



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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March 24, 2009

Damon Woodcock
Woodcock Investigations
4803 SE Woodstock Blvd. #107
Portland, OR 97206

Christopher Paille
Portland Police Bureau
Records Division
1111 SW 2nd Ave Rm 1126
Portland, OR 97204

Re: Petition of Damon Woodcock, received March 17, 2009 to disclose certain records of the Portland Police Bureau.

Dear Mr. Woodcock and Mr. Paille:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Damon Woodcock requests the District Attorney to order the Portland Police Bureau to disclose an unredacted version of the following records:

1. **PPDS name record for Jerome Enrico Cuie (DOB: 01/25/90)**
2. **PPDS name record for Audrey Ines Lane (DOB: 08/30/89).**
3. **PPB Case #08-27584, specifically all DOB's, all phone numbers, and complete witness information (Name, sex, race, DOB, address, phone number).**

Petitioner faxed his request for the first two items to PPB Records Custodian Christopher Paille on January 25 and January 29, 2009. He sent his request for the third item by email on February 13, 2009. The Police Bureau responded by providing the records for Mr. Cuie and Ms. Lane with the date of birth redacted. The police report was provided to petitioner with the dates of birth and phone numbers of Ms. Lane and Mr. Cuie redacted. Data on a listed witness was entirely redacted.

The City claimed exemption of the redacted information under ORS 192.502(2), Personal Information. In a March 19, 2009 email to this office, Mr. Paille noted the "burgeoning crime of identity theft" and the efforts of the Police Bureau to protect "dates of birth and other identifying

information.” He argued that petitioner failed in his burden to show that “public disclosure would not constitute an unreasonable invasion of privacy.” The witness information in the police report (from request #3) was redacted on the basis that the individual was a juvenile.

DISCUSSION

Personal Privacy Exemption

ORS 192.502(2) conditionally exempts:

Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

“The purpose of this exemption is not to prevent disclosure of personal information, as such, but rather to protect privacy from unreasonable invasion.” Jordan v. MVD, 308 Or 433, 441 (1989). Only personal information that would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption.

The Police Bureau is, in good faith, attempting to protect the citizenry by controlling the release of certain public information. As petitioner noted in his March 24, 2009 email to this office, “criminals have been stealing other people’s identities as far back as anyone can remember.” We are well aware of the explosion of identity theft prosecutions and the need for people in the community to guard their personal information from enterprising criminals. Unfortunately, a public agency has limits on its ability to keep things to itself.

There are many exemptions in the Public Records Law designed to restrict the dissemination of information in the public interest such as Criminal Investigatory Material, ORS 192.501(3), Civil Rights Investigatory Material, ORS 192.501(8), Unsafe Workplace Investigation Materials, ORS 192.501(17), Public Safety Plans, ORS 192.501(18), and Security Measures. ORS 192.501(23).

The exemption asserted by the City has a certain threshold requirement. “[T]he information is not exempt absent an individualized justification for exemption.” Attorney General’s Public Records Manual, 2008, p. 67. This determination must be made on a case-by-case basis. A blanket policy of nondisclosure is not enforceable. Guard Publishing v. Lane County School Dist, 310 Or 32, 38-40 (1990).

March 24, 2009

Petition of Damon Woodcock

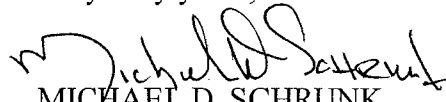
The necessary case-by-case analysis has not been done by the City (or at least presented to this office). A blanket non-disclosure policy, however well-intentioned, is simply not enforceable. See Guard Publishing Co. v. Lane School Dist. There is no indication Mr. Cuie, Ms. Lane or the “juvenile”¹ witness have safety concerns warranting the application of the exemption.

If a categorical exemption for certain personal information is deemed necessary in our 21st Century society, the City should make its case to the legislature. ORS 192.502(3), for example, exempts “[p]ublic body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body...” At this time, personal information of citizens who encounter the police, such as names, dates of birth, phone numbers, and addresses, does not enjoy quite the same protection.

ORDER

Accordingly, it is ordered that the City of Portland promptly disclose the records sought in the above petition. Disclosure of the documents ordered is subject to payment of the City of Portland’s fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

¹ The witness listed in the police report was 18 years of age at the time of the incident. For purposes of ORS 192.502(2), he is an adult.

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such a court action within 7 additional days thereafter.