



MIKE SCHMIDT, District Attorney for Multnomah County

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January 18, 2023

Jon Bial
Deputy General Counsel
Oregon Public Broadcasting
7140 S. Macadam Avenue
Portland, Oregon 97219

Re: Petition of Jon Bial, on behalf of OPB, requesting records from MCDA

Dear Mr. Bial:

On January 11, 2023, you submitted a petition to this office under the public records law challenging this office's determination that certain records were exempt from disclosure under ORS 192.345(3). Specifically you had requested records in this office's possession relating to the investigation into the murder of Sean Kealiher.¹ This office, through conflict counsel in the Clackamas County District Attorney's office, granted in part a previous petition of yours seeking similar records from the Portland Police Bureau. *Petition of Bial*, MCDA PRO 22-20 (2022). We then provided you our own records responsive to the request underlying this petition, redacted consistent with the determinations in the 22-20 order. This petition ensued.

Any person denied the right to inspect a copy of a public record of a local government agency may petition the local district attorney to determine if it has been properly withheld. ORS 192.415(1)(a). However, if the public record at issue is in the custody of an elected official, then "no petition to require disclosure may be filed with the [...] district attorney, or if a petition is filed it shall not be considered by the [...] district attorney." ORS 192.427. Because your petition seeks records in the custody of the Multnomah County District Attorney, an elected official, this office may not consider your petition. See, *Petition of Jenkins*, Att'y Gen. PRO (10/25/2022) (reaching the same conclusion for Attorney General's appellate authority as to records requests directed to the Oregon Department of Justice).

ORDER

Accordingly, the petition is dismissed for lack of jurisdiction.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

¹ This matter is currently pending in the Multnomah County Circuit Court under the name *State v. Knipe*, 22CR37677.