



ROD UNDERHILL, District Attorney for Multnomah County

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

February 27, 2017

Carli Brosseau
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Derily Bechthold
Deputy City Attorney
City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Carli Brosseau, on behalf of The Oregonian, seeking a Portland Police Bureau internal affairs findings memo

Dear Ms. Brosseau and Ms. Bechthold:

In her public records petition, dated February 1, 2017, petitioner Carli Brosseau requests this office to order the Portland Police Bureau (PPB) to disclose the following record:

Finding Memo, IA #2014-C-0265.

This finding memo is the product of the internal investigation arising out of the September 14, 2014 arrest of Thai Gurule by PPB officers. There are varying accounts of the incident, and we need not resolve the discrepancies for purposes of this order. In its broadest strokes, police stopped Mr. Gurule, and others, after reports of a group of young people causing problems. Mr. Gurule was resistive to police efforts to detain him and police officers ended up using multiple force options including punches, knee strikes, a takedown, a hair pull, and ultimately a taser to gain control of Mr. Gurule. Mr. Gurule was, at the time of the incident, a 16 year-old high school football player. A large crowd gathered and at least two of the bystanders recorded video of portions of the fight with Mr. Gurule. Shortly after the arrest PPB publicly released the police reports.

This incident spawned two prosecutions, multiple court hearings, and much media attention. Thai Gurule was charged with offenses in juvenile court and his brother, Giovanni Gurule, was charged with multiple misdemeanors that proceeded in circuit court. Each trial judge independently reached the conclusion that the initial stop of Thai Gurule by Officer Betsy Hornstein was illegal. In each hearing the public was able to hear extensive testimony, watch the videos recorded by bystanders (which remain available online), and each judge issued detailed written findings of fact and conclusions of law. Local media covered the hearings at the time and certain national media outlets covered the story as well.¹ The juvenile court judge acquitted Thai

¹ See, e.g., "Judging the Cops: When Excessive Force Trumps Resisting Arrest," *The Atlantic*, Mar. 21, 2015 (www.theatlantic.com); "Why Can't One of America's Most 'Progressive' Cities Reform Its Police Force?" *The Nation*, Mar. 16, 2015 (www.thenation.com).

Gurule of all charges in a nine-page order that was obtained and republished by The Oregonian. In her oral comments from the bench, the juvenile court judge stated that Officer Hornstein “was not credible in several important instances.”²

On November 30, 2016 the Portland City Council approved a \$90,000 settlement resolve a civil claim against the city arising out of this incident. Portland City Ordinance No. 188120 (Nov. 30, 2016).

PPB’s internal affairs division investigated several complaints regarding the involved officers and documented its findings in the memo that petitioner has requested. The United States Department of Justice (DOJ) reviewed this memo as a part of its ongoing monitoring of a civil rights settlement with the City of Portland. DOJ devoted a page and a half of its most recent annual compliance assessment to a case study of this incident, much of which focused on challenging the reasoning and conclusion of the findings memo as to Officer Hornstein.³ DOJ’s critique focusses on whether or not PPB officers were adequately trained on the legal requirements of reasonable suspicion to detain an individual. DOJ’s analysis was not entirely negative, in a separate section referencing this same investigation DOJ wrote that, “While we critique the adequacy of the investigation and finding in that case (see Section VIII, below), we laud PPB’s use of an administrative investigation to identify a training need.” *Id.* at 51.

In response to Ms. Brosseau’s petition, PPB has asserted that ORS 181A.830(3) exempts the memo from disclosure in its entirety. PPB has provided to this office, and we have reviewed, the findings memo at issue. For the reasons set out below, we grant the petition in part and deny it in part.

DISCUSSION

A. Police Personnel Investigations – ORS 181A.830(3)

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.

The memorandum at issue contains information about the conduct of a personnel investigation that did not result in discipline, which means this exemption presumptively applies. However, the exemption is conditional and may exempt records only if the public interest does not require disclosure. ORS 181A.830(4)(a).

The stated purpose behind shielding personnel investigations, under ORS 192.501(12), is to protect the public employee from ridicule for being subjected to discipline. *City of Portland v. Rice*, 308 Or 118 (1989) (“The policy intended by the legislature, which we enforce, protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes.”) The exemption in ORS

² See, “Judge rules Portland teen not guilty of resisting arrest, has stern words for police.” *The Oregonian*, Mar. 12, 2014 (www.oregonlive.com).

³ *United States v. City of Portland*, 3:12-cv-02265-SI, 2016 Settlement Agreement Compliance Assessment (Oct. 18, 2016) at 96 (“PPB’s rationale to justify a non-sustained finding—that the initial officer was not aware of the legal requirement for a stop—is incorrect.”)

181A.830(3), where the employee has not been disciplined, has been construed to serve a similar purpose. *Petition of Zaitz*, Att’y Gen. PRO (7/15/2014) (“our review of the materials suggests that disclosure of these materials will not subject [the officer] to much, if any, public criticism.”)

Within this legal framework, this case presents a unique confluence of factors weighing in favor of disclosure: 1) the intensity and breadth of the media coverage; 2) the exhaustive public airing of the facts, and Officer Hornstein’s actions, that has already occurred in official proceedings, filings, and orders; 3) the judicial statements made publicly about the involved officer; 4) the training issues identified in the memo, and emphasized by DOJ; and 5) the disagreement between two important governmental bodies (PPB and DOJ) on the circumstances and resolution of this matter.

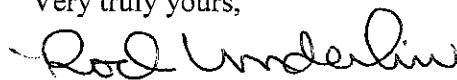
The legislature has expressed a clear preference for confidentiality in police personnel investigations by its enactment of both ORS 192.501(12) and ORS 181A.830(3). But, importantly, by making these exemptions conditional the legislature anticipated that the rare case would prove the exception to the general rule. We believe this to be such a rare case.

That said, not all of the memo at issue must be disclosed. The unique confluence of factors centers on Officer Hornstein and much of the memo discusses conduct of other officers. We do not find that the public interest requires disclosure of those sections. Specifically, the following sections are exempt under ORS 181A.830(3): Allegations 1, 3, 4, 6, and 7.⁴ The following sections must be disclosed: Recommended Finding and all information preceding it, Allegation 2, Allegation 5, and Comments/Recommendations.

ORDER

Accordingly, the petition is granted in part and denied in part. The Portland Police Bureau is ordered to promptly disclose a copy of the findings memo in case 2014-C-0265 redacted consistent with the discussion above. This disclosure is subject to payment of fees, if any, not to exceed the bureau’s actual cost in making the records 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

⁴ Additionally, certain passages in the memo appearing in boldface derive directly from the juvenile court record in this case. That information was obtained by PPB pursuant to a court’s protective order for purposes of its internal review. This information may, and indeed must, be redacted from the memorandum prior to its disclosure to petitioner.

Page 4
February 27, 2017
Petition of Carli Brosseau

(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.

17-12