



MICHAEL D. SCHRUNK, District Attorney for Multnomah County
600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

November 1, 1999

Mark Sanchez
KOIN TV
222 SW Columbia
Portland, OR 97201

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

Re: Petition of Mark Sanchez for KOIN TV received October 22, 1999, to disclose certain records of the City of Portland

Dear Mr. Sanchez and Ms. Haugen:

BACKGROUND

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

ANY and ALL information pertaining to police personnel -- uniformed and plainclothed -- who responded to the Pavel Guzenko incident October 12, 1999.

[T]he NAMES and RANKS of the responding officers plus their TENURE with the Portland Police Bureau.

[A]ll POLICE reports filed about the encounter.

[I]nformation disclosing SUSTAINED COMPLAINTS about excessive use of force involving the responding officers in the Guzenko encounter.

November 1, 1999

Re: Petition of Mark Sanchez

Petitioner made his request for the above information to Portland Police Sergeant Cheryl Kanzler. Debra Haugen, Records Division Manager, denied the request in a letter dated October 15, 1999. With respect to the police reports of the Pavel Guzenko incident, Ms. Haugen noted that the investigation was still in the very early stages and claimed exemption as Criminal Investigatory Material under ORS 192.501(3). Ms. Haugen also advised petitioner that the incident was being investigated by the Internal Affairs Division and claimed exemption as Personnel Discipline Actions under ORS 192.501(12). With respect to past sustained complaints of responding officers, Ms. Haugen again cited ORS 192.501(12).

On October 27, 1999, Ms. Haugen submitted a letter response to the petitioner's filing with this office. Ms. Haugen provided nine pages of police reports for this office to review. The Police Bureau is no longer asserting the Criminal Investigatory Material exemption "as the matter is no longer under criminal investigation." Ms. Haugen cautions that upon completion of the internal investigation, the matter may again become a criminal matter. The Police Bureau continues to rely on the Personnel Discipline Action exemption with respect to all the material requested by petitioner.

In regard to the initial police report, Ms. Haugen recites the position of Internal Affairs Division Captain Bret Smith that this document "is the 'core' of the internal investigation." Captain Smith believes that "release of it or any of the witness or officer names at this time could potentially interfere with this investigation." Ms. Haugen rejects petitioner's argument that there is currently a compelling interest for disclosure. "The compelling *benefit* to the public comes after a thorough investigation into the intent and actions of the officers." Ms. Haugen contends that the time for a "compelling interest in disclosure" may come but that it has not yet arrived. Any past sustained complaints against any of the officers would, according to Ms. Haugen, be similarly exempt at least until the current investigation is complete.

DISCUSSION

ORS 192.501(12) 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 [.]" Until recent amendments to the Public Records Law, the exemption only applied when discipline had been imposed.¹ The new legislation extends the exemption to unfounded discipline actions.

¹ The Attorney General has pointed out that neither the exemption (for sustained complaints) nor court decision specify how the statute applies when a person seeks records in a file in a pending personnel 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.

We would also make reference to the recent Oregon Court of Appeals decision of City of Portland v. David Anderson and The Oregonian, CA A101699, decided October 27, 1999. In that case, the Court upheld the disclosure of the personnel discipline action materials regarding the sustained discipline of Portland Police Bureau Captain John Michael Garvey.

Of significance to the Police Bureau is the Court of Appeal's discussion of public interest even when dealing with allegations of off-duty, non-criminal and not *per se* illegal conduct:

The public has a legitimate interest in confirming his integrity and his ability to enforce the law evenhandedly. The police investigation that resulted in discipline concluded that Garvey had engaged in sexual conduct through an escort service that may serve as a front for prostitution. That information bears materially on his integrity and on the risk that its compromise could affect the administration of his duties. Portland v. Anderson, page 3.

The general rule in Oregon with respect to public records favors disclosure. Portland v. Anderson, page 2. This office continues to be guided by the principles enunciated in our Public Records Order, February 6, 1997, *Foster*, involving the disciplinary records of Gresham police Sergeant James Kalbasky. We have taken the liberty of attaching a recent example of our application of the *Foster* guidelines to the noncriminal conduct of two Gresham Fire Department employees, *Esteve*, dated October 20, 1999. In both *Foster and Esteve*, the records supporting the disciplinary sanctions were ordered disclosed in the public interest.

Here, the Police Bureau will be faced with resolving on-duty allegations of misconduct including the use of excessive force. This office has concluded that disclosure now would be premature. However, on completion of the internal investigation, absent additional compelling arguments, we see no reason to withhold disclosure.

///
///
///

Page 5

November 1, 1999

Re: Petition of Mark Sanchez

ORDER

Accordingly, it is ordered that the petition of Mark Sanchez for KOIN TV to disclose certain records of the Portland Police Bureau is denied without prejudice to renewal upon completion (within a reasonable period of time) of the personnel discipline investigation.

Very truly yours,

/s/

MICHAEL D. SCHRUNK

District Attorney

Multnomah County