



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

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October 29, 2008

Brad Schmidt  
The Oregonian, East Metro News Bureau  
295 N.E. Second St.  
Gresham, OR 97030

Heather Pauley  
Senior Assistant City Attorney  
City of Gresham  
City Attorney's Office  
1333 N.W. Eastman Parkway  
Gresham, OR 97030-3813

Re: Petition of Brad Schmidt for The Oregonian received October 15, 2008, to  
disclose certain records of the City of Gresham

Dear Mr. Schmidt and Ms. Pauley:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Brad Schmidt for The Oregonian requests the District Attorney to order the Gresham Police Department and its employees to produce a copy or copies of the following records:

#### **1. Gresham Police Department internal affairs reports pertaining to Officer Scott Cunningham.**

On September 18, 2008, Gresham Senior Assistant City Attorney Heather Pauley made an email response to petitioner's request for the internal affairs reports on Officer Scott Cunningham. Ms. Pauley took the position that "the public interest in confidentiality outweighs the public interest in disclosure." She noted that "the City has the same concern about protecting employees from ridicule and embarrassment as well as a concern about employees and the public being candid during investigations." In response to the petition, Ms Pauley claimed the investigations were exempt under ORS 192.501(12), Personnel Discipline Actions.

Petitioner related his understanding of a 2005 incident: "Officer Cunningham was assigned to the Gresham Police Department K-9 unit when his police dog, Lex, bit his 5-year-old niece in the face. The city later was sued and agreed this year to a \$200,000 insurance settlement, one of the largest in recent city history." Petitioner then related his understanding of

an incident this year where Officer Cunningham “while at a K-9 conference on the Oregon coast, again let his police dog off his leash. The incident may have involved another dog and non-police guests at the hotel.”

Petitioner expresses a concern that “Officer Cunningham’s oversight of police dogs could lead to future lawsuits against the city. The public should know if disciplinary action has been taken against the officer, given the previous lawsuit settlement and the subsequent allegations.”

Ms. Pauley, in a lengthy confidential letter to this office, argues that petitioner has already informed the public about the first incident. Further, she maintains that neither of the complaints is criminal, there was no theft of City property, nor is his ability to engage in effective law enforcement being challenged. According to Ms. Pauley, there is no evidence to suggest the discipline imposed was unduly harsh or lenient. Again, Ms. Pauley objects to the added humiliation that Officer Cunningham would endure if the internal affairs reports were disclosed.

#### DISCUSSION

ORS 192,501(12) conditionally exempts “A personnel discipline action, or materials or documents supporting that action[.]” This is a conditional exemption that may be overcome if it is shown that “...the public interest requires disclosure in the particular instance[.]”

The City of Gresham provided this office, in confidence, an opportunity to review a complete set of the two investigations as well as the discipline imposed on Officer Cunningham. Both petitioner and the City of Gresham have alluded to the *Foster* principles used by this office to evaluate requests for discipline files of a public agency. Suffice it to say, none of the criteria for disclosure are to be found in the two internal investigations.

Officer Cunningham is not a high-ranking officer. The conduct was off-duty and non-criminal in nature. In the second instance, there is no evidence civilians were placed in danger or that violence was involved. For purposes of this Order, the City has authorized a limited reference to Ms. Pauley’s letter. Officer Cunningham was reprimanded in both instances and has now resigned from the K-9 Unit. Under these circumstances, there would be no public purpose served by disclosure of the two investigations.

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ORDER

Accordingly, it is ordered that the petition of Brad Schmidt for The Oregonian to disclose certain records of the City of Gresham is denied.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

