



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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August 7, 2003

Therese Bottomly
Managing Editor/News
The Oregonian
1320 SW Broadway
Portland, OR 97201-3499

Debra Haugen
Manager Records Division
City of Portland
Bureau of Police
1111 SW 2nd Avenue
Portland, OR 97204

Re: Petition of Therese Bottomly The Oregonian received July 25, 2003 to disclose certain records of the City of Portland

Dear Ms. Bottomly and Ms. Haugen:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Therese Bottomly requests the District Attorney to order the City of Portland to waive the fees charged for providing the following records:

IN AND OUT OF VEHICLES, (“Copyright 1997, Portland Police Bureau, Manual No.”)

**PORTLAND POLICE BUREAU TRAINING DIVISION,
LESSON PLAN Course Title: Patrol Tactics, Unknown Risk
Traffic Stops**

**POST-SHOOTING PROCEDURES (“Copyright 1997
Portland Police Bureau, Manual #)**

On May 20, 2003, Oregonian reporter Maxine Bernstein submitted an e-mail request to the Portland Police Bureau for its policies and directives relating to traffic stops. On June 6, PPB Records Manager Debra Haugen provided 32 pages of redacted documents with a charge of \$82.00. Ms. Bernstein paid the fee and then petitioned this office under the Public Records Law

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(See PR 03-04) for an order to disclose the redacted material. PPB argued that the redacted material was exempt under ORS 192.501(18), as tactical information.

Oregonian Managing Editor/News, Therese Bottomly, provided this office with a lengthy email on June 12 outlining her understanding of the legislative history that led up to the tactical information exemption. This office provided the legislative history itself to Deputy City Attorney David Woboril, who reviewed the petition and prepared a response on June 16. Ms. Bottomly submitted a June 17 response to the City's arguments.

A June 18 meeting to resolve the issues raised in the public records petition was held in this office between Ms. Bernstein, representatives of the PPB Training Division, Mr. Woboril, and Deputy District Attorney John Hoover. Ms. Bernstein was apprised of certain sensitive information in the redacted training materials and the necessity for the need for discretion in the reporting of such tactical plans. The Bureau representatives, upon the advice of Mr. Woboril and the suggestion of Mr. Hoover, elected to provide the entire set of documents to Ms. Bernstein. PR 03-04 was then denied as moot.

This petition followed, challenging the denial of a fee waiver of the \$82.00 charge, in the public interest. Petitioner argued that the nature of the information is of "paramount interest and importance to the public: what is the expectation of police officers' behavior during a traffic stop and what are the implications of police training in the way Officer Scott McCollister handled himself on duty?" She took the position that the \$82 does not create a financial hardship for the Bureau. "The volume and easy availability of the records requested mean there was no great time and expense necessary to find, gather or copy them." Of primary concern to petitioner was the fact that the fee "was the cost of pay and benefits for less than two hours of work done at the rate of the member who did the redaction." According to petitioner, there was no need to segregate the exempt from the nonexempt materials.

Debra Haugen replied to the petition in a July 31 letter to this office. Ms. Haugen summarized the "actual costs" incurred by the Bureau: "five hours locating, reviewing and redacting certain portions of the 33 pages of documents at an expense of \$205. 85 in labor." Additional time (not charged) was spent determining "exactly what documents needed to be produced." Ms. Haugen argued, "most of these expenses would have been incurred regardless of whether or not we ultimately redacted the information." She estimated the total actual costs to be "in excess of \$250.00."

DISCUSSION

The Public Records Law authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual costs incurred in making records available." ORS 192.440(2). "Actual costs" may include those costs incurred by a public agency in searching for records that

are responsive to the request, in reviewing those records in order to delete exempt material and in excising the exempt portions of records. It also includes other costs incurred in preparing the records for release, such as duplication and special mailing costs. "Actual costs" also may include the costs of attorney time in assisting in the release of documents.

Ms. Haugen charged The Oregonian only \$82.00 for actual costs totaling over \$250.00. This amounts to a 67% fee reduction. The City charged The Oregonian only for the two hours spent by officers of the Training Division to make what they believed to be the necessary redactions of the documents. In hindsight, it may have been appropriate to charge The Oregonian the \$168.00 actual costs and deferred the contested fees pending a review by this office.

Records Manager Haugen noted that the "motivation for the redaction of the training materials made by the Police Bureau Training Division was the belief that release of techniques used by officers in tactical situations could endanger the lives of citizens or public safety officers in future situations if they were widely published and widely known." Ms. Bottomly questioned in a June 9 e-mail to this office whether Ms. Haugen sought guidance from Deputy City Attorney David Woboril before denying the release of the unredacted records. The six-page letter from Mr. Woboril to this office defending the Bureau's position demonstrates the Bureau was fully prepared to litigate the exemption. It might be prudent for the Bureau to accept petitioner's argument that it consult with the City Attorney's Office on controversial positions in the future. Of necessity, the ultimate cost to petitioner would be reflected in that consultation.


Petitioner seeks a complete fee waiver in the public interest. The Public Records Law leaves the decision as to whether or not to reduce or waive fees within the discretion of the agency. Ms. Haugen noted that taking hours of Training Division time "is a significant disruption to the carrying out of their business, as public records issues are not within their normal duties. In addition, the information the Oregonian sought, was not information that was new or brought new light to the public's examination of the case." Petitioner argued "The Oregonian is the state's largest newspaper. It has published many articles on the traffic stop that resulted in the death of Kendra S, James. The circumstances around death have been a matter of intense public debate."

This office reviewed the materials and discussed their contents with Oregonian reporter Maxine Bernstein during the meeting in this office with Deputy City Attorney Woboril and representatives of the Training Division. Suffice it to say, the training manual documents were not of particular significance to the incident involving the death of Kendra James. We conclude that the Bureau's position to further waive or reduce the fees was reasonable.

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ORDER

Accordingly, it is ordered that the petition of Therese Bottomly for The Oregonian for a fee waiver with respect to certain records of the City of Portland is denied.

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon