



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

James H. Van Dyke, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

June 13, 2012

By email: anil@miketlaw.com
& Regular First-Class Mail

Anil S. Karia
Tedesco Law Group
3021 NE Broadway
Portland, OR 97232

Re: *Estate of Aaron Campbell v. Ronald Frashour III, et al.*
USDC Case No. CV-10-1358 MD
* * *
Portland Police Association v. City of Portland

Dear Mr. Karia:

I write to bring violations of court and other orders to your attention. I first will describe the various orders in effect in these matters and then recite how they were violated.

As you are aware, there is currently pending before the United States District Court of the District of Oregon the case of *Estate of Aaron Campbell v. Ronald Frashour III, et al.*, Case. No. CV-10-1358 MD. On February 4, 2011, the Court entered an order designating certain information as “confidential.” (Hereafter the “First Order.”)

The First Order stated that confidential information included, but was not limited to, “training documents from the Portland Police Bureau not already publicly available or in the possession of the requesting party or counsel for the requesting party as of November 3, 2010.” (First Order attached.)

On April 15, 2011, on behalf of PPA, you signed a “Declaration Consenting to the Stipulated Protective Order” as provided for in the Order. The Declaration states in part:

I have been provided and have read the Stipulated Protective Order entered in this case and I expressly agree to be bound by its terms as ordered by the Court. ¶ 2.

(Emphasis added.) Declaration attached.

The First Order is effective “until agreed otherwise by written stipulation signed by all counsel for all parties hereto and filed herein or until modified or terminated by

order of this Court upon good cause being shown.” The First Order has neither been terminated nor modified.

As a result of your receipt of this order, PPA and you were aware that Lt. King’s training documents were described in the First Order as being documents subject to the order and PPA agreed they would not be disclosed.

In addition, there were also arbitration proceedings pending between the City of Portland and various City employees including Officer Frashour resulting from the Campbell shooting. Some time prior to the arbitration hearing with Officer Frashour, PPA asked for certain City documents the City considered to be nondiscoverable, including training review documents.

In order to receive those documents, PPA agreed to a “Stipulated Protective Order” on July 13, 2011 in the arbitration proceeding (the “Second Order,” attached.) The Second Order stated the City would provide PPA with certain records in response to PPA’s information requests and agreed that they would be used within the context of the arbitration proceeding itself. In addition, the Second Order stated:

2. As of the date this document is signed, the records and materials provided shall not be disclosed to anyone except counsel for the PPA. Any other use is prohibited.
Disclosure to the media is prohibited.

* * *

6. This confidentiality and non-disclosure agreement shall remain in force indefinitely, unless otherwise provided by law. (Emphasis added.)

The Second Order has not been terminated or modified since the time it was agreed upon. At no time has PPA sought to have it changed. We have no objection to the use of the transcript within the context of the arbitration proceeding or the proceeding before the Employment Relations Board (ERB), but do object to “any other use.”

The same day PPA agreed to the Second Order, the City provided documents to your office concerning the pending matters. Letter of July 13, 2011. (Attached.) That letter stated the documents were “covered by our agreed upon protective order.” Documents provided included “Training Review files of Lt. Robert King.” Letter, p. 2. These were provided notwithstanding the City’s legal position that certain records regarding “internal thought processes” did not have to be disclosed under Oregon law. *Id.*, p. 1.

Anil S. Karia
June 13, 2012
Page 3 of 4

After both the First Order and Second Order were executed, an arbitration hearing was held regarding Officer Frashour. The arbitrator's ruling is now on appeal before the Employment Relations Board. As you are aware, the City's contention is that the arbitrator's ruling is unenforceable as it violates public policy.

In the meantime, I understand that Unfair Labor Practices have been filed with ERB in regard to the other employees and that some of the same documents used in the Frashour arbitration may be used in these subsequent proceedings.

After the Second Order was executed and after the Frashour arbitration was conducted, an issue arose as to whether the transcript of the arbitration could be provided to third parties. On January 5, 2012, a court reporter wrote to the City's outside counsel, the arbitrator and yourself to see if the transcript of the arbitration could be provided to the attorney who represented the Estate of Aaron Campbell. On January 18, 2012, you wrote the arbitrator (with a copy to the City) stating:

We ask that the transcripts not be released. The parties had agreed early on that this arbitration was a matter of private contract that was not open to the public. Releasing the transcripts to Mr. Steenson doesn't appear consistent with that agreement. (Emphasis added.) (Attached.)

Based on this correspondence, the arbitrator responded back and stated:

I would only release the transcripts with the parties' mutual agreement. Since the Association [PPA] objects, I will order that they not be released. (Emphasis added.)

Following this exchange of correspondence, it was clear PPA believed the Second Order prohibited the release of any transcripts. Moreover, there was now a Third Order prohibiting release.

On June 5, 2012, Daryl Turner, President of PPA, published an article in the "Rap Sheet," a publication of the PPA. The article quoted from the transcript of the arbitration hearing and quoted and/or summarized training documents prepared by Lt. Robert King.

The contents of those documents are, of course, prohibited from being disclosed by the First and Second Orders. The release of the transcript is prohibited by the Second and Third Orders.

On June 7, 2012, Stephanie Harper of my office spoke with you regarding the breach of the confidentiality agreements and the orders by PPA. I understand you told her the transcript of the arbitration proceeding was not subject to any agreement

Anil S. Karia
June 13, 2012
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regarding confidentiality. Your own email, however, shows you contended just the opposite to the arbitrator.

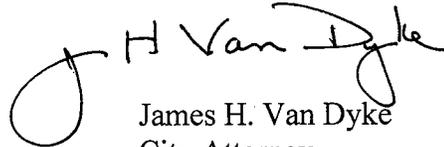
It may be, of course, that the federal court protective order and the separate agreement between PPA and the City may need to be modified. However, at this point they have not been modified. As a result, violations of the federal court order and the agreement PPA executed must cease immediately. If PPA intends further unauthorized disclosures, please contact my office so we can set up a hearing before the federal court and/or the arbitrator.

Beyond the violations, however, you should be aware that PPA's credibility has been severely damaged by these actions. I understand your client and mine have a difference of opinion in regard to the Frashour disciplinary proceedings and our clients may have disputes in the future. In order to have any kind of productive relationship, the City must be able to trust PPA to live up to its promises and not to selectively release portions of transcripts while this matter remains pending before ERB and the federal court. Based on the facts above, it appears PPA's promises are not credible.

In addition, I am hopeful attorneys for PPA neither participated in these disclosures nor were aware of them before their release, as that would be a serious matter as well.

Please be advised the City of Portland reserves its rights to take whatever legal actions it believes may be necessary in light of PPA's disregard of the First, Second and Third Orders.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Van Dyke". The signature is written in a cursive style with a large initial "J" and "H".

James H. Van Dyke
City Attorney

JVD/ccj
Encls.

Steven A. Kraemer, OSB No. 882476
E-mail: sak@hhw.com
Kari A. Furnanz, OSB No. 962920
E-mail: kaf@hhw.com
HOFFMAN, HART & WAGNER LLP
1000 S.W. Broadway, Twentieth Floor
Portland, Oregon 97205
Telephone: (503) 222-4499
Facsimile: (503) 222-2301

Of Attorneys for Defendant Ryan Lewton

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ESTATE OF AARON CAMPBELL, by and
through its personal representative, Marva
Davis,

No. CV-10-1358-MO

Plaintiffs,

v.

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

RONALD FRASHOUR III, RYAN
LEWTON, LIANI REYNA, JOHN
BIRKINBINE, and CITY OF PORTLAND,

Defendants.

The parties have requested the production of documents and/or information that each party considers to be or contain confidential information that is subject to protection under Federal Rule of Civil Procedure 26 (c)(7) and *Foltz v. State Farm Mut. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003). The categories of information that are considered confidential include personnel, personal health information such as medical and mental health, internal affairs and computer database records which are identified with greater specificity on pages two and three in

sections (a) – (k). The parties may or may not agree that a particular document within the described protected category or information should in fact be designated as “confidential,” and do not waive the right to object to the inclusion of any particular documents under this Stipulated Protective Order. The parties contemplate that the designation of any document as confidential may be challenged for any reason, regardless of what category of information may be involved.

