



**ROD UNDERHILL**, District Attorney for Multnomah County

1021 SW 4<sup>th</sup> Ave., 600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

July 28, 2015

Carli Brosseau  
The Oregonian  
1320 S.W. Broadway  
Portland, OR 97201

Tony Garcia  
Deputy City Attorney  
1221 S.W. 4th Ave., Suite 430  
Portland, OR 97204

Re: Petition of Carli Brosseau for The Oregonian requesting unredacted records relating to Portland Police rape kits.

Dear Ms. Brosseau and Mr. Garcia:

In her public records petition under ORS 192.410 et seq., petitioner Carli Brosseau, on behalf of The Oregonian, requested the district attorney to order the City of Portland to release the following records:

**All rows in the property evidence table related to a rape kit.**

The request refers to a spreadsheet maintained by the Portland Police Bureau and used to track information about sexual assault kits they have gathered. The spreadsheet contains information about sexual assault kits collected between 1980 and 2015. The city provided Ms. Brosseau with a copy of the spreadsheet with certain columns of data redacted. The disclosed spreadsheet contains the following columns of data: property receipt number, seizure date, barcode, item type, incident type, delivering officer, investigator, respond date, approving officer, and delivered to description.

After discussion between the parties, Ms. Brosseau has agreed to limit the scope of her request and now seeks an order to release only the following additional columns of data from the spreadsheet: the police case number associated with each entry, the victim's ZIP code, and the hospital at which the evidence was collected.<sup>1</sup> The city has already agreed to provide the information on the hospitals at issue if petitioner will pay the cost—estimated at \$40—of reviewing the data and redacting any children's hospitals from the list.

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<sup>1</sup> Ms. Brosseau had also requested the dates the kits were sent to and received by the Oregon State Police Crime Lab. The city has asserted, and we have confirmed, that the spreadsheet that is the subject of this records request does not contain these data. Ms. Brosseau has filed a separate records request for this information, which is still pending with the Portland Police Bureau.

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As to the other columns the city has asserted the following exemptions to the public records law: information of a personal nature (ORS 192.502(2)), confidential submission (ORS 192.502(4)), and child abuse reports (ORS 419B.035). For the reasons explained below we grant Ms. Brosseau's petition, subject to certain redaction.

## DISCUSSION

### A. Information of a Personal Nature

ORS 192.502(2) exempts from disclosure:

Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure 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.

As a general rule the public body has the burden of establishing an individualized privacy interest as to each record sought. The Supreme Court held in *Guard Publishing Co. v. Lane County School District* that a blanket policy of nondisclosure is not enforceable. 310 Or 32, 38-40 (1990). Two decades after *Guard Publishing*, the Jackson County Sheriff refused a public records request for the names of all concealed carry permit holders in his county. He claimed that the very purpose of the license was secrecy and that disclosure could lead to embarrassment or theft. In rejecting this argument the Court of Appeals held:

Those hypothetical purposes do not satisfy the sheriff's burden of proof, because they do not establish individualized bases for nondisclosure. Put another way, the sheriff has failed to satisfy his burden because he has not connected his stated purpose with any particular individual, as required by *Guard Publishing Co.*

*Mail Tribune v. Winters*, 236 Or App 91 (2010)

We have previously ordered the disclosure of records, including those that identify the victims of alleged sexual assault, because of the public body's failure to demonstrate an individualized invasion of privacy. *In re petition of Slovic for Willamette Week*, MCDA PRO 10-07 (2010) (disclosure ordered as to notices of tort claim including those identifying victims alleging sexual abuse); see also *In re petition of Beaven for The Oregonian*, MCDA PRO 12-13 (2012 (names of owners of grave plots)); *In re petition of Damon Woodcock*, MCDA PRO 09-02 (2009) (blanket policy of redacting victim identifiers from police reports to be disclosed impermissible). The city has made no individualized showing as to any victim in this case.<sup>2</sup>

In two specific circumstances we have recognized that disclosure of information is presumptively an unreasonable intrusion even absent an individualized showing: medical

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<sup>2</sup> We recognize the practical difficulty in obtaining individualized evidence regarding victims' privacy interests on the time line required by the public records law. However, we are bound by clear precedent on this question and may not substitute our independent judgement for that of the courts.

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information and graphic factual details of rape. *In re petition of Hinkle for The Oregonian*, MCDA PRO 05-03 (2005) (“Disclosure of any medical information is presumptively an unreasonable invasion of privacy”); *In re petition of Franzen for The Oregonian*, MCDA PRO 04-02 (2004) (factual details ordered redacted from police reports prior to disclosure as there is no public interest in knowing exactly how horrifying a rape was).

Having compared our previous orders in *Slovic* and *Franzen* as they relate to privacy in sexual assault cases, we cannot say that disclosure of a police case number is presumptively an unreasonable invasion of privacy absent an individualized showing. As to the other data, neither the ZIP code in which the victim lived at the time of the incident nor the hospital at which the evidence was collected are information that identify an individual and, as such, their disclosure is not an unreasonable invasion of privacy under these circumstances.<sup>3</sup>

B. Confidential Submissions

ORS 192.502(4) exempts from disclosure:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

To sustain a claim of exemption under ORS 192.502(4) the public body has the burden of showing that:

1. The informant must have submitted the information on the condition that it would be kept confidential.
2. The informant must not have been required by law to provide the information.
3. The information itself must be of a nature that reasonably should be kept confidential.
4. The public body must show that it has obliged itself in good faith not to disclose the information.
5. Disclosure of the information must cause harm to the public interest.

A failure of proof on any one prong will defeat a claim of exemption. With respect to the fourth element, the only showing the city has made is the assertion in its response that, “during the criminal investigation, the city requested this information in confidence and upon reassurance

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<sup>3</sup> We recognize that we have previously reached the opposite conclusion with respect to disclosure of ZIP codes. *In re petition of Hinkle for The Oregonian*, MCDA PRO 05-03 (2005). In that case we had ordered that names of individuals receiving city disability payments be disclosed. We held that the name together with a ZIP code was “tantamount to disclosing the full address itself” given other publicly available databases. Contrary to *Hinkle*, here we do not require release of the victims’ names. Absent disclosure of a name a ZIP code is a gross geographical locator and not an unreasonable invasion of privacy.

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that the city will not voluntarily release information that might identify [the person] as a victim of rape.” Although an unsupported statement is a weak record on which to base a claim of policy or regular practice, we need not reach that issue. As discussed above, we do not believe that the information relating to the hospital in which the police gathered the evidence, the ZIP code of the victim at the time of the incident, or the police case number are “information that might identify the victim.” The city has not established that it obliged itself to keep secret the specific information sought by petitioner.

C. Child Abuse Reports

ORS 419B.035 exempts from disclosure:

Reports and records compiled under the provisions of ORS 419B.010 to 419B.050[.]

ORS 419B.020 provides that, upon receiving a report of possible child abuse, law enforcement “shall immediately cause an investigation to be made to determine the nature and cause of the abuse.” The statute specifically contemplates the collection of sexual assault kits as a part of this investigation. ORS 419B.020(6)–(7). Child abuse is defined to include any rape of a child or sexual abuse of a child. ORS 419B.050(1)(a)(C)–(D).

This office has consistently and strictly interpreted ORS 419B.035 in prior public records orders. We have concluded that redaction of reports is insufficient to satisfy the requirements of the statute. ORS 419B.035 creates an absolute prohibition on the release of any record relating to a child abuse investigation. See, *In re petition of Jon Friedman*, MCDA PRO 14-13 (2014) (refusing to release records relating to open child abuse prosecution); *In re petition of Denson for The Oregonian*, MCDA PRO 04-07 (2004) (police released a redacted police report relating to a child sex abuse investigation, we questioned whether even a redacted report should have been released and refused to order an unredacted disclosure); *In re petition of Glanville for The Oregonian*, MCDA PRO 95-06 (1995) (“The Gresham Police Department has no authority to release this [child abuse] report; nor does this office have any authority to order its disclosure.”)

However innocuous a particular piece of information may seem, any record generated by an investigative agency relating to the investigation of child abuse as defined in ORS 419B.050(1)(a) is unconditionally exempt from disclosure under the public records law. Of the substantial number of records already partially disclosed to petitioner, 156 have an incident type of “CHILD ABUSE.” We will not order the city to produce additional information as to these cases.

D. Open Cases

The city has asked that, if ordered to reveal any of the requested data, it be permitted to redact any information relating to open prosecutions. The City has not claimed any specific exemption relating to these records nor provided any reason or argument why disclosure of the additional information sought would have a greater effect on any open case than the information it has already provided voluntarily. Performing the proposed redaction would require a time consuming, and accordingly expensive, hand check of individual case numbers.

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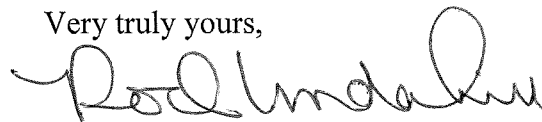
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The city has already disclosed much of the information relating to open cases, which likely explains its choice not to claim these records are protected by the criminal investigatory materials exemption contained in ORS 192.501(3). The city has also already provided a unique identifier as to each case: the property receipt number associated with the sexual assault kit. Because we have concluded above that the requested information cannot realistically be used to identify the victims of sexual assault, we see no significant public interest in keeping the balance of the information requested by petitioner secret. As this office does not evaluate claims of exemption not raised by the parties we express no opinion on the applicability of ORS 192.501(3) to the facts of this case. *In re petition of Mayes for The Oregonian*, MCDA PRO 94-02 (1994).

**ORDER**

The petition is granted subject to redaction of any information resulting from an investigation of child abuse. The City of Portland is ordered to promptly disclose all records responsive to this request that do not relate to a child abuse investigation. This disclosure is subject to payment of fees to the city, if any, not exceeding the actual cost in making the information available.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

**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's 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 seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.