



MICHAEL D. SCHRUNK, District Attorney for Multnomah County
600 County Courthouse • Portland, Oregon 97204-1193 • (503) 248-3162

June 18, 1999

Kathryn A. Short
Assistant County Counsel
Office of Multnomah County Counsel
1120 SW Fifth Avenue, Suite 1530
Portland, OR 97204-1977

William G. Gillespie
3120 NW John Olsen Ave #8204
Hillsboro, OR 97234

Re: Petition of William Gillespie, received June 9, 1999, to disclose certain records of the Multnomah County Sheriff's Office and the Merit System Civil Service Council

Dear Ms. Short and Mr. Gillespie:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner William G. Gillespie, requests the District Attorney to order the Multnomah County Sheriff's Office and the Merit System Civil Service Council and its employees to produce a copy of the following record:

All information, in any form used to evaluate and deny the petitioner employment for the position he applied for, namely Lateral Entry Deputy Sheriff Officer.

Petitioner unsuccessfully requested the background investigation information from Multnomah County Chair Beverly Stein, from Leila Wrathall, Executive Secretary to the Merit System Civil Service Council, and from Susan Ayers, Director of Human Resources, Multnomah County Sheriff's Office.

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Kathryn Short, Assistant County Counsel, has issued the attached letter response to the petition dated June 11, 1999. Ms. Short claims exemption for the County agencies under ORS 192.502(4) which provides:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

Ms. Short also maintains that petitioner "waived his right to access these documents when he knowingly executed a waiver." County Counsel's position is consistent with correspondence provided by petitioner from Ms. Wrathall regarding petitioner's unsuccessful appeal before the Merit System Civil Service Council.

Petitioner maintains that the signed waiver is not irrevocable and was provided as the only way to be considered for the position. Petitioner indicates that he does not want to know the identity of persons unless slander or malicious conduct be identified. Petitioner notes that the Sheriff's Office does disseminate the information to other entities and acknowledges that the information might not be accurate.

DISCUSSION

I. Confidential Information Exemption

According to the Attorney General's Public Records Manual, 1997, page 52, the purpose of this exemption is to "encourage citizens to provide relevant information voluntarily to public bodies, with some reasonable assurance that the information will be kept confidential." There are five tests to be met for the exemption to apply:

The informant must have submitted the information on the condition that the information would be kept confidential.

The informant must not have been required by law to provide the information.

The information itself must be of a nature that reasonably should be kept confidential.

The public body must show that it has obliged itself in good faith not to disclose the information.

Disclosure of the information must cause harm to the public interest.

The letter response of County Counsel clearly establishes the exemption is appropriate in this case. The background investigation process is extremely sensitive where law enforcement employment applications are concerned. There is an explicit need for frankness and a corresponding need for confidentiality. Disclosure of background information would, under these circumstances, harm the public interest. Petitioner has not demonstrated a public interest that would override such a conclusion.¹

II. Waiver of Access

Under ORS 192.420 "every person" has a right to inspect any nonexempt public record of a public body in this state. A necessary limitation on that right must be under circumstances where that person has "waived" this right. Petitioner signed an employment application document which specifically acknowledged that

I further understand that neither I nor any persons outside of a law enforcement background investigation process will be granted access to all or any part of the results of this investigation.

There is nothing inherently coercive or unreasonable to require such a waiver as a pre-condition of applying for employment. It is particularly necessary for a law enforcement agency to be able to assure confidentiality to

¹ Although the background investigation material was not produced by either the Sheriff's Office or the Merit Council, this office has had an extensive conversation with Assistant County Counsel Short regarding the investigation and the reasons for the hiring decision of the Multnomah County Sheriff's Office.

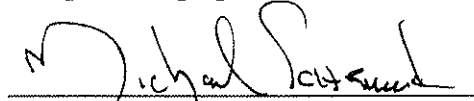
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sources of information in a background investigation. This office is bound to honor the waiver as executed by petitioner.

ORDER

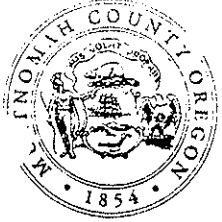
Accordingly, it is ordered that the petition of William G. Gillespie to disclose certain records of the Multnomah County Sheriff's Office and the Merit System Civil Service Council is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Schrunck", written over a horizontal line.

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

99-07



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June 11, 1999

John K. Hoover
Deputy District Attorney
600 County Courthouse
Portland, Oregon 97204

Re: William Gillespie Request for Records

Dear Mr. Hoover:

I am writing in response to your June 10, 1999, fax to the Office of County Counsel regarding Mr. Gillespie's request for records. Perhaps the following background information will put this issue in context.

Mr. Gillespie applied for a deputy position with the Multnomah County Sheriff's Office ("MCSO"). When Mr. Gillespie was not selected for the position, he filed an appeal with the Merit System Civil Service Council. As part of his appeal, Mr. Gillespie requested documents regarding his background investigation and application for employment. The County provided copies of some documents that were responsive to his request, but refused to provide copies of the background investigation. On May 11, 1999, the Merit Council denied Mr. Gillespie's request to receive a copy of the background investigation. The Council notified Mr. Gillespie that he could appeal this ruling to the Board of County Commissioners. On June 8, 1999, the Council signed the minutes and Mr. Gillespie now has 10 days within which to file an appeal with the Board of County Commissioners. Therefore, I believe Mr. Gillespie's request is being properly handled through the Merit System.

Regardless of the foregoing, the records Mr. Gillespie requests are confidential and exempt from disclosure under ORS 192.502(4). Further, Mr. Gillespie waived his right to access these documents when he knowingly executed a waiver. (Exhibit A)

ORS 192.502 provides an exemption to the otherwise expansive public records disclosure laws. ORS 192.502(4) exempts from disclosure:

"Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose information, and when the public interest would suffer by disclosure[.]"

The purpose of this exemption is to encourage citizens to voluntarily provide information to governmental agencies, with some reasonable assurance that the information will be kept confidential.

When deciding whether the conditional exemption applies in a given situation, the public interest at issue must be weighed against (1) the likelihood that disclosure would discourage others from providing information in confidence in the future, and (2) the impact of the disclosure on the particular individual providing information. Here, there is absolutely no public interest at issue. Disclosure of the MCSO background investigation information serves a private interest only: that of Mr. Gillespie.

Even if Mr. Gillespie could somehow establish that the public interest would be served by disclosure of these documents, the resulting harm significantly outweighs any potential benefit. Not only would there be a negative impact on individuals who provided information to investigators who assured confidentiality, but future investigations would be hampered because individuals might not provide information to investigators without such an assurance. Without complete information about an applicant's background, MCSO is seriously disadvantaged in making its hiring decisions, resulting in compromised public safety.

By way of background, when an individual applies for employment with the MCSO, they submit a standard Multnomah County application, which is reviewed for meeting minimum qualifications. If an applicant meets the minimum qualifications, the entire application is reviewed (including answers to supplemental questions) to decide which individuals to interview.¹ These individuals are interviewed, ranked and placed on an eligibility list. According to the ranking on the eligibility list, candidates are asked to complete a Statement of Personal History, which requests information about personal references, credit history, criminal history, educational background, employment history, substance abuse, driving record and so on. Once completed, the applicant signs the Statement of Personal History before a notary and submits it to the MCSO.

¹ Depending on the position, applicants may also be asked to take an examination, e.g. skills test.

While most information provided by applicants is complete and accurate, MCSO cannot rely solely on their statements. Therefore, the background investigation unit of MCSO follows up on information provided in the Personal History Forms by contacting personal and professional references. In order to get forthright and honest responses, investigators introduce themselves, assure individuals and organizations that what they say is confidential and will not be shared with anyone outside the background investigation process, including the applicant. This assurance from investigators allows individuals and organizations to speak freely and honestly. Frequently, former employers will not provide any information until they receive a copy of the signed release, which states in part:

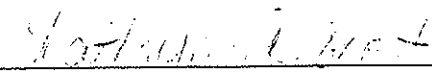
* * * I also understand that the contents and findings of the background investigation are confidential, and will be used for the purpose of background investigations for full time, part time, or volunteer employment with the Multnomah County Sheriff's Office. I further understand that neither I nor any persons outside of a law enforcement background investigation process will be granted access to all or any part of the results of this investigation. With the above statements in mind **I hereby waive any and all rights that I or my representatives may have to read, review, or in any way gain knowledge of the content of the completed investigation.**" (Exhibit A, emphasis added).

The Merit Council found that Mr. Gillespie knowingly and voluntarily signed the waiver. Therefore, Mr. Gillespie waived any rights that he has or may have to access information about his background investigation and cannot circumvent the full force and effect of that waiver simply by making a public records request. Therefore, based on ORS 192.502(4) and the clear and unambiguous waiver, MCSO properly denied Mr. Gillespie's request for background investigation material.

Please contact me if you have any questions or need additional information.

Very truly yours,

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY


By 
Kathryn A. Short
Assistant County Counsel

Enclosure

I solemnly swear and affirm that the answers I have made to each and all of the questions on this application are true and complete to the best of my knowledge and belief, and I agree and understand that any misstatements of material facts contained herein will cause forfeiture on my part to all rights of employment in the services of the Sheriff's Office of Multnomah County, Oregon. I hereby authorize my former employers to furnish their records of my service and my reason for leaving together with all information they may have concerning me, whether on record or not; and I hereby authorize any other agency or individual with knowledge of me to furnish any and all information that they may have concerning me, including all information of a confidential or privileged nature; and I hereby authorize any creditor or bank or other financial institution to furnish its records regarding my financial and credit status; and I do hereby release them from any and all liability for damage on account of furnishing such information.

I understand that questionnaires may be sent to any and all of the references that I have listed on the Statement of Personal History or any other sources that are found during my background investigation. I also understand that the contents and findings of the background investigation are confidential, and will be used for the purpose of background investigations for full time, part time, or volunteer employment with the Multnomah County Sheriff's Office. I further understand that neither I nor any persons outside of a law enforcement background investigation process will be granted access to all or any part of the results of this investigation. With the above statements in mind I hereby waive any and all rights that I or my representatives may have to read, review, or in any way gain knowledge of the content of the completed investigation.

TO BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

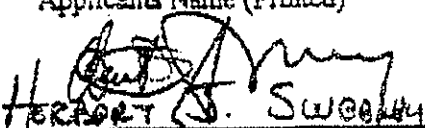

Applicants signature
SEPTEMBER 10 1998
Date signed

State of HAWAII

City & County of HONOLULU

Signed or attested before me on SEPTEMBER 10, 1998

By WILLIAM GEORGE GUILLESPIE
Applicants Name (Printed)


HERBERT S. SWOOLLEY
Notary Public

My commission expires: OCT 3, 2000