



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204-1193 • (503) 248-3162

February 27, 1998

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

MAUREEN O'HAGEN
WILLAMETTE WEEK
822 SW 10TH AVE.
PORTLAND OR 97205

Re: Petition of Maureen O'Hagen, for Willamette Week,
dated February 18, 1998, to disclose certain records
of the Portland Police Bureau

Dear Ms. Haugen and Ms. O'Hagen:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Maureen O'Hagen, for Willamette Week, requests the District Attorney to order the Portland Police Bureau and its employees to produce a copy of the following records:

The Long Gun Study (Letter petition received February 18, 1998).

Debra Haugen, Records Division Manager of the Portland Police Bureau, denied the petitioner's request and cited the Law Enforcement Public Safety Plans exemption of ORS 192.501 (18) which exempts:

Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure thereof would endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved[.]

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Petitioner provided helpful research information at the request of this office regarding the AR-15 rifle which was, in turn, submitted to the Portland Police Bureau. The District Attorney's Office received a more detailed exemption letter (attached) from Ms. Haugen together with the unedited Long Gun Study and a proposed redacted version. The Police Bureau reiterated its claimed exemption under ORS 192.501(18). In addition, portions of the study are claimed to be exempt under ORS 192.502(1), Internal Advisory Communications, which states:

Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

DISCUSSION

The District Attorney's Office received a forty five page document titled **Long Gun Option Study**, dated November 1997, authored by Portland Police Officer Lawrence P. O'Dea. There is a two page introduction, a one page index, a nineteen page report, a one page appendix, and twenty two pages of supporting documents. It is a document composed of surveys, tests, operational and material facts, opinions, conclusions and recommendations.

This office also received an edited version of the study prepared by Portland Police Bureau Firearms Program Supervisor Sergeant Larry Baird. Sgt. Baird works under the supervision of Training Unit Lieutenant and former S.E.R.T. Commander Dave Benson. Lt. Benson assisted Sgt. Baird in the editing process, according to Ms. Haugen. There are redactions on thirty nine pages of the study which appear to be incisive, limited and the result of a great deal of thought and effort.

The areas of redaction can be summarized as follows:

1. Factual information. Present long gun (shotgun) performance, liability, accuracy, use, and limitations. Penetration data and comparisons, ammunition features, superior features of the carbine, training, stand-off distance, and range.
2. Advice. Survey opinions, benefits, and recommendations.

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I. Public Safety Plan Exemption. The Police Bureau expresses in its letter response a concern that release of the redacted information could "potentially endanger police and citizens, or might hamper police in a future tactical situation." Release of such information might be a detriment to the "element of surprise" that gives police some level of advantage in a law enforcement activity.

The Police Bureau has not acted in an arbitrary and capricious manner in editing the Long Gun Option Study but, instead, has relied on the expertise and many years of experience of Sgt. Baird and Lt. Benson. The District Attorney's Office is satisfied that the redacted information fits within the exemption of ORS 192.501(18). As stated in the ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL, p. 35 (1995):

The exemption recognizes that law enforcement agencies must maintain an element of surprise to prevent someone from circumventing these plans and rendering them useless in providing protection.

II. Internal Advisory Communications. The Police Bureau has made a few limited redactions of the report which can be characterized as advisory statements and not purely factual materials. Most of the opinions and recommendations have not been edited. The specific advisory statements redacted from the study relate to the factual information redacted under the public safety plan exemption. Again, the District Attorney's Office is satisfied with the restrained efforts of Sgt. Baird and Lt. Benson.

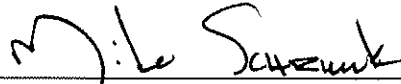
Material is exempt under the advisory exemption only if the interest in encouraging frank communications clearly outweighs the public interest in disclosure. Needless to say, opinions and recommendations about life and death issues involving police officers and citizens take on a different tone if made in confidence than in public debate. This is particularly true with respect to an evaluation of the current long gun versus the proposed AR-15 carbine. Frank communication is essential in a proper evaluation of the benefits and liabilities of the respective weapons. The exemption applies in this case.

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ORDER

Accordingly, it is ordered that the Portland Police Bureau promptly disclose the redacted version of the records sought in the above petition, subject . 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

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 court action within 7 additional days thereafter.

JKH:TT

98-5



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

VERA KATZ, MAYOR
Charles A. Moose, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

February
December 20, 1997⁸

John K. Hoover
Deputy District Attorney
600 County Courthouse
Portland, OR 97204

Dear Mr. Hoover:

Re: Petition of Maureen O'Hagen for Willamette Week, to disclose certain records of the City of Portland Oregon Bureau of Police Long Gun Study

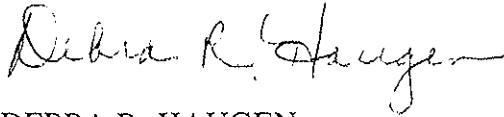
I have received your letter regarding the above public records request. Enclosed are two copies of the "Long Gun Option Study". One copy is an exact duplicate of the original study. The second has had several areas of the report redacted. The redaction was completed by Police Bureau Firearms Program Supervisor, Sgt. Larry Baird. Sgt. Baird works under the supervision of Training Unit Lieutenant and former S.E.R.T. Commander Dave Benson. We are suggesting that the redacted version be released to Ms. O'Hagen in lieu of providing her with the entire document. In doing this we have attempted to provide Ms. O'Hagen with as much as possible of the information she is requesting without making public certain details about the capabilities, strengths and weaknesses of current and possibly soon to be purchased Police Bureau weapons. It is our concern that release of the redacted information could potentially endanger police and citizens, or might hamper police in a future tactical situation. We believe this material is exempt under ORS 192.501(18), the Law Enforcement Public Safety Plans exemption. By involving Sgt. Baird and Lt. Benson in the redaction, we are relying on their expertise and many years of experience to determine what information made public might be a detriment to the "element of surprise" that gives police some level of advantage in a law enforcement activity.

The areas of the study that have been redacted deal with distances in which the weapons are effective, the penetration potential of ammunition, accuracy, ease of useability, and a variety of other details that could put police at a disadvantage if the information were widely known. While we do realize that it is possible for a person who took the time to go to the library or search the Internet to obtain some of the information contained in this report, we believe it not to be the course most persons involved in criminal activity would take. On the other hand, providing it to a newspaper with a widespread, free distribution makes the information accessible in a manner that

seems counter to the police and the general public's best interest. We are quite willing to provide information about cost to taxpayers and to discuss in general terms why the Police Bureau is asking for the purchase of more efficient weapons. In addition, at least portions of this study are exempt as internal advisory information under ORS 192.502(1). We ask that in those areas where public and police officer safety might be negatively impacted, the weighing of the public's need to know and the potential danger to that same public be in favor of the protection of human life.

If you have any further questions, please feel free to contact me at 823-0056.

Sincerely,

A handwritten signature in cursive script that reads "Debra R. Haugen".

DEBRA R. HAUGEN
Manager
Records Division

DRH/drh

c: Mary Danford, Deputy City Attorney
Lt. Cliff Madison/PIO
A/C David Butzer/Services