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via email only

Zaeem Shaikh
Reporter – The Oregonian
zshaikh@oregonian.com

Lisa Rogers
Deputy City Attorney
lisa.rogers@portlandoregon.gov

Re: Petition of the Zaeem Shaikh, on behalf of The Oregonian, seeking internal disciplinary investigation records from the Portland Police Bureau

Dear Mr. Shaikh and Ms. Rogers:

On February 26, 2025, petitioner, on behalf of The Oregonian, submitted a public records request to the Portland Police Bureau for: “All records related to an internal affairs investigation in which a Portland police employee deleted 2,900 files from a server that later had to be restore[d] and allegedly retaliated against his supervisor and division” and “reports from Internal Affairs and the Police Review Board, including the name of the employee and his supervisor, as well as any information on corrective action taken by Police Bureau leadership.”

The City responded by pointing petitioner to the already published, anonymized, Police Review Board (PRB) report and asserting that the remaining records were exempt from disclosure under ORS 181A.674(3). This statute exempts law enforcement disciplinary investigations that do not result in discipline from disclosure under the public records law. Petitioner acknowledges this exemption, but observes that it applies unless “the public interest requires disclosure of the information,” which he argues is the case here. See ORS 181A.674(4)(a).

In summary, the publicly known facts of this episode, taken from the anonymized PRB report, are:

- A PPB officer used derogatory words and curse words towards supervisors after learning the officer was to be transferred to a patrol division.
- The officer admitted to using the language in their internal affairs interview.
- The officer refused to obey orders to stop deleting files from a PPB server.
- The officer acknowledged being given these orders.
- The officer deleted 2,929 files from the server.
- This conduct carried the potential to cause damage to the entire PPB organization.
- This constituted retaliation against the supervisor and their department.
- The files were later restored.

- The PRB recommended the officer be terminated.

I agree with petitioner that the public interest requires release of certain of the materials from this investigation and grant the petition in part.

DISCUSSION

A. Law Enforcement Personnel Investigations – ORS 181A.674(3)

ORS 181A.674(3) provides that:

A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.

ORS 181A.674(4) provides that:

Subsection (3) of this section does not apply: (a) When the public interest requires disclosure of the information.

The requested records are, as petitioner acknowledges, subject to the exemption in ORS 181A.674(3). The dispute is whether the public interest nonetheless requires the disclosure of these records as provided in ORS 181A.674(4)(a). In making a public interest determination under this section, the Supreme Court has instructed that we “must balance the public’s interest in disclosure against the public body’s interest in confidentiality, with the presumption in favor of disclosure.” *ACLU v. City of Eugene*, 360 Or 269, 280 (2016).

Prior to *ACLU* this office used the “*Foster* factors” to weigh the competing interests in access to disciplinary records. *Petition of Foster*, MCDA PRO 96-31 (1997). *Foster* discussed imposed discipline and the application of the exemption in ORS 192.345(12), but we have also held that it provides a useful framework for evaluating investigations that do not result in discipline under ORS 181A.674(3). *Petition of Kerensa*, MCDA PRO 19-20 (2019).

Foster stands for the general principle that findings of “serious” misconduct (as defined to mean termination or discipline for cause based on criminal conduct, abuse of power, or conduct impairing the mission of the agency) should be disclosed while less serious misconduct should not, unless doing so reveals something important about systemic misconduct in the agency or the agency’s administration of its disciplinary process.

The Supreme Court’s instruction in *ACLU* now provides the process and presumption for evaluating this question, not *Foster*. However, while mindful that the presumption is “in favor of disclosure,” the questions in *Foster*’s analysis remain a useful framework within which to identify and balance competing interests, even if the proscriptive language about what “should” or “should not” be disclosed is less useful in light of *ACLU*.

In this case, the public interests in disclosure identified by petitioner are: the magnitude of the conduct, that is it imperiled a portion of PPB’s operations and was serious enough to warrant termination; having a public record of the present incident in the event the officer seeks re-employment as a law enforcement officer in the future; illuminating what safeguards PPB might need to implement to prevent a similar incident in the future.

PPB's interests in confidentiality are: protecting a former employee from public ridicule; ensuring the full cooperation of witnesses in future internal investigations; ensuring officers are not dissuaded from taking appropriate law enforcement action from fear of public airing of baseless or unsubstantiated allegations.

For reasons that cannot be discussed in a public facing order, the interest in an officer's freedom to take appropriate discretionary law enforcement actions without pausing to consider the personal impact of public pillory for exercising that authority is not present in this case.

Here I find that the public interest requires that PPB release an unredacted version of the PRB report and portions of the 18-page June 4, 2024 Internal Affairs investigation report. Of particular note are the above-mentioned detachment from traditional law enforcement activities and the magnitude of the risk to the integrity of PPB's mission posed by the conduct (although, fortunately, the actual impact on its operations proved minimal.) Between these two records the public may understand the allegations and conduct sufficient to satisfy the identified interests in disclosure without further burdening PPB's interests in confidentiality.

As to the investigation report, the following sections shall be released: Header Information; Date of Incident; IA Case #; Complainant; Involved Members Interviewed; Allegations; Applicable Directives on Date of Occurrence; Incident Overview; Investigation Narrative; Interview with [division captain]; Interview with [involved officer]; Investigator Comments; Investigator Recommended Findings. The remaining sections and exhibits may be redacted or withheld. From the sections that I have indicated must be released, PPB may redact the name, but not rank, of bureau staff mentioned other than the division captain, the involved officer, and anyone ranking higher than the division captain.¹ In the section Investigation Narrative, PPB may redact the last seven words of the last sentence of the first paragraph.

Given the release of these items, I do not find that the public interest requires release of the other materials gathered or created during the Internal Affairs investigation.

ORDER

Accordingly, the petition is granted in part. PPB shall release to petitioner an unredacted copy of the PRB memo and a copy of the Internal Affairs investigation report redacted consistent with the discussion above. The petition is otherwise denied. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4).

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 

Adam Gibbs
General Counsel

¹ There is a single reference to a Deputy Chief on page 3.

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.

25-27