The parties agree that good cause exists to protect the confidential nature of the information contained in documents, interrogatory responses and deposition testimony, such that the entry of this Stipulated Protective Order (“Protective Order”) is warranted to protect against disclosure of such documents and information.

I order that certain documents produced by defendants in response to plaintiff’s discovery requests, be subject to this Protective Order.

The categories of documents to be protected initially are:

- (a) Documents from the Portland Police Bureau's Internal Affairs Division not already publicly available or in the possession of the requesting party or counsel for the requesting party as of November 3, 2010;
- (b) Documents from personnel files of Frashour, Lewton, Reyna, and Birkinbine;
- (c) Training documents from the Portland Police Bureau not already publicly available or in the possession of the requesting party or counsel for the requesting party as of November 3, 2010;
- (d) Text message records;
- (e) Portland Police Bureau After Action Reports and Review Level documents not already publicly available or in the possession of the requesting party or counsel for the requesting party as of November 3, 2010;

(f) City of Portland records involving other in-custody or other officer involved deaths not already publicly available or in the possession of the requesting party or counsel for the requesting party as of November 3, 2010;

(g) Personal financial information, including but not limited to bank records, investment records, and tax records relating to any individual defendant or that defendant's family;

(h) Personal health information relating to any party, the decedent Aaron Campbell or beneficiaries;

(i) Records relating to ownership, lease or rental of real property by any individual defendant or that defendant's family;

(j) Residence address, personal telephone, e-mail, and internet usage information relating to any individual defendant or that defendant's family; and

(k) Employment records relating to employment of any individual defendant by any employer other than the City of Portland Police Bureau.

Any such materials produced throughout the pendency of this litigation shall be subject to the following conditions:

1. All documents and the information contained therein shall be disclosed only to parties and counsel of record, or to individuals employed by or assisting such counsel in preparation for, or at a hearing in or at the trial of the action.
2. This Order does not waive or limit any otherwise available objection to production of any such records or information contained therein; however, a party's counsel shall be allowed to challenge the redaction or withholding of responsive documents.

3. All documents and information produced pursuant to the Protective Order shall be used only in connection with this litigation and the preparation and trial of this case or any related appellate proceeding, and not for other purposes, including any other litigation.

4. All records subject to the Protective Order will be produced on salmon colored paper with the documents stamped "confidential," and "produced under protective order," and any such records produced on computer-readable media as well as any videotapes or audiotapes produced will have a salmon highlighted label.

5. Any person to whom such documents or information contained therein is to be disclosed shall first be advised by counsel making the disclosure that, pursuant to this Protective Order, such person may not divulge any such documents or information to any other person and that such documents and information shall be used only for the purpose of prosecuting this action; counsel making the disclosure shall require each such person to read and sign the "Disclosure Statement for Confidential Material," attached as Exhibit 1 to this Protective Order.

6. To the extent plaintiffs' attorneys ask questions in any depositions which relate to any confidential information produced pursuant to this Protective Order, all such portions of those depositions shall be sealed by the court reporter; sealed portions of depositions shall be available only to those entitled to review the documents subject to this Protective Order.

7. Any documents to which the producing party asserts a claim of attorney-client or work product privilege, must be identified in a privilege log at the same time other documents are produced.

8. Within three months of the final conclusion of this action, including all appeals, all materials furnished by the parties under this Protective Order and all copies, or reproductions thereof made by anyone of such documents or information contained therein, shall be returned to

the office of the counsel for the party producing the documents, together with a letter containing a truthful assurance that all documents, copies, or reproductions of such documents or written material recording the information contained in such documents are being destroyed or returned to the office of the counsel for the party producing the documents; plaintiff's and defendants' attorneys will make arrangements to have these documents appropriately segregated and marked so that their office will be prepared to comply with the terms of this Protective Order when required to do so by its terms.

9. This Protective Order shall remain in effect until agreed otherwise by written stipulation signed by all counsel for all parties hereto and filed herein or until modified or terminated by order of this Court upon good cause being shown.

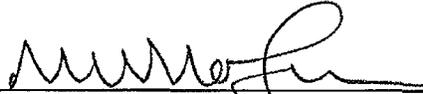
10. In the event that any of the parties believe that any of these documents or the information contained there, or any sealed portion of a deposition, needs to be included with, or the contents thereof in any way disclosed in, any pleading, motion or other paper filed herein, such confidential documents or information, or sealed portion of a deposition, shall be exchanged by the parties prior to filing with the Court. If one of the parties believes that any such confidential documents or information, or sealed portion of a deposition, needs to be filed under seal, the matter will be brought to the attention of the Court so it can be resolved before any such documents or information or sealed portion of a deposition is filed. This Protective Order shall not affect the admissibility of any document or information covered herein.

11. To the extent any information protected by this Protective Order is offered and received as an exhibit at trial, the presumption is that the information will be public at the time of trial, unless one of the parties seeks and obtains a specific order from the Court limiting the disclosure of such document.

12. Upon receipt of any documents which are designated as "confidential" the receiving party shall have 10 days to advise the party making the designation of any objections to the designation. The party making the designation shall then have 14 days to contact the court for a ruling on whether the disputed document(s) is/are covered by this Stipulated Protective Order. Failure to contact the court for a ruling shall be a waiver of the designation. The material shall remain confidential pending the court's decision on the protective order.

IT IS SO ORDERED.

DATED: 3d Feb 2011



The Honorable Michael Mosman
United States District Court Judge

STIPULATED AND CONSENTED TO BY:¹

By: /s/ Thomas M. Steenson/ Mark E. Griffin
Thomas M Steenson, OSB No. 743131
Telephone: 971-645-6625

Mark E Griffin, OSB No. 761528
Griffin & McCandlish
Telephone: 503 224-2348
Of Attorneys for Plaintiff

PORTLAND CITY ATTORNEY'S OFFICE

By: /s/ David A. Landrum
David A Landrum, OSB No. 955425
Rob Yamachika, OSB No. 065560
Telephone: (503) 823-3120
Of Attorneys for Defendant City of Portland

¹ Pursuant to L.R. 11-1(c)(2), all counsel have authorized the electronic filing of this document.

MILLER & WAGNER LLP

By: /s/ Robert S. Wagner
Robert S Wagner, OSB No. 844115
David C. Lewis, OSB No. 953348
Telephone: (503) 299-6116
Of Attorneys for Defendant Ronald Frashour

HOFFMAN HART & WAGNER LLP

By: /s/ Kari A. Furnanz
Steven A. Kraemer, OSB No. 882476
Kari A. Furnanz, OSB No. 962920
Telephone: (503) 222-4499
Of Attorneys for Defendant Ryan Lewton

LEHNER & RODRIGUES PC

By: /s/ Michael A. Lehner
Michael A Lehner, OSB No. 741885
Telephone: (503) 226-2225
Of Attorneys for Defendant Liani Reyna

WILLIAM G. BLAIR, PC

By: /s/ William G. Blair
William G Blair, OSB No. 690212
Telephone: (503) 608-7222
Of Attorneys for Defendant John Birkinbine

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ESTATE OF AARON CAMPBELL, by and
through its personal representative, Marva
Davis,

No. CV-10-1358-MO

Plaintiffs,

v.

DECLARATION OF

CONSENTING TO STIPULATED
PROTECTIVE ORDER

RONALD FRASHOUR III, RYAN
LEWTON, LIANI REYNA, JOHN
BIRKINBINE, and CITY OF PORTLAND,

Defendants.

1. My name is _____. The address for my
business is _____. I am
employed as (state position) _____ by (state name and
address of employer)
_____.

2. I have been provided and have read the Stipulated Protective Order entered in this
case, and I expressly agree to be bound by its terms as ordered by the Court.

