



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

July 24, 1998

DEBRA HAUGEN
POLICE RECORDS MANAGER
PORTLAND POLICE BUREAU
1111 SW SECOND AVENUE
PORTLAND OR 97204

LARS LARSON
OREGON NEWS 12
PO BOX 3401
PORTLAND OR 97208

Re: Petition of Lars Larson, on behalf of KPTV,
December 18, 1997, to disclose certain records of
the Portland Police Bureau

Dear Ms. Haugen and Mr. Larson:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Lars Larson, for KPTV, requests the District Attorney to order the Portland Police Bureau and its employees to make available for inspection the following records:

[A]ll records relating to the shooting of Officer Colleen Waibel and the death of suspect Steven Dons (E mail petition received July 16, 1998).

Debra Haugen, Manager of the Records Division of the Portland Police Bureau, denied the petitioner's request in a letter response dated June 18, 1998.¹ Ms. Haugen cited the criminal investigatory material exemption of ORS 192.501 (3) which conditionally exempts

Investigatory information compiled for criminal law purposes.

¹ Petitioner failed to include either his original written request to the Portland Police Bureau or the written response from Ms. Haugen. The petition was, accordingly, rejected for review until the necessary documentation was received in this office on July 20, 1998.

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Petitioner has disputed the position of the Police Bureau and contends that

"...even if some of the records meet this exemption, we dispute that all of them do. If some of them are subject to release, it's the duty of the public agency to segregate them (E mail petition dated July 16, 1998).

In response to our notice letter of July 20, 1998, Ms. Haugen submitted an explanation of her denial in the attached letter dated July 22, 1998. The police bureau has compiled 700 to 800 pages of reports under seven report numbers. Ms. Haugen contacted Portland Police Bureau Captain Greg Clark and Multnomah County Deputy District Attorney James McIntyre who are adamant that "premature release of these reports could hamper ongoing law enforcement proceedings related to the [Colleen Waibel/Steven Dons] incident."

DISCUSSION

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, p. 28 (1997).

In evaluating this public records petition, Senior Deputy District Attorney James McIntyre, assigned to the Dons homicide investigation, advises that Jeffrey Moore, co-defendant of Steven Dons, is being prosecuted for offenses arising out of the homicide investigation and that a trial date is scheduled for August 11, 1998. Mr. McIntyre indicates that the investigation is continuing and that all the reports generated in the Colleen Waibel shooting and the death of Steven Dons are related to the criminal investigation and prosecution of Jeffrey Moore. Mr. McIntyre is of the opinion that no reports should be released until the prosecution of Mr. Moore is completed.

Ms. Haugen, speaking for the Portland Police Bureau, asserts that the investigative information sought in this public records petition "is critical and directly related to the pending prosecution of Jeffrey Moore." Further, Ms. Haugen states that it

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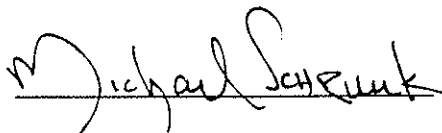
would be "a futile [and prohibitively costly] attempt to separate exempt material from releasible data contained within this voluminous case file..." Ms. Haugen justifiably relies on the judgment of Captain Clark and Deputy District Attorney McIntyre that the reports "are so inextricably intertwined with the Moore prosecution that they cannot reasonably be separated."

We agree with the reasoned judgment of the public officials in charge of the pending criminal investigation as well as the custodian of the records in question. The public interest in the orderly progress of the Moore criminal investigation outweighs the public interest in disclosure at this time.

ORDER

Accordingly, it is ordered that the petition of Lars Larson, on behalf of KPTV to disclose certain records of the Portland Police Bureau is denied without prejudice to renewal when preliminary investigation is concluded, ORS 192.502 (9).

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County

JKH:jkh
cc: Mary Danford, Deputy City Attorney

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