



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

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June 26, 2002

Charles F. Hinkle  
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Portland, OR 97204

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

Re: Petition of Charles Hinkle for The Oregonian, and its staff reporter, Maxine Bernstein, received June 17, 2002, to disclose certain records of the Department of Community Justice (DCJ).

Dear Mr. Hinkle and Ms. Weber:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Charles Hinkle for The Oregonian requests the District Attorney to order the DCJ and its employees to produce the following records:

**[A]ll of the parole supervision records on Ladon Andre Stephens.**

Oregonian reporter Maxine Bernstein made her e-mail request for the above information to Maggie Miller, Public Information Office for the DCJ, on May 31, 2002. Ms. Miller denied the request in an e-mail dated June 6, 2002. An exemption was claimed under ORS 192.501(3), Criminal Investigatory Material, as a current, ongoing criminal investigation. Ms. Miller took the position that "[t]he scope of the exemption extends to prevent disclosure, such as the probation/parole file that are [sic] 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 argues that the DCJ is wrong for two reasons. First, parole supervision records maintained by the DCJ do not constitute "investigatory information compiled for criminal law purposes." The public records were created and are maintained by the "supervisory authority" as part of DCJ's duties in supervising Ladon Stephen's parole. Second, assuming the parole records fall within the scope of the exemption, "the public interest requires disclosure in the particular instance." Petitioner contends that since Stephens has been charged with committing very serious crimes during the time he was on parole, "there is a very high public interest in obtaining information as to how government officials carry out their duties."

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

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confidential because disclosure likely would interfere with law enforcement proceedings." Attorney General's Public Records Manual, 2001, page 30.

Petitioner first argues that the parole supervision file is not covered by the exemption. We respectfully disagree and would refer petitioner to the position of the Attorney General.

In a public records order, we concluded that the scope of the exemption for criminal investigatory information extends to prevent disclosure of documents not originally created for, but later gathered for, criminal law enforcement purposes. In reaching our conclusion, we noted that the United States Supreme Court construed the nearly identical provision in the federal Freedom of Information Act exempting "records or information compiled for law enforcement purposes."

Attorney General's Public Records Manual, 2001, page 33.

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 "[t]here is significant public interest in the manner in which the Multnomah Department of Community Justice discharges its parole supervisory duties, particularly in a case in which the State has now accused a person of committing serious crimes while under the Department's supervision." Upon completion of

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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 Charles Hinkle for The Oregonian 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,



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MICHAEL D. SCHRUNK

District Attorney

Multnomah County

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