



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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June 26, 2002

Nick Budnick
Willamette Week
822 SW 10th Avenue
Portland, OR 97205

Jacqueline Ann Weber
Multnomah County Attorney's Office
501 SE Hawthorne, Suite 500
Portland, OR 97214

Re: Petition of Nick Budnick for Willamette Week, received June 19, 2002, to disclose certain records of the Department of Community Justice (DCJ).

Dear Mr. Budnick and Ms. Weber:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Nick Budnick for Willamette Week requests the District Attorney to order the DCJ and its employees to produce the following records:

[T]he parole supervision records of Ladon Stephens, who is suspected of killing Melissa Bitler [sic].

Willamette Week reporter Nick Budnick made his written request for the above information to Joanne Fuller, DCJ Director, on June 18, 2002. Maggie Miller, Public Information Officer for DCJ, denied the request in writing on the same date. An exemption was claimed under ORS 192.501(3), Criminal Investigatory Material, as "information compiled in investigations connected with pending or contemplated prosecutions." Ms. Miller took the position that "the exemption extends to prevent disclosure, such as the probation/parole file, that is gathered in a criminal investigation. The District Attorney's Office has informed us that this file is part of the investigation."

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Petitioner expresses a particular interest "in the records of Stephens' supervision *prior* to the Bittler murder." Petitioner does not understand how disclosing those records "could interfere with the investigation that followed that crime." He argues that the decision should be made on a case-by-case basis and that withholding an entire file is an abuse of the county's discretion. Petitioner contends there is a strong and compelling argument to release them. "The safety of Multnomah County residents depends in large part on the competent oversight of convicts released to Community Justice department supervision."

In a June 18 letter response to this office, Assistant County Attorney Jacqueline A. Weber noted, "DCJ is complying with the request of both the investigating agency, Portland Police Bureau, and the DA assigned to the case, Rod Underhill." According to Ms. Weber, Mr. Underhill contacted Ladon Stephens' Parole Officer, Dane Warnke, and requested he bring the supervision file to the detective's command center. PPB Detectives Brooks and Weatheroy copied the file as part of the criminal investigation. Subsequently, Ms. Miller contacted Mr. Underhill, who advised her "not to release any of the file as the whole file was part of an ongoing investigation."

Ms. Weber acknowledged in her letter response the "significant interest" in the manner in which DCJ discharges its duties. However, she contended "there is an even greater public interest in the ability of the police and the DA to investigate and prosecute Mr. Stephens without interference." Ms. Miller provided a copy of the parole records to this office.

DISCUSSION

I. 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 an 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 30.

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We have reviewed the parole file and discussed the investigation with both Senior Deputy District Attorney Rod Underhill and lead Portland Police Bureau Detective John Brooks. We accept the determination of the criminal investigator and prosecutor that, under the circumstances, Ladon Stephens' parole supervision file should be incorporated into the active criminal investigation.

There are several reasons for inclusion of this specific file in the investigation. First, Ladon Stephens' supervision file continues to be a vital part of the ongoing criminal investigation. Second, Stephens is charged in 21 counts of the 31-count indictment with being a dangerous offender. The State must prove that Stephens "is suffering from a severe personality disorder, indicating a propensity toward crimes that seriously endanger the life or safety of another." See ORS 161.725. Third, Stephens is charged with 9 counts of Aggravated Murder. At sentencing, the State will of necessity explore Stephens' criminal and supervision history. See ORS 163.150.

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.

We agree with the position of petitioner that there is a "public interest involved in knowing the details of Stephens' treatment and oversight, as the oversight of sex offenders is a matter of great public concern." Upon completion of the criminal investigation, it will be appropriate to give careful consideration to disclosure of the requested information.

ORDER

Accordingly, it is ordered that the petition of Nick Budnick for Willamette Week to disclose certain records of the Department of Community Justice is denied without prejudice to renewal upon completion of the criminal investigation.

Very truly yours,



MICHAEL D. SCHRUNK

District Attorney
Multnomah County

02-07