



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

January 30, 1998

NANCY STURDEVANT  
INTERNAL AFFAIRS  
PORTLAND POLICE BUREAU  
1111 SW SECOND AVENUE  
PORTLAND OR 97204

PETER SLEETH  
THE OREGONIAN  
1320 SW BROADWAY  
PORTLAND OR 97201-3499

Re: Petition of Peter Sleeth, on behalf of The Oregonian, January 7, 1998, to disclose certain records of the Portland Police Bureau

Dear Ms. Sturdevant and Mr. Sleeth:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Peter Sleeth, for The Oregonian, requests the District Attorney to order the Portland Police Bureau and its employees to produce a copy of the following records:

All reports, letters, memos, e-mails and summaries of any complaints against Officer Steven Regalado of the Portland Police Bureau that have been reviewed by Internal Affairs. The request includes, but is not limited to, any "unsubstantiated complaints" against Officer Regalado.

William Bennington, Captain, Internal Affairs for the Portland Police Bureau, granted in part and denied in part petitioner's request in a letter response dated January 14, 1998. Captain Bennington indicated non-sustained complaint files were available but declined to allow on-site inspection and requested the payment of \$492 for the cost of copying the documents and tapes prior to compliance with the request.

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Captain Bennington declined to provide the rest of the files on the basis that they were

exempt from the public disclosure or not discoverable in a criminal case because the files pertain to an investigation in which the charge against one or more involved officer(s) was sustained.

Nancy Ayres, Deputy City Attorney, submitted an oral response to the petition on January 22, 1998 and a written response on January 29, 1998. The city has asserted the conditional exemption under ORS 192.501 (12) for public records of "[a] personnel discipline action, or materials or documents supporting that action." This would apply to sustained complaints in which discipline was imposed. City of Portland v. Rice, 308 Or 118 (1989).

#### DISCUSSION

Petitioner requested a waiver or reduction of all fees associated with the public records request. It is our understanding from telephone conversations with Mr. Sleeth, Ms. Sturdevant and Ms. Ayres that there has been a compromise resolution to the request to inspect the non-sustained complaint files. The Internal Affairs Division will allow a supervised on-site review of the identified files. Costs will be limited to the hourly wage and fringe benefits for the Bureau employee supervising the inspection together with time spent copying any of the documents or tapes requested by the petitioner upon his review of the files. The cost of the copies will be limited to the actual cost of the document copy (ten cents a page?) and/or the tape(s).

With respect to sustained complaint files, this office would take notice of the pending criminal investigation in State v. Steven Anthony Regalado, C 97-10-38615. Mr. Regalado is charged with delivery of marijuana, possession of marijuana, bribe receiving and official misconduct.

ORS 192.501 (3) conditionally exempts criminal investigatory material. "Information compiled in investigations connected with pending or contemplated prosecutions ordinarily will remain confidential because disclosure likely would interfere with law enforcement proceedings." ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL, (1995), p. 25. See Jensen v. Schiffman, 24 Or App 11, 16 (1976).

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It would not be appropriate for the Portland Police Bureau to disclose sustained complaint files until the completion of the current criminal investigation and prosecution.

ORDER

Accordingly, it is ordered that the petition of Peter Sleeth, on behalf of The Oregonian to disclose certain records of the Portland Police Bureau is denied without prejudice to renewal when the criminal investigation is concluded, ORS 192.501 (3) and 192.502 (9).

Very truly yours,

MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County

  
by John K. Hoover  
Deputy District Attorney

JKH:JKH  
cc: Nancy Ayres, Deputy City Attorney  
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