3. I declare under penalty of perjury under the laws of the State of Oregon that the
foregoing is true and correct.

Executed this ____ day of _____, 20__.

BY: _____

PRINT NAME: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ESTATE OF AARON CAMPBELL, by and
through its personal representative, Marva
Davis,

No. CV-10-1358-MO

Plaintiffs,

v.

DECLARATION OF

CONSENTING TO STIPULATED
PROTECTIVE ORDER

RONALD FRASHOUR III, RYAN
LEWTON, LIANI REYNA, JOHN
BIRKINBINE, and CITY OF PORTLAND,

Defendants.

1. My name is Anil Karia. The address for my
business is 14103 Taylors Crest Lane, Lake Oswego, OR 97035. I am
employed as (state position) an attorney, of course by (state name and
address of employer)
Telesco Law Group, 14103 Taylors Crest Ln., Lake Oswego, OR 97035

2. I have been provided and have read the Stipulated Protective Order entered in this
case, and I expressly agree to be bound by its terms as ordered by the Court.

3. I declare under penalty of perjury under the laws of the State of Oregon that the
foregoing is true and correct.

Executed this 15th day of April, 2011.

BY: [Signature]

PRINT NAME: Anil S Karia

BEFORE JANE WILKINSON, ARBITRATOR

**In the Matter of the Arbitration of
Grievances Relating to the Aaron
Campbell Shooting (Ron Frashour,
Ryan Lewton, John Birkinbine,
Liani Reyna)**)
)
)
)
)
)
PORTLAND POLICE ASSOCIATION,)
)
Union,)
v.)
)
CITY OF PORTLAND,)
)
Employer.)

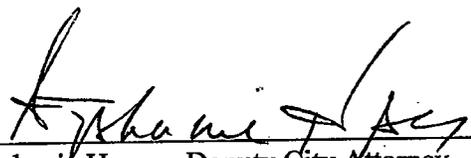
STIPULATED PROTECTIVE ORDER

Pursuant to the parties' respective obligations under the Public Employee Collective Bargaining Act, the City of Portland and the Portland Police Association agree to the following confidentiality and non-disclosure agreement.

1. The City shall provide to the Portland Police Association (PPA), through its Counsel, Anil Karia and Will Aitchison, records and materials gathered in response to the PPA's information requests in preparation for arbitration.
2. As of the date this document is signed, the records and materials provided shall not be disclosed to anyone except counsel for the PPA. Any other use is prohibited. Disclosure to the media is prohibited.
3. The records and materials may be used for the sole purpose of preparing for and presenting the parties' respective cases at the above-referenced arbitration(s).
4. The parties agree that decisions about the information request process, and materials disclosed in this matter (the Aaron Campbell shooting) were reached within the context of the unique circumstances of this particular matter, and do not establish a precedent for any other matter.
5. Duplication of the materials, for any purpose other than the arbitration proceeding, is not permitted.
6. This confidentiality and non-disclosure agreement shall remain in force indefinitely, unless otherwise provided by law.



Anil Karia, Attorney
for Portland Police Association
Dated: 7-13-11



Stephanie Harper, Deputy City Attorney
for City of Portland
Dated: 7-13-11

Landrum, David

From: Harper, Stephanie (Attorney)
Sent: Thursday, January 19, 2012 9:51 AM
To: Landrum, David
Subject: Arbitration Transcripts - Arbitrator ruled no release
David, FYI.

Stephanie

From: Rubin, Howard [mailto:HRubin@littler.com]
Sent: Wednesday, January 18, 2012 7:07 PM
To: Harper, Stephanie (Attorney)
Cc: Nelson, Jennifer A.; Aufmuth, Joanna R.
Subject: Fwd: The City of Portland and Portland Police Association.

FYI.

