



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

December 1, 1997

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

ERIC J. NEIMAN  
ATTORNEY AT LAW  
TOOZE DUDEN CREAMER FRANK & HUTCHISON  
333 SW TAYLOR STREET  
PORTLAND OR 97204-2496

Re: Petition of Eric Neiman, for Providence Medical Center, November 13, 1997, to disclose certain records of the Portland Police Bureau

Dear Ms. Haugen and Mr. Neiman:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Eric J. Neiman, for Sisters of Providence dba Providence Medical Center, requests the District Attorney to order the Portland Police Bureau and its employees to produce a copy of the following records:

The Police Bureau's entire case file, including but no limited to the file on investigative reports, witness interview notes, correspondence and memoranda, relating to Case. No. 97-97897, involving an alleged incident involving [a named adult female and adult male." (Letter petition received November 19, 1997).

Debra Haugen, Records Division Manager of the Portland Police Bureau, denied the petitioner's request and cited the personal privacy exemption of ORS 192.502 (2) which 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

Page 2  
December 1, 1997  
RE: Petition of Eric Neiman

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 Police Bureau argues that the records contain references to a woman's "sexual activity and mental health" which "are deemed highly personal and private to most people." The Police Bureau found no overriding public interest and concluded that a release of the information "would easily fall into the category of an 'unreasonable invasion of privacy.'" (Letter response dated and received November 24, 1997).

#### DISCUSSION

Two questions must be answered as a threshold matter when considering a privacy record's claim:

- 1) whether the information is of a personal nature, and
- 2) whether disclosure unreasonably invades privacy.

Jordan v. Motor Vehicles Division, 308 Or 433, 781 P2d 1203 (1989).

A review of the record in question leaves no doubt that an affirmative answer to both questions would be appropriate. The report contains detailed references to intimate sexual events as well as references to mental health medications and treatment. The information in the report is the kind which, although not provided in confidence, is clearly intended not to be shared with strangers or become common public knowledge. It is worthy of note, however, that Records Manager Haugen could find nothing in the records to indicate an individualized privacy interest.

Of course, the public records law is predominately a disclosure statute not a privacy statute. Consequently, public bodies for the most part are not obligated to claim exemptions from disclosure under this law, although they may do so. Even when the statutory exemption claim is left to the discretion of the public agency, a cautious exercise of the discretion may be needful.

Jordan v. MVD, supra, goes on to note that a public interest may require disclosure in the particular instance. The exemption applies and may only be erased in favor of disclosure if either:

- 1) clear and convincing evidence of the public interest in disclosure of the record is produced, or
- 2) if the showing of unreasonable invasion is overcome.

Page 3  
December 1, 1997  
RE: Petition of Eric Neiman

Petitioner, in response to a request from this office, presented answers to the two questions above. (Petitioner letter dated November 26, 1997). According to petitioner, Providence Medical Health System operates the Crisis Triage Center pursuant to a contract with Multnomah County. There is an investigation being conducted by the Behavioral Health Program of the Multnomah County Department of Community and Family Services. Petitioner believes that the alleged victim of the County investigation is the same person involved in the public records requested from the Portland Police Bureau. The public interest asserted by the petitioner is the issue of quality care at the Crisis Triage Center.

In a telephone conference with Bill Toomey, administrator of the Behavioral Health Program, we were advised that there is such an investigation and that, in due course, any and all police reports concerning the alleged incidents would be requested pursuant to statutory authority. Mr. Toomey further stated that petitioner was present during an interview of a person named in the police reports and that Providence Medical Center was cooperating in the investigation.

With respect to the invasion of privacy question, petitioner asserts that the same information "may have been disclosed during the County investigation and to at least one acquaintance of the alleged victim." Petitioner argues that "there is no reason to think that disclosure of the public records would discourage others from providing information in confidence to the Portland Police Bureau in the future."

In a telephone conference with the petitioner, it was agreed that the nature of the police report required a great deal of sensitivity in protecting the privacy of the alleged victim. Consequently, petitioner agreed that, if released, the report would be maintained by petitioner and Providence Medical Center as if it were a hospital record up to the point when a claim is initiated or a suit is filed. (Neither the Portland Police Bureau, the petitioner, or Mr. Toomey has any information of threatened litigation. A search of the office DACTS system reveals no entry.)

Although a close question, we find sufficient public interest in disclosure of the records in this particular instance and that, although there is an invasion of privacy, it will be minimal and is reasonable under the circumstances.

Page 4  
December 1, 1997  
RE: Petition of Eric Neiman

ORDER

Accordingly, it is ordered that the Portland Police Bureau promptly disclose all records sought in the above petition. Disclosure of the documents ordered is subject to payment of the Police Bureau'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

  
by: John K. Hoover, OSB 72125

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 issued within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within 7 additional days thereafter.

JKH:WG  
cc: Frank Hudson, Deputy City Attorney

97-48