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RE: Public Records Petition of Eugene Weekly and Ardy Tabrizian

Dear Counsel:

As indicated in my prior e-mail, I appreciate your patience in this matter. The submitted materials by the parties were helpful in understanding your respective positions in the matter.

This appeal involves the City of Eugene's denial of a Public Records Request by Ardy Tabrizian for "any and all" body worn camera video recordings related to an arrest by Eugene Police Department of Landon Payne on March 27, 2020. The City denied production of those specific materials, relying on ORS 192.345(40) as authority for denying the request.

Facts and Arguments:

Having been involved in an earlier review of the investigative materials in this matter, I accept the City's "Background" recitation as accurately and adequately summarizing the facts of the police intervention/investigation at issue in this matter.

The Petitioner argues the City's refusal to produce the recordings violates the law, as the exemption provided in ORS 192.345(40) is conditional, and the City has not given an adequate justification for that denial. Petitioner argues Respondent's denial, which in effect evidences a blanket policy of non-disclosure of body worn camera video

recordings, violates Oregon law. Petitioner further submits there is obvious public interest in examining the subject videos “because it documents police and CAHOOTS interactions with a person in mental health crisis against whom officers used serious force.”

Petitioner in a written letter response (dated July 21, 2021, but received by e-mail July 28, 2021) additionally argues the “public has a significant interest in disclosure of BWC video depicting the totality of the circumstances underlying an officer’s decision to arrest and use force against a person in mental health crisis who later dies.”

Petitioner requests an order allowing the following relief:

- (1) Declaring Respondent’s blanket denial of Petitioner’s Request a prima facie violation of the OPRL;
- (2) Finding that the public interest requires disclosure of the requested BWC video;
- (3) Disclosing all BWC video in Eugene Police Department Case No. 20-05537;
- (4) Waiving all fees associated with Petitioner’s Request.

The City of Eugene responds by denying it has a “blanket policy” of denying Public Records Requests for BWC recordings. The City counter-argues that Petitioner’s request on its face was too broad, and not “reasonably tailored,” as required by ORS 192.345(40)(b). The City further counters that Petitioner bore the responsibility of informing the City as to the public interests implicating or “necessitating” disclosure of the requested records.

Further, the City requests this office ignore the supplemental discussion of public interests now promoted by Petitioner, noting those arguments were not presented to the public body at the time of the original PRR. The City then opines and argues that the deceased has a personal privacy interest in the recorded content of the BWCs at issue, which countervails the Petitioner’s public interest arguments. Finally, the City argues that its police auditor and civilian oversight systems were created to provide external monitoring of police uses of force, and as such, inferentially mitigate public need for the requested records.

Discussion Regarding Requested Relief:

(1) I do not accept Petitioner’s invitation to find the City’s denial of the PRR in this case to be a blanket denial, given the City’s concessions in its letter response of July 26, 2021. I cannot find on this record the City has such a “blanket policy,” and as such, will not declare their PRR denial as a prima facie violation of the OPRL.

(2) Both parties cross-claim that the other’s “public interest” arguments are precluded, as they were not made at the time of the PRR or the denial of that PRR. I agree with Petitioner’s e-mail argument of July 28, 2021, in which Petitioner acknowledges this office, as first arbiter of fact and law, has *de novo* authority to consider

supplemental materials. I agree that is supported by the AG Manual on Oregon Public Records Law, as well as by the Oregon Supreme Court in *ACLU of Oregon v. City of Eugene*, 360 Or 269 (2016). As such, I consider both Petitioner's and Respondent's supplemental briefing regarding the "public interest."

I agree with the City that Petitioner's request for "any and all" video and audio appears broad. However, in the context of the entire PRR, I read that to reasonably intend a request for only video and audio pertaining to the police action documented in Eugene Police Department case no. 20-05537. Additionally, since the request is to review the entire police action related to the contact and arrest of Mr. Payne, I find the request is not too broad, and that it is "reasonably tailored to include only that material for which a public interest requires disclosure." ORS 192.345(40)(b).

I reject the City's observed claim of personal privacy on behalf of Mr. Payne. I understand and even share the City's concern, having watched the pertinent videos (both ICV and BWCs). The content is distressing and potentially embarrassing to the deceased's family. However, that claim is not the City's to advance, and Petitioner has apparently conferred with Mr. Payne's widow to determine that she does not wish to intervene.

I find Petitioner has established valid "public interests" requiring disclosure. I have struggled with the Legislature's use of the phrase "for which a public interest *requires* disclosure." ORS 192.345(40)(b) (italics added). In this matter, reports and other materials have been made available to the Petitioner to address the stated public interests. However, the axiom "seeing is believing" comes to mind when addressing the importance of these particular requested records. I agree with Petitioner "the totality of the circumstances" are potentially important for the public to understand or appreciate. Those circumstances include police conduct, as well as the circumstances the police were faced with in this incident. Although the police auditor and civilian review processes are designed to have some positive impact on addressing the public's interests in its police conduct, I cannot find the public's interests are completely addressed by those bodies' reviews of otherwise confidential public records. I agree with Petitioner that public records law in this state favors disclosure of public records to the public.

In this case and particular set of circumstances, including the fact Mr. Payne went into cardiac arrest while in police custody, I agree the public has a potential interest in examining the pertinent records of the totality of police and responding agency conduct leading up to that event.

(3) The Petitioner's request for an order requiring Respondent to disclose "all BWC video in Eugene Police Department Case No. 20-05537" is granted in part, denied in part, as described below.

(4) This office disagrees with the City's argument Petitioner cannot now request a fee waiver associated with production of any records pursuant to Petitioner's PRR. However, the Legislature has recognized, and this office is aware, there are significant

costs (in both employee time and resources) associated with many Public Records Requests. In this case, the agency additionally has a duty, pursuant to ORS 192.345(40)(c), to edit the requested videos to comply with law. The public should also expect, in most cases, an agency will offset taxpayer costs when private parties request records. Therefore, pursuant to ORS 192.324, this office will not order waiver of any reasonable fees sought by the City pursuant to statute for the materials requested and ordered to be disclosed.

Order:

By authority of ORS 192.415, the City of Eugene Police Department is ordered to produce the *complete segments of any body worn camera video recordings still requested by Petitioner capturing the interactions between EPD officers and Landon Payne, Cahoots, and Eugene/Springfield Fire related to the police response* documented under EPD case no. 20-05537. Such video segments are required to be edited as provided in ORS 192.345(40)(c).

The City may charge a reasonable fee associated with the editing and production of the requested records, as provided in ORS 192.324.

I note there appear to be BWC videos of officers appearing “after the fact” of the initial contact, resisting episode, and custody of Mr. Payne. I leave it to the Petitioner to determine with the City whether Petitioner demands those videos, given the work and cost associated with their editing and production.

This order is appealable to the Circuit Court pursuant to statute. If either party requires clarification of this order, you may contact me directly by e-mail. Thank you for your attention to this matter.

Sincerely,

PATRICIA W. PERLOW, District Attorney



Erik V. Hasselman
Deputy District Attorney