



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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June 12, 2008

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

Heather Pauley
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 June 2, 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 for the past 18 months.

On May 16, 2008, Gresham Assistant City Attorney Heather Pauley made a letter response to petitioner's request for "a copy of completed police internal affairs investigations from 2007 to the present." Ms. Pauley noted at the time that she had identified six internal affairs investigations from 2007 to the present. She claimed the investigations were exempt under ORS 181.854(3), Personnel Discipline Action and ORS 192.501(12), Unfounded Discipline Action.

In a series of email exchanges over the next two weeks, the parties argued whether or not the public interest required disclosure of the internal affairs reports. Petitioner took the position that investigations into serious misconduct by police are in the public interest. He also maintained that the disciplinary decision record of Gresham Chief Carla Piluso was an issue in her race for a position on the Multnomah County Board of Commissioners. The City argued that

the need for candid and truthful investigations together with the need to protect employees from ridicule and embarrassment weighed against disclosure.

On June 6, 2008, Ms. Pauley provided to this office five separate reports of completed investigations. She noted that there were, in fact, three additional internal affairs investigations still pending. In addition to the above exemptions, Ms. Pauley asserted the names of the employees and witnesses were exempt under ORS 192.502(2), Personal Privacy.

DISCUSSION

ORS 181.843(3) states: "A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee." ORS 192.501(12) exempts: "A personnel discipline action, or materials or documents supporting that action[.]" This exemption only applies, however, when discipline has been imposed. Both exemptions are conditional and disclosure is required if it is in the public interest in the particular instance.

We reviewed each of the lengthy reports. Two of the completed reports resulted in sustained discipline. One complaint was sustained in part. One investigation was not sustained and one investigation ended with the retirement of the Gresham police officer.

Petitioner correctly points out that police officers are public officials, at least for purposes of libel. That does not end the inquiry under the public records law. The supervisory level of the officer, the presence of systemic or illegal conduct, or the appearance of the arbitrary or irrational administration of discipline by management are all factors to be considered in evaluating the public interest.

The police officers involved in the internal investigations here are not high-ranking members of the Gresham Police Department. The nature of the conduct (whether sustained or not) is not extraordinary and raises no questions of corruption or serious wrongdoing. The discipline imposed appears to be reasonable and not unduly harsh. In other words, the files disclosed no public interest to be served in either airing the complaints or the sanctions (when imposed).


Most significantly, this office could find nothing in the materials that even hinted at a disagreement with the police union over the process of the internal affairs investigations, the various levels of management review, or in the ultimate actions of Chief Piluso. The public interest argument of petitioner cannot be sustained here.

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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

08-07