



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

October 2, 1998

Barbara Simon
Multnomah County Sheriff's Office
12240 NE Glisan St
Portland, OR 97220

William Birhanzl
11125 SE 202nd Ave
Boring, OR 97009

Re: Petition of William Birhanzl, September 23, 1998, to disclose certain records of the Multnomah County Sheriff's Office

Dear Ms. Simon and Mr. Birhanzl:

Background

On this public records petition, ORS 192.410 et. seq., petitioner William Birhanzl, requests the District Attorney to order the Multnomah County Sheriff's Office and its employees to make available for inspection the following records:

- 1) The Multnomah County Sheriff's internal employee name and telephone number list;
- 2) The 8 1/2" X 5" document containing various internal S.O. information including Fax numbers which Barbara Simon described to me 8-28-98;
- 3) MCSO Report Case 98-40387.

Barbara Simon, Public Information Officer for the Multnomah County Sheriff's Office, responded in part to the petitioner's request in a letter to the petitioner dated September 3, 1998 (letter attached as Exhibit A). Ms. Simon provided the telephone numbers which appear in the U.S. West Telephone Directory together with the Fax number for the Hanson Building. Ms. Simon declined to provide individual phone or other fax numbers because "it would impede our ability to conduct the business of the Multnomah County

Page 2
October 2, 1998
RE: Petition of William Birhanzl

business of the Multnomah County Sheriff's Office." Ms. Simon had not yet processed the request for the MCSO report. Petitioner then filed his public records petition.

Jacqueline A. Weber, Assistant County Counsel, responded by letter to the petition (letter attached as Exhibit B). Ms. Weber took the position that the disclosure of the "internal" fax and telephone information "could have a significant impact on the safety and security of Sheriff's Office facilities and operations." County Counsel argued that allowing the public the ability to send incoming faxes "could interfere with the staffing and operation of MCSO correctional and other facilities."

Ms. Weber pointed out that internal telephone numbers "are to be accessed by justice system personnel who have a need to conduct official, sensitive, and often confidential business." She noted that the disclosure of these internal numbers to the public has the potential for the "inadvertent leak of confidential information, which could cause a threat to the facility, its staff, inmates and/or the public."

With respect to the request for MCSO report case 98-403687, County Counsel indicated that it involved a case currently under investigation and was therefore exempt from disclosure pursuant to ORS 192.501(3). This office has subsequently been advised by Ms. Weber that the Sheriff's Office has agreed to release the report. Petitioner's request for the MCSO report is, therefore, moot.

Discussion

Petitioner made a public records request of the Multnomah County Sheriff's Office for phone numbers and fax numbers. Petitioner was provided with the "public" telephone numbers for eighteen departments of the Multnomah County Sheriff's Office as well as the fax number at the Sheriff's Office Hanson Building. As a result, petitioner has the ability to communicate with employees of the Sheriff's Office both by telephone and by fax. There has, therefore, been compliance with the public records request.

Petitioner has gone beyond the request to the Sheriff's Office in his petition to the District Attorney's Office by demanding we order the disclosure of the internal communication telephone and fax numbers maintained by the Sheriff's office. We conclude that these numbers are outside the purview of the Public Records Law. Even if viewed as public records, such the number lists are exempt from disclosure as criminal investigatory material, ORS 192.501(3) and law enforcement public safety plans, ORS 192.501(18).

Page 3
October 2, 1998
RE: Petition of William Birhanzl

Public records are defined by ORS 192.410(4) to include "...any writing containing information relating to the conduct of the public's business..." This definition establishes a limitation on those writings which constitute a public record.

If one takes a literal approach to the matter, anything reduced to writing would be a public record. A more realistic and practical analysis leads to the conclusion that lists of codes and numbers involving the safety and security of the public agency itself must be excluded from the definition of a public record.

There are numerous codes and numbers of a highly sensitive nature used in any public business or enterprise such as access codes for storage gates or other locks, safe combinations, access codes for computers, and pin numbers for credit cards. These internal codes may (and probably should) be recorded on a list maintained by the public business or enterprise. However, these internal codes (including telephone numbers) should be considered essential tools of the public agency and not "information relating to the public business."

The various internal telephone and fax lines used in the enforcement and correctional departments of the Sheriff's Office (as opposed to the numerous lines available to the public and provided to petitioner), are intended to be restricted to justice system personnel for law enforcement purposes. If a list of such numbers is considered a public record, it must remain confidential.

The responsibility of the Sheriff's Office is to maintain the safety and security of the citizens of Multnomah County, the inmates in the various correctional facilities, as well as its employees including deputy sheriffs, correctional officers, and unsworn personnel. The availability of internal telephones and fax machines are vital to the success of this mission. Emergency communications, hostage negotiations, Presidential visits, SERT and drug missions, inmate movements, and communications with the courts would be severely compromised by the "public" use of internal telephone and fax lines.

The Public Records Law recognizes the need for maintaining the secrecy of public safety plans if disclosure would "...endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved." ORS 192.501(18). Similarly, the criminal investigatory material exemption of ORS 192.501(3) has been recognized by the courts as necessary when disclosure would endanger the life or physical safety of law enforcement personnel. See Jensen v. Schiffman, 24 Or App 11, 16 (1976).

Page 4
October 2, 1998
RE: Petition of William Birhanzl

The communication resources of the internal telephone and fax lines is the lifeblood of public safety plans and criminal investigations and should be considered as exempt as the plans and investigative material itself.

ORDER

Accordingly, it is ordered that the petition of William Berhanzl, to disclose certain records of the Multnomah County Sheriff's Office is denied.

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County

JKH:jkh
cc: Jacqueline Weber, Assistant County Counsel

98-22