



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

December 31, 1997

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

CINDY HAMILL
OREGON NEWS 12
PO BOX 3401
PORTLAND OR 97208

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

Dear Ms. Haugen and Ms. Hamill:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Cindy Hamill, for KPTV, requests the District Attorney to order the Portland Police Bureau and its employees to produce a copy of the following records:

The arrest report in which Portland police officer Jason Pierce allegedly used excessive force. The incident happened the first week in December, 1997. (Letter petition received December 18, 1997 referred to a December 8, 1997 request to the Portland Police Bureau).

Frank Hudson, deputy city attorney for the City of Portland, denied the petitioner's request in a letter response dated December 12, 1997. Mr. Hudson cited the criminal investigatory material exemption of ORS 192.501 (3) which conditionally exempts

Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim." (Letter response dated December 12, 1997).

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The Manager of the Portland Police Bureau Records Division, Debra Haugen, was provided with a copy of the petition on December 19, 1997.¹ She has interpreted the petition of Ms. Hamill as a request for arrest information of a victim of an alleged excessive force complaint against a Portland Police officer. Ms. Haugen has contacted three members of the Detective Division who strongly believe that "it is critical to the criminal investigation of the incident that the arrest report be exempted from disclosure at this time." Ms. Haugen has reiterated the claimed exemption under ORS 192.501(3) on the ground that "there is a clear need to delay disclosure of the subject's identity and location until the investigation into the incident is further progressed." (Letter response dated December 19, 1997).

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. 25 (1995). That type of investigatory material is not requested in this public record petition and has not been received or reviewed by this office as part of the petition.

Petitioner has sought the more limited information contained in the report of an arrest or the report of a crime. This is considered an exception to the exemption. As stated in the Attorney General's Public Records Manual, p. 26 (1995):

¹Ms. Haugen has pointed out in her response that the public records request was not directed to the appropriate "custodian" of records in this instance. As we have made clear to KPTV in the past, requests for records in criminal cases made under the Public Records Law are to be made to the "Records Division, Custodian of Records, Attn: Debra Haugen" rather than to the Public Information Officer, the City Attorney, or the Mayor's Office. This will avoid the confusion, misunderstanding, and consequent delay in the response of the Portland Police Bureau.

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"This exception is clarified by the list of the types of information included within those terms. The listed information contained in arrest records and crime reports should be disclosed promptly upon request unless a clear need exists for delaying disclosure during the course of a specific investigation [emphasis added]."

In evaluating this public records petition, we have been in contact with Portland Police Captain Greg Clark and Senior Deputy District Attorney Jim McIntyre. We have been advised of the details of a specific investigation, an explanation as to why disclosure of the arrest report information would impede the integrity and success of the investigation, and a request for a short delay in disclosure as essential to completion of the preliminary investigation. The arrest report of the complainant should be available for release on or about January 15, 1998. Such a brief delay is appropriate under the circumstances. The public interest in the orderly progress of that investigation outweighs the public interest in disclosure at this time.

ORDER

Accordingly, it is ordered that the petition of Cindy Hamill, 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 192.501 (3) and 192.502 (9).

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County

MDS:WG
cc: Frank Hudson, Deputy City Attorney
97-50