



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

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

July 22, 2016

Kathleen Winterling  
kathywinterling@comcast.net

Mark Amberg  
Chief Deputy City Attorney  
City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Kathleen Winterling requesting disciplinary records of PPB Officer Scherise Hobbs.

Dear Ms. Winterling and Mr. Amberg:

In her public records petition, dated July 13, 2016, petitioner Kathleen Winterling requests this office to order the City of Portland to disclose the following records:

**Any records pertaining to the 2016 sustained disciplinary records relating to PPB Officer Scherise Hobbs' use of LEDS Data System for non-law enforcement reasons as well as related correspondence.**

Petitioner had made a request of the Portland Police Bureau for the above described records, which she states was denied on June 14, 2016. Petitioner argues that, notwithstanding any facially applicable exemptions, Officer Hobbs' previously publicized history of discipline creates a heightened public interest in evaluating the propriety of any discipline imposed in this instance as well as the integrity of the investigative process itself.<sup>1</sup>

The city responds by stating that any evaluation of the public interest is premature as the disciplinary process in this case has not yet concluded. As required by statute, the city has provided us with its investigative file and related correspondence, which we have reviewed. For the reasons discussed below, we agree with the city that the disciplinary process should conclude before we may accurately assess the public interest in disclosure.

#### DISCUSSION

A. Law Enforcement Personnel Discipline – 192.501(12) / 181A.830(3)

ORS 192.501(12) conditionally exempts from disclosure,

A personnel discipline action, or materials or documents supporting that action.

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<sup>1</sup> See, *Portland council scales back discipline for officer caught twice for similar misconduct*, THE OREGONIAN, Nov. 4, 2010 ([http://www.oregonlive.com/portland/index.ssf/2010/11/portland\\_council\\_pays\\_nearly\\_2.html](http://www.oregonlive.com/portland/index.ssf/2010/11/portland_council_pays_nearly_2.html))

ORS 181A.830(3) provides that,

A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.

Taken together these two provisions exempt all personnel investigations of law enforcement officers from disclosure under the public records law. However, neither exemption applies when the public interest requires disclosure. ORS 181A.830(4)(a), 192.501.

Petitioner raises a number of points as to why the disciplinary investigation of Officer Hobbs should be a matter of public interest. However, we are unable, at present, to assess whether or not the public interest requires disclosure. The disciplinary process has yet to conclude and a threshold question from the *Foster* criteria, by which we gauge the public interest in disclosure against an employee's interest in privacy, is the severity of the discipline imposed. *In re petition of Foster*, MCDA PRO 96-31 (1997).

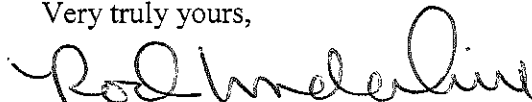
There may well be instances involving such intense public interest that disclosure of an open investigation would be warranted. However, compared to the present case, other cases where we have permitted investigations to conclude before evaluating disclosure involved officials of much higher rank and interest to the general public or involved substantially more serious allegations of misconduct, or both. See, most recently, *In re petition of Budnick for the Portland Tribune*, MCDA PRO 16-09 (2016) (ongoing investigation of Sheriff Staton not subject to disclosure); *In re petition of van der Voo for InvestigateWest*, MCDA PRO 15-17 (2015) (investigation regarding alleged sexual assault of a co-worker by Port of Portland firefighter); *In re petition of Schmidt for The Oregonian*, MCDA PRO 15-03 (2015) (investigation of Dean Marriott, director of Portland Bureau of Environmental Services). If the public interest did not require immediate disclosure in those instances, we do not see a basis to so conclude here.

Of course, an agency may not artificially suspend, delay, or otherwise leave open an investigation solely for the purpose of thwarting the public's access to information. Our review of the records at issue, and subsequent discussion with the attorney for the city, does not indicate any such artifice in this case. Rather some complicating issues coupled with recent command staff upheavals in the police bureau have resulted in somewhat more protracted process than might ordinarily be expected.

#### ORDER

Accordingly, the petition is denied, with leave to resubmit upon conclusion of the disciplinary process.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon