (2021). This is consistent with the plain language used. "Relate" is a broad term, defined as "connected in some way; having relationship to or with something else." *Black's Law Dictionary* (11th Ed. 2019). Many of these reports are indeed "connected in some way" to the youth's history.

That these reports also relate to something other than the youth's history, the investigation of the involved officers, does not alter this analysis. ORS 419A.255(2) does not make confidential reports that *solely* relate to a youth's history or even *primarily* relate to a youth's history. *State v. Vanburen*, 262 Or App 715 (2014) ("We are mindful of the admonition not to 'insert what has been omitted' when construing a statute.") (quoting *Carlson v. Myers*, 327 Or 213, 224 (1998)).

This office has reviewed the records submitted by PPB and, many of them do indeed relate to the youth's history (his actions, condition, property, and associates) but others do not. The police were understandably concerned with investigating precisely what the youth had done and what the various officers had perceived of his actions prior to and after he was shot. Reports on these issues certainly "relate" to him even if a significant, or even primary, purpose of the report was to investigate police actions. ORS 419A.255(2) mandates that such reports "shall be withheld from public inspection." This language creates an unconditional and mandatory exemption from disclosure under the public records law without reference to the public's undeniable interest in reviewing the investigation of a police officer's discharge of a firearm at a youth. Further, this exemption applies to "reports" not "information," which means that if the report relates to the youth the entire report must be withheld.

However, police reports and other records that exclusively document the police investigation of police, without reference to the youth, do not "relate" to him within the meaning

of this section. Such reports are not exempt under ORS 419A.255 even if they are contained in the supplemental confidential file. This includes, by way of example, reports documenting ammunition countdown of on-scene officers; general scene diagrams or photographs that do not depict the youth's location or that of his property; crime scene logs; and other similar documents relating exclusively to the procedural investigation of the shooting. Specifically, those records that do not relate to the youth are located at the following pages among the 764 pages produced to us for review:

| | | | | |
|-------|---------|---------|---------|---------|
| 79-83 | 124-129 | 218 | 685-687 | 729-730 |
| 84 | 172-176 | 222 | 688-702 | 732-733 |
| 86 | 178-179 | 225 | 704-705 | 737-764 |
| 87-88 | 189-197 | 226 | 708 | |
| 101 | 204 | 229 | 712-714 | |
| 110 | 208 | 237-238 | 716-720 | |
| 111 | 215 | 675-684 | 723-725 | |

iv. Mandatory redactions for undercover assignments

PPB has stated that the names of certain police officers appearing in the records are subject to mandatory redaction under ORS 181A.825(2) because that officer is currently, or was within the last six months, assigned to undercover operations. These redactions are proper. See, *Petition of Bernstein*, MCDA PRO 20-46 (2020) (finding names of police officers assigned undercover duties were within the scope of ORS 181A.825(2)).

v. Redaction of state identification numbers

PPB has also proposed redactions to Oregon state identification (SID) numbers appearing in these records. A SID number is a unique identifier used to identify an individual involvement in the State's criminal records systems. PPB has cited 28 USC § 534(b) and its implementing regulations, specifically 28 CFR 20.3(d), as authority for these redactions. Section 534(b) states that the federal government is authorized to rescind access to interstate criminal offender records systems for any recipient of criminal history information who disseminates "identification, criminal identification, crime, and other records" received from the Attorney General. PPB has not established on this record that the state-created identification number is identification information derived from such a repository.

Statewide public bodies routinely publish individuals' SID numbers. The judicial department includes them in the publicly accessible electronic court register of every criminal case. The Department of Corrections requires that SIDs be placed on all mail to an inmate in a state correctional facility. Indeed, the Oregon Department of Corrections freely provides a database to the public to look up any inmate's SID number.³ Given the systemic and wide-ranging dissemination of these numbers by state actors and the mandate to resolve disputed points in favor of release of information, we cannot endorse a reading of 28 CFR 20.3(d) or 28

³ Department of Corrections, Oregon Offender Search, <http://docpub.state.or.us/OOS/intro.jsf>

USC § 534 that would prohibit disclosure of a state-originated identification number in the possession of a local municipality. See, *Colby v. Gunson*, 224 Or.App. 666, 676 (2008) (“if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails.”)

Oregon’s statutes regarding the confidentiality of criminal records do provide that “criminal offender information is confidential.” ORS 181A.195(12)(a). But the definition of “criminal offender information” is “records and related data as to physical description and vital statistics, fingerprints received and compiled for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.” ORS 181A.010(2). This would not include an identification number. As such, on this record, it has not been established that a SID number is exempt from disclosure under the public records law.⁴

ORDER

Accordingly, the petition is granted in part. PPB is ordered to promptly produce to petitioner copies of any records not contained within the 577 pages in the supplemental confidential file. Of the records appearing in the supplemental confidential file, those contained in the table above do not relate to the youth and must also be released. The limited redactions proposed by PPB to undercover officer names may be applied to these records. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Regards,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

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Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(3) your agency may become liable to pay petitioner’s attorney’s fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

⁴ We recognize the redaction of SIDs is a tangential issue in this particular case, and was the subject of extremely limited argument by PPB. Our finding here is that PPB has not convinced us with appropriate authority that a SID number is subject to redaction pursuant to ORS 192.355(8). We do not foreclose the possibility of reaching a different conclusion on a more developed record.