



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

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

February 14, 2017

Daniel Norman  
512 Sixth Street South, Suite 101  
Kirkland, Washington 98033

Ashley Berman  
Gresham City Attorney's Office  
1333 N.W. Eastman Parkway  
Gresham, Oregon 97030

Re: Petition of Daniel Norman regarding police records held by the Gresham Police Department.

Dear Mr. Norman and Ms. Berman:

In his public records petition, dated February 3, 2017, petitioner Dan Norman requests that this office order the Gresham Police Department (GPD) to disclose the following records:

**all police records involving Austin Agnish 04/06/92.**

On January 31, 2017 petitioner requested from GPD copies of any police reports relating to contact with Mr. Agnish. The same day, the GPD records manager responded that no responsive records existed. This response was inaccurate, and through subsequent communication with petitioner it was determined that GPD did possess records involving Mr. Agnish related to an open murder case. GPD now asserts that these records are exempt from disclosure by operation of ORS 192.501(3), the criminal investigatory exemption.

Mr. Agnish is currently being prosecuted on two counts of hindering prosecution as a result of his after-the-fact involvement with defendants who have been indicted for murder and aggravated murder. Mr. Norman informs this office that he is a criminal defense attorney in Washington state and is seeking these records as part of the representation of a client.

#### DISCUSSION

A. Criminal Investigatory Material – ORS 192.501(3)

ORS 192.501(3) conditionally exempts from disclosure:

Investigatory information compiled for criminal law purposes.

The criminal investigatory exemption applies to material during all stages of the criminal process so long as it was gathered for purposes of criminal investigation. ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL at 43 (2014), see also, *Petition of Garrettson*, Att'y Gen PRO (7/3/1995) (records exempt while district attorney is considering case for prosecution); *Petition of Padgett/Eller*, Att'y Gen PRO (8/15/01) (exemption found applicable while criminal case is on appeal).

Following these outside precedents, this office has likewise consistently found the exemption applicable to cases, like this one, that are open and pending trial. *Petition of Jon Friedman*, MCDA PRO 14-13 (2014); *Petition of Duin for The Oregonian*, MCDA PRO 99-05 (1999); *Foster for The Oregonian*, MCDA PRO 98-03 (1998).

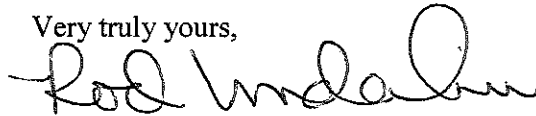
That does not, however, end the analysis. Conditional exemptions apply only unless the public interest requires disclosure in a particular instance. In this case, petitioner has identified no particular public interest in the disclosure of these records. Notwithstanding a generalized interest in governmental transparency, a person seeking records for personal or (non-media) professional use will rarely be able to establish that the public interest in disclosure to him personally is so great as to overcome the facial applicability of an exemption in ORS 192.501. MANUAL at 30 (“Public interest means the value to the public at large, not to a particular person at a particular time.”) This case does not present any unique circumstances that would suggest a different conclusion.

It may well be that other avenues exist for obtaining the requested documents in the context of petitioner’s pending criminal case in Washington state, however the Oregon Public Records Law (ORS 192.410 – 192.505) does not compel their disclosure at this time.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon