



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

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November 21, 2007

Matthew C. Ellis  
Kell, Alterman & Runstein, LLP  
520 SW Yamhill, Ste 600  
Portland, OR 97204-1329

Randall M. Killinger  
Captain, Records Division  
City of Portland  
Bureau of Police  
1111 SW Second Avenue  
Portland, OR 97204

Re: Petition of Matthew C. Ellis, dated November 13, 2007, to disclose certain records of the City of Portland

Dear Mr. Ellis and Captain Killinger:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Matthew Ellis on behalf of an unnamed client requests the District Attorney to order the Portland Police Bureau and its employees to produce the following records:

#### **Police Report for Case No. 07-38750**

Petitioner made his request for the above information to the Records Division on November 7, 2007. The request was denied on November 8, 2007. An exemption was claimed under ORS 192.496(1), records less than 75 years old regarding physical or mental health or psychiatric care. In his petition, Mr. Ellis maintained that the report is not covered by the statute, that the report contains no exempt information, and that disclosure would not constitute an unreasonable invasion of privacy.

In response to the petition, Captain Randall Killinger notes that the "Hooper Detoxification Center is a medical treatment facility for alcohol and substance abuse." He argues that petitioner has made no showing that disclosure is in the public interest or that disclosure would not constitute an unreasonable invasion of privacy to the treated individual.

In a November 19, 2007 reply to Captain Killinger, petitioner raises the possibility of police wrongdoing and reveals that the request "is made on behalf of a concerned citizen who was present at the time of the interaction and witnessed such wrongdoing." Mr. Ellis also argues that the City's position "stretched the narrow exemption much too far."

### DISCUSSION

ORS 192.496(1) conditionally exempts:

Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

This office is sensitive to the privacy and confidentiality rules and policies guiding the actions of the employees of Hooper Memorial. Such interests would be materially undermined if the identity of a person taken to Hooper in a routine police action were the subject of public knowledge and discussion. The question raised by petitioner is whether the circumstances of the incident itself is of such public importance that disclosure is necessary and would not be an unreasonable invasion of privacy.

The report does not reflect the commission of a crime or illegal conduct. There is no indication the named subject is a public figure. It would be an unreasonable invasion of the privacy of this individual to disclose his name or any identifiers. There are such identifiers on both pages of the Investigation report and on the first page of the Use of Force report. Those references should be redacted as exempt under ORS 192.496(1) as reports of physical care or treatment of a living individual.

The public nature of the disturbance and the actions of Portland Police Officers establishes some public interest that outweighs a blanket exemption of the report. This office is mindful of the public interest in confidentiality with respect to information relating to the Hooper Memorial facility. We have identified specific references such as "DRUNK C/F," "civil hold," "Detox," and "DK," on the two-page Investigation report, and the words "intoxicated" and "detox" on the Use of Force report. Those references should be redacted as well.

ORDER

Accordingly, it is ordered that the City of Portland promptly disclose the records sought in the above petition subject to redaction of words such as "detox," "civil hold" or the state of any person's intoxication as well as any identifiers of the subject of the reports. 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

By   
John K. Hoover  
Deputy District Attorney

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.