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RE: Public Records Appeal

Dear Mr. Mussenden and Mr. Miller:

This letter serves as the Order in Mr. Mussenden's appeal of a denial of public records by the City of Eugene for records related to officers Robert Griesel, Andrew Roberts, and Jairo Solorio. After review, as outlined below, it is my Order that the request for a release of records relating to the above-referenced officers is denied.

Mussenden and Sarah Siock, a reporter with the Howard Center of Investigative Journalism, sought the following information for all three officers:

"A copy of all personnel records, including but not limited to:

(1) Materials the officer submitted as part of an employment application;
(2) Records detailing the officer's job-related performance, including commendations and disciplinary actions;
(3) Records of formal and informal complaints or criminal allegations made against the officer; and
(4) Records of investigations stemming from internal or external complaints, use of force/deadly force, or other actions.

On June 22, 2022, Chris Stetson, the AIC Public Records Program Supervisor for the Eugene Police Department authored letters denying the request for information on all three officers, citing exemptions under ORS 192.345(1), 192.345(12), ORS 192.355(2)(a), 192.385(2), 181A.674(2) and 181A.674(3). Mr. Stetson's denials note that the requests do "not articulate why the public interest would require disclosure of the entire personnel records of the officers," and argues that the disclosure of the personnel files would invade the privacy interests of the department and individual officers by

disclosing personal addresses or information that could be used to contact or harm the officers, stigmatize officers whose alleged misconduct is not sustained, identify cooperating or complaining witnesses, encourage complaints filed with the Eugene Police Auditor, and to discourage candid and robust written documentation of personnel investigations that can be reviewed by both the Eugene Police Auditor and the Civilian Review Board. The denial letters also note that the three officers do not consent to the release of any records. Accordingly, the City concluded that the public interest did not require disclosure of Officer Griesel, Roberts and Solorio's personnel records.

Sean Mussenden filed an appeal with the Lane County District Attorney's Office on October 5, 2022 requesting the same material for officers Griesel, Roberts and Solorio as outlined above. The Petition for Public Record Order was attached to an email from Sarah Siock that stated their organization is "looking at patterns of police conduct and interactions with the public." Furthermore, Ms. Siock indicated that these officers were selected because they have been involved "in standout incidents" the group is interested in. Unclear what incidents Ms. Siock was referencing or how the Howard Center for Investigative Journalism became aware of the incidents, I sent an invitation to Mr. Mussenden's email address for clarification as to what specific incidents they were referring to. On October 10, 2022, I received a response from Ms. Siock, on Mr. Mussenden's behalf, stating "[t]here has been previous news coverage on the standout incident involving these officers." It remains unclear what "standout incidents" have generated the Howard Center for Investigative Journalism's interest in these three particular officers or how they became aware of the alleged incidents.

The City of Eugene employs 223 sworn police personnel in patrol, investigations and traffic, and another 162 civilian employees, working in records, dispatch, crime prevention and administration. Of these 385 Eugene Police employees, the requestor has selected three and requested all of their personnel records. The rationale for selecting these three officers has not been communicated in their Petition for a Public Records Order, and it contains no other explanation than these officers were involved in "standout incidents." Nevertheless, Mr. Mussenden has made an extremely broad request for information pertaining to three specific officers. The requester seeks disclosure of personal information that goes well beyond any involvement in the undescribed "standout incidents."

In Oregon, every person has a right to inspect any public record of a public body in this state unless a document is exempt from disclosure as provided by statute. ORS 192.314(1). A "public record" is any writing that contains information relating to the conduct of the public's business that is prepared, owned, used or retained by a public body regardless of physical form or characteristics. ORS 192.311(5)(a). The public's right to inspect, as the Oregon courts have acknowledged, "is not without qualification." *ACLU v. Eugene*, 360 Or 269, 281 (2016) (citing *MacEwan v. Holm et al*, 226 Or 27, 44 (1961).

1. **Materials the officer submitted as part of an employment application**

The material submitted by an officer during the initial application process or following a promotion are contained within that officer's personnel file, which is maintained by the Eugene Employee Resource Center. Such personnel files consist of a NeoGov application detailing contact information, personal information, work references, education, work experience, certificates and

licenses, skills, a resume, and answers to agency wide and supplemental questions. As the City notes, basic biographical information for every sworn police officer is already publicly available via CJ IRIS at http://www.bpl-orsnapshot.net/PublicInquiry_CJ/EmployeeSearch.aspx. The City asserts that additional personnel file records are exempt from public disclosure under ORS 192.355(2)(a).

ORS 192.355(2)(a) exempts from disclosure "[i]nformation of a personal nature such as but not limited to that kept in personal, medical or similar file, if the public disclosure would constitute an unreasonable invasion of privacy." Under the statute, disclosure is conditioned on the public interest outweighing the public employee's interest in privacy by "clear and convincing evidence." The party that seeks disclosure has the burden of demonstrating that public disclosure "would not constitute an unreasonable invasion of privacy."

Because the contents of the employment application for officers Griesel, Roberts and Solorio are stored within their personnel files, the information is subject to ORS 192.355(2)(a). It, therefore, falls upon the requester to demonstrate disclosure would not constitute an unreasonable invasion of the officers' privacy. No such showing has been made. Instead, the public records request demands a wide array of documentation that inherently contains private information, such as home addresses, phone numbers and emails for officer and his/her family that could enable tracking or harassment, on the basis that these officers have been involved in undescribed "standout incidents." The requester provides no explanation as to what incidents are being investigated or what the public's interest is in investigating them. Nor is there an explanation as to why the basic biographical information publicized by the City is insufficient for its purposes. More importantly, the requester has provided no explanation for why public disclosure would not constitute an unreasonable invasion of these three officers' rights to privacy.

The materials submitted by Officers Griesel, Roberts and Solorio as part of their employment applications are exempted from disclosure under ORS 192.355(2)(a).

2. Records detailing the officer's job-related performance, including commendations and disciplinary actions

According to the City, all performance reviews, commendations and sustained disciplinary actions are contained within the employee's personnel files and maintained by the Eugene Employee Resource Center, pursuant to Eugene Police Policy 1020.7.1(3). The City asserts that those records are exempt from disclosure under ORS 192.355(2)(a). To the extent the request for records seeks to examine the personal information contained within Officers Griesel, Roberts and Solorio's personnel files, the requested is denied. As discussed in the section above, the requestor has failed to meet its burden to show by clear and convincing evidence that the public's interest in disclosure outweighs the officers' privacy interest.

The City also states that any records supporting a sustained disciplinary action are maintained by the Internal Affairs Unit. These records would customarily include the complaint, investigative report(s) and interview(s), chain of command recommended adjudication, recommended adjudication by the police auditor, adjudication by the Chief or his designee, recommended discipline, correspondence from the employee or their bargaining unit, the adjudicated final discipline

determination, and other supporting materials – commonly referred to as the "IA investigation file." The City asserts that the IA investigation records are exempt under ORS 181A.674(3), ORS 192.345(12) and ORS 192.385(2). Additionally, records pertaining to allegations that are not sustained are subject to exemption under ORS 181A. 674(3).

ORS 181A.674(3) is a conditional exemption that states 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." Under ORS 181A.674(3), the exemption does not apply "[w]hen the public interest requires disclosure of the information." ORS 192.345(12) is a conditional exemption for "[a] personnel discipline action, or materials or documents supporting that action" unless the public interest requires disclosure in the particular instance. ORS 192.385(2) exempts disclosure of "audio or video records of internal investigation interviews of public safety officers. Unlike the previous exemptions, ORS 192.385(2) is not conditioned on the consideration of the public's interest in the disclosure.

The applicability of the conditional exemptions in ORS 181.674(3) and ORS 192.345(12) depend upon "whether the public interest in disclosure outweighs the competing interest in confidentiality, with the presumption in favor of disclosure." *ACLU*, 360 Or at 285. The necessity of facts establishing "the nature and significance of an interest that favors disclosure or confidentiality will depend on whether the interest on which the party relies is evident as a matter of law or is dependent on the production of evidence." *Id*. When a party's interest cannot be established as a matter of law, "the party must adduce evidence of the interest in disclosure or confidentiality before that interest can be weighed against a competing interest." *Id*.

Here, the requester is asking for broad access to information contained within the personnel files of Officers Griesel, Roberts and Solorio based only on cryptic references to their involvement in "standout incidents" that requester merely alleges received "previous news coverage." Although the City's interest in protecting the privacy of the officers may be diminished by prior media disclosure of their conduct, *id* at 295, it is impossible to assess the public's interest in disclosure and the effect of prior new coverage on the City's interest in privacy when the "standout incidents" referred to are not specifically disclosed. Instead, I am left to assess an expansive request for highly personal documents for each of the three officers based on nothing more than the indication that the requester is examining "patterns of police conduct and interactions with the public" without explanation or justification for how these officers' records would be useful to that endeavor. Nor does the requester explain how the personnel records of these three officers, out of Eugene Police Department's 223 sworn employees, would demonstrate any pattern of police conduct to the public.

