



MIKE SCHMIDT, District Attorney for Multnomah County

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October 31, 2023

via email only

Tanvi Varma
Reporter – KATU2
tvarma@katu.com

Sherisa Davis-Larry
City of Gresham
sherisa.davis-larry@greshamoregon.gov

Re: Petition of Tanvi Varma seeking body-worn camera footage from the
Gresham Police Department

Dear Ms. Varma and Ms. Davis-Larry:

Petitioner, a reporter with KATU, filed a public records petition challenging the Gresham Police Department's denial of a records request for body-worn camera footage documenting Gresham Police Department (GPD) response to calls for service from two individuals at the Landings at Morrison Apartments on June 30, 2023, August 22, 2023, and September 15, 2023. GPD responded that it had no responsive records from June and had six videos responsive to the August and September dates. GPD further noted that a prosecution related to these calls was pending in this office and referred petitioner to us.

In this case there are two exemptions we understand GPD to be asserting: ORS 192.345(3), which exempts criminal investigatory material and ORS 192.345(40), which exempts footage from police body-worn cameras.

For the reasons discussed below, we conclude that the public interest in the orderly conclusion of the pending criminal prosecution outweighs the public interest in immediate access to the footage.

DISCUSSION

A. Criminal Investigatory material – ORS 192.345(3)

ORS 192.345(3) conditionally exempts from disclosure, “investigatory information compiled for criminal law purposes.”

An exemption in ORS 192.345 applies, unless the public interest requires otherwise. The analysis is a two-step process. The first part is to “determine what the competing interests are in disclosure and nondisclosure.” PUBLIC RECORDS AND MEETINGS MANUAL (2019) at 32. The second part is to “weigh those interests and determine which predominates, with the presumption in favor of disclosure.” *Id.*

The Oregon Court of Appeals has stated that, “investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely ‘interfere with enforcement proceedings.’” *Jensen v. Schiffman*, 24 Or App 11, 16 (1976) (quoting 5 U.S.C. s 552(b)(7) as a “persuasive catalog” of the purposes of our own criminal investigatory exemption). Among the purposes identified are to prevent interference with a prosecution and to prevent disclosure of investigative techniques, as well as ensuring a defendant is able to have a fair trial.

Following *Jensen*’s holding, the Attorney General and the Multnomah County District Attorney have uniformly concluded that police reports relating to pending matters are not subject to release. *See, Petition of Garrettson*, Att’y Gen PRO (7/3/1995) (records exempt while district attorney is considering case for prosecution); *Petition of Padgett/Eller*, Att’y Gen PRO (8/15/01) (exemption found applicable while criminal case is on appeal); *Petition of Norman*, MCDA PRO 17-13 (2017); *Petition of Jon Friedman*, MCDA PRO 14-13 (2014); *Petition of Duin for The Oregonian*, MCDA PRO 99-05 (1999); *Foster for The Oregonian*, MCDA PRO 98-03 (1998).

While *Jensen* does not foreclose the possibility that an unusual case would warrant a finding that the public interest in promptly knowing what happened would override the public’s interest in ensuring a thorough investigation of a bias crime in the community, it does provide strong guidance. *Jensen* instructs that, while the criminal investigatory exemption *can* remain in force after the conclusion of a prosecution, the balancing of interests is much more favorable to release at that point.

This particular case involves allegations of threatening behavior against two tenants at the Landings at Morrison Apartment complex.¹ This office has filed criminal charges including multiple allegations of Attempted Burglary, Unlawful Use of a Weapon, Bias Crime, and Menacing. Due to that pending case, this office will refrain from further characterizing the facts beyond stating for purposes of this order that there is undoubtedly a public interest in the investigation of the particular allegations made by the crime victims in this case. The interest of a reporter from a major media outlet, while not independently dispositive, is strong evidence of that interest. However, we believe those interests can be sufficiently addressed in this case by review of non-exempt portions of the video upon the conclusion of the criminal prosecution.

A. Police Body Camera Recordings – ORS 192.345(40)

ORS 192.345(40) conditionally exempts from disclosure,

Audio or video recordings, whether digital or analog, resulting from a law enforcement officer’s operation of a video camera worn upon the officer’s person that records the officer’s interactions with members of the public while the officer is on duty.

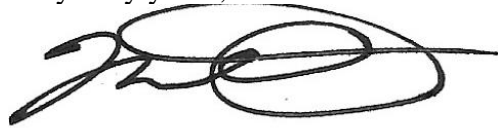
¹ See, Varma, Tanvi, “Another woman alleges harassment by man at Gresham apartment,” KATU, Oct. 12, 2023 (<https://katu.com/news/local/another-woman-alleges-harassment-by-man-at-gresham-apartment>)

As with ORS 192.345(3), this exemption is conditional, applying only unless the public interest requires otherwise. As petitioner has directly requested body-worn camera footage, this exemption applies unless the public interest requires otherwise. Following the lead of the *Jensen* court, for the same reasons articulated in the previous section, we do not find that in this particular case the public interest requires disclosure of any footage prior to the conclusion of enforcement proceedings.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to be "Mike Schmidt", with a large, stylized loop at the end.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon