



MIKE SCHMIDT, District Attorney for Multnomah County

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January 6, 2023

VIA EMAIL ONLY

Alan Kessler
ak@alankesslerlaw.com

Trevor Byrd
Deputy City Attorney
Trevor.Byrd@portlandoregon.gov

Re: Petition of Alan Kessler seeking sanctions against the City of Portland's Bureau of Human Resources

Dear Mr. Kessler and Mr. Byrd:

On November 28, 2022, Mr. Kessler petitioned this office for a public records order compelling the City of Portland's Bureau of Human Resources (BHR) to respond to a public records request: "For each day beginning with October 10, 2022 and ending on the day this request is completed, please provide time logs showing the times worked (e.g. start time, stop time, break period, lunch) for the police officer or officers who shot Jeremy J. Rieck on October 14, 2022."

Petitioner made this request of BHR on November 8, 2022. BHR responded on November 28, stating that it lacked the necessary information to identify the person whose records petitioner was seeking and closed the request. BHR further noted that it appeared as though petitioner was seeking records from the Portland Police Bureau (PPB). This appeal immediately ensued.

On December 9, 2022, while this matter was pending in this office, BHR informed us that due to a change in factual circumstances, it was now able to identify the officer involved and would proceed with producing records upon payment of fees. The cited change in circumstance was a press release issued by PPB identifying police officers who had been involved in a number of recent officer-involved uses of deadly force. The press release further stated that PPB policy moving forward would be to identify officers involved in similar incidents 15 days after the event.

BHR asks us to dismiss this appeal as moot as it has reactivated the request and quoted fees that petitioner has not yet paid. Petitioner alleges bad faith and gamesmanship on the part of the City as a whole, and urges us to impose a sanction under ORS 192.407.

We decline to impose a sanction because we do not find that the City failed to timely and appropriately respond to a public records request.

DISCUSSION

A. Questions – ORS 192.345(15)

In *Petition of Michael Kessler*, MCDA PRO 21-40 (2021), this office held that the PPB was required to respond to a records request for the police report written by an officer who identified themselves as “#67” on their uniform. Although some of the language contained therein could be interpreted broadly, it was not our intent to depart from the Attorney General’s well-settled premise that the public records law does not require a public body to disclose knowledge that their staff might have. See, e.g., *Petition of Ryan*, Att’y Gen PRO 6/11/19 (“The public records law does not require public bodies to respond to requests for information by disclosing ‘knowledge’ their staff might have.”) *Petition of Volin*, 1/10/19 (public records law “does not require public bodies to ... disclose other knowledge their staffs might have.”) It is difficult to pin down with precision the line between disclosing knowledge that City employees possess and *using* knowledge that certain City employees possess to fulfill a records request.

Unlike *Michael Kessler*, above, where the petitioner had requested the police report of a officer who was known to the requestor by an observed and non-subjective identifier (“#67”), the present request would require disclosure of partial results of a closely held and then-ongoing criminal investigation. Indeed, that the particular information was part of an ongoing criminal investigation may have independently rendered it exempt from disclosure. See ORS 192.345(3). We do not believe the legislature could have intended the public records law to be interpreted in such a way as to require, among other things, a law enforcement agency to disclose the name of the subject of a criminal investigation prior to consideration of the matter by the relevant prosecuting authority.

As this office wrote in *Petition of Merrick*, MCDA PRO 16-05 (2016), “a person does not alter the essential nature of a question by framing it in terms of public records.” Having acknowledge the difficulties in line-drawing in the abstract, it is clear to us that the request at issue in this case posed a question that would have required City employees to divulge knowledge they held.

Even assuming that BHR had full access to the factual information necessary to answer petitioner’s question (a point we understand the City to dispute), we would not find BHR’s response to have been in derogation of its obligations under the public records law.

ORDER

Accordingly, the request for ORS 192.407 sanctions is denied.

Regards,

A handwritten signature in black ink, appearing to read "Mike Schmidt", with a stylized flourish at the end.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon