



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

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September 29, 2003

Joseph Rose  
Crime & Justice Writer  
The Oregonian  
1320 SW Broadway  
Portland, OR 97201-3499

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

Re: Petition of Joseph Rose for The Oregonian received September 23, 2003 to disclose certain records of the Portland Police Bureau

Dear Mr. Rose and Ms. Haugen:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Joseph Rose requests the District Attorney to order the Portland Police Bureau and its employees to produce the following record:

**A copy of the police report pertaining to Officer William Moffenbeier's arrest on September 9, 2003 on charges of sex abuse in the third degree, criminal trespass in the first degree, and official misconduct in the first degree.**

On September 10, 2003, Oregonian reporter Joseph Rose submitted a written request to the Portland Police Bureau Records Division for copies of the police reports relating to the arrest of Portland Police Officer William M. Moffenbeier. On September 11, PPB Records Administrative Assistant Veronica Nordeen denied the request.

In a September 23 letter response to this office, Records Manager Debra Haugen claimed an exemption under ORS 192.501(3), Criminal Investigatory Material, based on investigator Daniel McGetrick's concern that "a release of the records at this time could hamper ongoing criminal proceedings." Ms. Haugen also contacted Detective Supervisory Sergeant Wayne Svilar and Senior Deputy District Attorney James McIntyre to discuss the investigation.

## DISCUSSION

ORS 192.501(3) conditionally exempts:

Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute to disclosure or discovery in criminal cases.

An application of the criminal investigatory material exemption requires identification and balancing of the various purposes for secrecy and a determination of the stage of the investigation or prosecution. See Jensen v. Schiffman, 24 Or App 11 (1976). This is a conditional privilege designed to protect active police investigations. "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, 2001, page 32.

Records Manager Haugen relates that Detective McGetrick, Sgt. Svilar and DDA McIntyre "strongly oppose disclosure of the reports at this time." The case is currently under active investigation with a "significant amount of work yet to be completed." According to Ms. Haugen, the detectives and Mr. McIntyre believe that "premature release of this report could be seriously detrimental to the ongoing investigation and/or subsequent criminal law proceedings."

Acting Commander of Detectives, Michael Pace, notified Ms. Haugen that he concurred that premature disclosure "could seriously hamper the investigation and prosecution." We have independently discussed the investigation with Mr. McIntyre who explained at length the need for secrecy until the investigation is completed. We accept the determination of the criminal investigators and prosecutor that, under the circumstances, it would be inappropriate to release the police reports at this time.

The materials sought by petitioner are being carefully maintained and protected from public scrutiny for the limited period of time necessary to complete the criminal investigation. We conclude that the public interest in the orderly progress of the investigation outweighs the public interest in disclosure at this time.

ORDER

Accordingly, it is ordered that the petition of Joseph Rose for The Oregonian to disclose certain records of the Portland Police Bureau is denied without prejudice to renewal upon completion of the criminal investigation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael D. Schrunk". The signature is written in a cursive style with a large initial "M".

MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon