



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

600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

September 17, 1999

Anne Jaeger  
KOIN NEWS 6  
222 SW Columbia  
Portland, OR 98682

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

Re: Petition of Anne Jaeger for KOIN NEWS 6 received September 8, 1999, to disclose certain records of the City of Portland

Dear Ms. Jaeger and Ms. Haugen:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Anne Jaeger for KOIN NEWS 6 requests the District Attorney to order the Portland Police Bureau and its employees to produce the following records:

**[T]he names of officers under investigation for timesheet abuse  
and all information regarding their discipline**

Petitioner made her request for the above information to Portland Police Sergeant Cheryl Kanzler. Debra Haugen, Records Division Manager, denied the request in a letter dated August 23, 1999. Ms. Haugen noted that "the investigation regarding 'timesheet' abuse is currently being re-reviewed by the District Attorney's Office as a possible criminal matter." An exemption was claimed under ORS 192.02(3), Criminal Investigatory material, "at least until they have completed their process."

Ms. Haugen also cited ORS 192.501(12), Personnel Discipline Actions. "While proposed discipline resulting from the internal investigation by the Police Bureau is pending for several

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Reference was made to the Attorney General's advice that agencies await the disciplinary determinations before making any disclosure of information, particularly when the outcome may be impacted by the District Attorney's review.

## DISCUSSION

### **I. Criminal Investigatory Material Exemption**

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, 1997, page 28.

In evaluating this public record petition, we have been in contact with Norm Frink, Chief Deputy in charge of felony prosecutions, who advised that disclosure of the reports would impede the integrity and success of the criminal investigation. Ms. Haugen noted in her letter that she spoke with Lieutenants Erv McGeachy and Steven Bechard who advised that they believed "premature release of any information from the investigation would be inappropriate and could potentially hamper ongoing and future law enforcement proceedings that may result."

We conclude that the public interest in the orderly progress of this investigation outweighs the public interest in disclosure at this time.

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## II. Personnel Discipline Action Exemption

ORS 192.501(12) conditionally exempts:

A personnel discipline action, or materials or documents supporting that action[.]

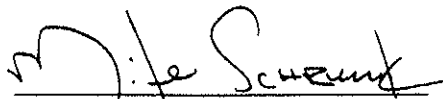
The exemption only applies to materials or documents that support completed disciplinary actions when a sanction is imposed. The Attorney General has pointed out that neither the exemption nor court decisions specify how the statute applies when a person seeks records in a file in a pending personnel disciplinary matter. "We believe, however, that in those circumstances a public body may postpone action on the request until the personnel matter is finally resolved, in order to determine whether those records are exempt." Attorney General's Public Records Manual, 1997, page 35.

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 and administer the appropriate internal discipline. We agree with the position of petitioner that "the public has a right to expect that officers are held accountable for their actions." Upon completion of the criminal and internal investigation, it will be appropriate it give careful consideration to disclosure of the requested information.

### ORDER

Accordingly, it is ordered that the petition of Anne Jaeger for KOIN NEWS 6 to disclose certain records of the Portland Police Bureau is denied without prejudice to renewal upon completion of the criminal investigation and internal discipline process.

Very truly yours,



MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF POLICE

VERA KATZ, MAYOR  
Charles A. Moose, Chief of Police  
1111 S.W. 2nd Avenue  
Portland, Oregon 97204

September 13, 1999

John K. Hoover  
Deputy District Attorney  
600 County Courthouse  
Portland, OR 97204

Dear Mr. Hoover:

Re: Petition of Ann Jaeger, September 8, 1999 to disclose certain records of the Portland Police Bureau. (Overtime investigation.)

I have very little to add to my response to Ms. Jaeger on this matter. As explained in the denial letter to her, the overtime abuse investigation is currently being re-reviewed as a possible criminal matter by your office. Further, as I understand it, there is also at least some possibility of an investigation at the federal level, as most of the monies obtained inappropriately were from a federal grant. With so many of the potential criminal aspects of this case still so uncertain, investigators Lt. Erv McGeachy and Lt. Steven Bechard advise that they believe premature release of any information from the investigation would be inappropriate and could potentially hamper ongoing and future law enforcement proceedings that may result. As such, we claim the investigation as exempt under ORS 192.501(3) Criminal Investigatory Material.

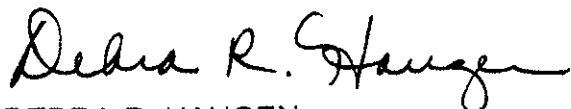
To further complicate the issue, there is the matter of the internal disciplinary process. While the investigative portion of internal investigation is basically complete, the disciplinary process is far from finished. Discipline has been proposed for several officers, but the officers have not yet had an opportunity to present any mitigating factors to the Chief, or pursue mediation, arbitration and other options as allowed them by their labor agreement. As you know, ORS 192.501(12), Personnel Discipline Actions exemption, applies to completed disciplinary actions where a sanction is imposed. Because it cannot be determined if the exemption is applicable until the process is completed, Attorney General Hardy Myers in the Attorney General's Public Records and Meetings Manual states that a "public body may postpone action" on a request for disclosure, "until the personnel matter is finally resolved, in order to determine whether those records are exempt." It appears to us that this case clearly fits this description.

The one exception to applying these exemptions would be if release would be in the "public interest." While the public is extremely *interested* in this investigation, the statute applies when it is to the public *benefit* to do so. I do not see anywhere in Ms. Jaeger's

letter where she has made a case for release being in the "public interest", as defined by the Attorney General. If her comment: "We believe the public has a right to expect that Officers are held accountable for their actions." Is meant to do that, I would offer that premature disclosure of information is as likely to hamper that end as help it.

If you have any further questions about this response, please do not hesitate to contact Deputy City Attorney, Mary Danford or myself.

Sincerely,

A handwritten signature in black ink that reads "Debra R. Haugen". The signature is written in a cursive style with a large, looped initial "D".

DEBRA R. HAUGEN  
Manager  
Records Division

DRH/drh

C: DCA Mary Danford  
Captain Smith/IAD  
Sgt. Cheryl Kanzler/PIO