In contrast, the City has provided numerous reasons for maintaining the confidentiality of information in the personnel records of the three involved officers. The City's rationale includes avoiding disclosure of personnel addresses or information that could be used to contact or harm the officers, avoiding disclosure of personal contacts of the officer for the same reasons, avoiding stigmatizing officers who alleged misconduct that is not sustained, avoiding identifying cooperating or complaining witnesses, to encourage citizens and other police officers to file complaints with the Eugene Police Auditor without fear of reprisal, and to ensure candid and robust written documentation of

personnel investigations that can be thoroughly and thoughtfully reviewed by the Eugene Police Auditor and Civilian Review Board. Finally, Officers Griesel, Roberts and Solorio have not consented to the release of any records to the requestor.

Balancing the interest of public disclosure with the City's interest in confidentiality, I find, on this record, the City's interests prevail. The request for records detailing the officers' job-related performance, including commendations and disciplinary actions is denied.

3. **Records of formal or informal complaints or criminal allegations made against the officers by members of the public, Eugene Police Department employees or other law enforcement agencies**

First, the City has declared that were unable to "locate any records of criminal allegations made" against Officers Griesel, Roberts or Solorio and, therefore, have "no responsive records."

With respect to formal or informal complaints made against the three officers, the City has claimed exemptions under ORS 181A.674(3), ORS 192.345(12) and special exemptions for records contained within the Internal Affairs files under ORS 192.385(2), ORS 192.355(4), ORS 192.345(40), and ORS 192.355(9)(a). As the City argued before, they claim exemption for complaints that did not result in any discipline to the officers under ORS 181A.674(3), and an exemption for complaints that did result in discipline under ORS 192.345(12).

Because application of ORS 181A.674(3) and ORS 192.345(12) require a balancing of interests, as previously outlined in subsection 2 above, I adopt the same analysis. Consequently, I fined the public interest does not outweigh the City's interest in confidentiality under the arguments and evidence presented before me, and deny the request for formal and informal complaints levied against Officers Griesel, Roberts and Solorio.

Finally, while the requester has not specifically requested for tort claim notices under ORS 30.275 or formal lawsuit filings against the three officers, which the City agrees that these are not subject to any exemptions from disclosure. Thus, those records are available to the requester upon request.

4. **Records of investigations into the officer stemming from internal or external complaints, use of force or deadly force, or other instigating actions. This includes records detailing any disciplinary action or other outcome of those investigations**

As discussed above, complaints filed against an officer are housed within Internal Affair investigative files. Those files, under the balancing analysis required, are exempt from disclosure under ORS 181A.674(3) and ORS 192.345(12) on the record before me. In addition, some of the supporting materials in those reports are subject to further exemptions under ORS 192.385(2) (audio and video record of internal investigations), ORS 192.355(4) (information submitted in confidence), and ORS 192.345(40) (body camera footage).

According to the City, use of force investigations are contained within another set of records. Investigations into an officer's use of force during an incident are documented by the "BlueTeam." BlueTeam functions as a personnel investigation to determine whether the officer's conduct complies with the Police Department's policy on use of force. The City asserts that in the situation where the use of force does not result in discipline for a policy violation, the records are exempt under ORS 181A.674(3). On the other hand, the City claims that when the use of force violates the Department's policy, it is subject to exemption under ORS 192.345(12).

Because the exemptions claimed as to the use of force investigations are both conditional, requiring a balancing of the public's interest against the City right to confidentiality, I determine, based on the analysis provided in subsection 2, and the record before me, that the City's interests outweigh the public's interest in disclosure. Therefore, the request for disclosure of records pertaining to use of force or deadly force are denied.

Finally, if an officer is found in violation of the policy and disciplined, the officer can file a grievance and arbitrate any disciplinary actions in accordance with collective bargaining procedures. The City also states that no responsive records of grievances and arbitrations have been found for the three officers that are the subject of the records request in this case.

Therefore, the requester's appeal for disclosure of the records is hereby denied in its entirety.

The requester has the right to appeal this Order to the Lane County Circuit Court under ORS 192.431.

Sincerely,

Christopher J. Parosa
Chief Deputy District Attorney
Lane County, Oregon