

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

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July 1, 2016

Carli Brosseau The Oregonian 1500 SW First Avenue, Suite 400 Portland, Oregon 97201

Ashley Berman Sr. Assistant City Attorney City Attorney's Office 1333 NW Eastman Parkway Gresham, Oregon 97030

Re: <u>Petition of Carli Brosseau</u>, for The Oregonian, requesting a spreadsheet maintained by the Gresham Police Department listing known gang associates

Dear Ms. Brosseau and Ms. Berman:

In her public records petition, dated June 13, 2016, petitioner Carli Brosseau, on behalf of The Oregonian, requests this office to order the City of Gresham to disclose the following records:

# the database table or spreadsheet that lists designated gang members and gang affiliates.

Ms. Brosseau graciously agreed to waive the seven-day deadline under ORS 192.465(1) to permit a full consideration of this case. During the pendency of this appeal, Ms. Brosseau first narrowed her request somewhat and the City of Gresham subsequently agreed to provide a redacted version of the spreadsheet containing many, but not all, of the data fields sought by Ms. Brosseau. We appreciate both parties' willingness to compromise and narrow the dispute.

The Gresham Police Department (GPD) maintains a spreadsheet listing the details of individuals whom it has documented as associates of criminal organizations. As of the date of this petition, that spreadsheet contains 214 entries. The spreadsheet contains the following fields: Gang, Moniker (the person's street name), Last, First, Mid, DOB (date of birth), R[ace], S[ex], ODL (the person's Oregon Drivers License number), Address, Comments (details relating to physical identifiers such as scars and tattoos), Entry (the date the person was entered into the spreadsheet), GAR (date of the person's last gang activity report), and Parole/Probation (details of the person's supervision status including his or her parole officer, current custody status and location, and reporting office).

At this office's request, pursuant to ORS 192.470(2), GPD has provided us with a copy of the redacted spreadsheet as well as a summary of the substance of the redacted fields. In visual summary, below are two of the 214 entries as GPD has presently agreed to disclose them:

	Gang	Moniker	Last	First	Mid	DOB	R	s	ODL	Address	Comments	Entry	GAR	Parole/ Probation
	Blood						В	M				2/13/16	2/13/16	
Ī	18 St						H	M				5/15/15	5/15/15	

GPD also prepared, and has disclosed to petitioner, a statistical summary that reports the frequency of incidence of various years of birth on the list (i.e. the ages of those on the list presented in such a way as to not associate the age with any other item), the number of males and females on the list, and the number of each racial group on the list.

Among these redacted records petitioner still seeks the following information 1) for juveniles or adults whose contact was not associated with an arrest: City, State, ZIP (but not street address), Parole/Probation, and year of birth; 2) for adults where the record is associated with an arrest: all fields.

As discussed further below, we conclude that certain additional information can be disclosed without identifying a specific individual.

#### DISCUSSION

## A. Criminal Investigatory Material – 192,501(3)

ORS 192.501(3) conditionally exempts from disclosure,

Investigatory information compiled for criminal law purposes.

We believe there is a legitimate law enforcement interest in not publicly disclosing a reference list from which anyone may determine which members of a gang have and have not been identified by law enforcement. The public has an interest in effective functioning of law enforcement in the area of gang suppression activity. The public likewise has an undeniable interest in monitoring law enforcement to ensure that its activities are carried out in an even-handed manner. To those ends, disclosure of demographic data, gang names, contact dates, and any other information that would not identify a specific individual is in the public interest.

As previously noted, GPD has now agreed to disclose the vast majority of non-identifying data. However, the following data are also non-identifying in our assessment: the portions of the address field showing the city, state, and ZIP of residence (if available); year of birth as associated with a particular record.<sup>1</sup>

## B. Information of a Personal Nature – 192.502(2)

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

<sup>&</sup>lt;sup>1</sup> GPD's decision to redact the entire applicable columns (DOB and Address) is most likely an administrative efficiency since hand redacting each cell would be laborious and, accordingly, expensive for petitioner. While we are ordering GPD to disclose this information, it may well be that the added benefit of these data to petitioner are not worth the costs associated with its redaction. We leave that issue to be resolved between the parties.

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invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

GPD has asserted that disclosure of the identifying details of the individuals on this list would constitute an unreasonable invasion of those individuals' privacy. We reject this assertion without further discussion because GPD has not offered an individualized basis for non-disclosure as to any particular record. *Mail Tribune v. Winters*, 236 Or App 91 (2010), *In repetition of Schmidt for The Oregonian*, MCDA PRO 15-32 (2015),

## C. Form of Disclosure

In the interest of avoiding a subsequent request for this office's intervention, although not specifically raised by the parties, we briefly address the form of the required disclosure. ORS 192.440(3) governs the format in which digitally stored data must be provided and that is: "the form requested, if available." And, if not available in that format, then "in the form in which the custodian maintains the record."

ORS 192.440(4) specifically contemplates that the public agency may have to spend time formatting the requested data to meet the requirements of ORS 192.440(3) and provides that the agency may pass those costs on to the requesting party.

Where a requestor seeking digitally stored data does not specify the format in which he or she wishes to receive the data, the agency may provide it in whatever format it chooses (but should only charge fees commensurate with whatever the least expensive means of providing the data is, whether or not it chooses to use that particular method). If a specific format is requested, then the agency must either provide it in that format or, if the data do not exist in that format and the agency does not wish to take the time to put it in that format, in the raw format that the agency stores it. To be clear, an agency is not required to provide data in the format requested by a public records request. However, the only alternative to not doing so for digital data is to provide it in exactly the format that the agency itself stores it. The main deterrent to a records requestor making onerous formatting demands is that any costs incurred tailoring the data to the requestor's specification may be charged to the requestor. ORS 192.440(4)(a).

#### ORDER

The petition is granted as to the city, state, and ZIP code and the year of birth in each cell and denied as to the remaining data.

Very truly yours,

ROD UNDERHILL

District Attorney

Multnomah County, Oregon

<sup>&</sup>lt;sup>2</sup> This office has previously held that we lack the statutory authority to determine whether or not fees requested by an agency are reasonable. *In re petition of Babcock*, MCDA PRO 15-22 (2015).

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# **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.

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