Sent from my iPhone

Begin forwarded message:

From: chris <chris@isdreporters.com>
Date: January 18, 2012 6:39:01 PM PST
To: Jane Wilkinson <jane.wilkinson@gmail.com>, 'Anil Karia' <anil@miketlaw.com>, "Aufmuth, Joanna R." <JAufmuth@littler.com>, "Rubin, Howard" <HRubin@littler.com>, 'Will Aitchison' <will@aitchisonlaw.com>
Subject: RE: The City of Portland and Portland Police Association.
Reply-To: chris <chris@isdreporters.com>

Thank you. I received your ruling and will inform Mr. Steenson of such.

Chris Villano Iba, CSR OR-WA, RPR, RMR, CRR
Iba Symonds & Dunn
503-224-4438
10260 SW Greenburg Road
Suite 400
Portland, OR 97223

isdreporters.com

-----Original Message-----

From: Jane Wilkinson <jane.wilkinson@gmail.com>

To: 'Anil Karia' <anil@miketlaw.com>, 'Chris Iba' <chris@isdreporters.com>, 'Aufmuth, Joanna R.'

<JAufmuth@littler.com>, 'Howard Rubin' <HRubin@littler.com>, 'Will Aitchison' <will@aitchisonlaw.com>

Subject: RE: The City of Portland and Portland Police Association.

6/7/2012.

Sent: Jan 18 '12 6:51pm

I would only release the transcripts with the parties' mutual agreement. Since the Association objects, I will order that they not be released.

Sincerely,

Jane Wilkinson

JANE R. WILKINSON LABOR ARBITRATOR

3 Monroe Parkway, Ste. P-211 . Lake Oswego, OR 97035

Tel: 503.635.7954 E-mail: [LINK: mailto:jane.wilkinson@gmail.com]

jane.wilkinson@gmail.com

Please note that I have a new fax number. It is: 503-635-1230

FROM: Anil Karia [mailto:anil@miketlaw.com]

SENT: Wednesday, January 18, 2012 6:44 PM

TO: Jane Wilkinson

CC: Aufmuth, Joanna R.; Howard Rubin; Chris Iba; Will Aitchison

SUBJECT: RE: The City of Portland and Portland Police Association.

Arbitrator Wilkinson:

We would ask that the transcripts not be released. The parties had agreed early on that this arbitration was a matter of private contract that was not open to the public. Releasing the transcripts to Mr. Steenson doesn't appear consistent with that agreement.

Thanks,

Anil

----- Original Message -----

Subject: RE: The City of Portland and Portland Police Association.

From: "Rubin, Howard" <[LINK: mailto:HRubin@littler.com]

HRubin@littler.com>

Date: Wed, January 18, 2012 4:08 pm

To: chris <[LINK: mailto:chris@isdreporters.com] chris@isdreporters.com>,

Jane Wilkinson

<[LINK: mailto:jane.wilkinson@gmail.com] jane.wilkinson@gmail.com>, Anil

Karia <[LINK: mailto:anil@miketlaw.com] anil@miketlaw.com>,

"[LINK: mailto:will@aitchisonlaw.com] will@aitchisonlaw.com" <[LINK:

will@aitchisonlaw.com] will@aitchisonlaw.com>

Cc: "Aufmuth, Joanna R." <[LINK: mailto:JAufmuth@littler.com]

JAufmuth@littler.com>

The City will defer to the arbitrator's decision regarding this request.

-----Original Message-----

From: chris [[LINK: mailto:chris@isdreporters.com]

<mailto:chris@isdreporters.com>]

Sent: Thursday, January 05, 2012 11:07 AM

To: Jane Wilkinson; Rubin, Howard; Anil Karia; [LINK:

mailto:will@aitchisonlaw.com] will@aitchisonlaw.com

Subject: The City of Portland and Portland Police Association.

I have been contacted by Tom Steenson, who is representing parties in litigation, about the transcripts I have prepared in the above-referenced arbitration hearing. He would potentially like to purchase copies of the transcripts of some of the witnesses' testimony in that case.

I would like to get permission from each of you that I can release transcripts from the hearing to Mr. Steenson.

Thanks,

Chris Villano Iba, CSR OR-WA, RPR, RMR, CRR

Iba Symonds & Dunn

503-224-4438

10260 SW Greenburg Road

Suite 400

Portland, OR 97223

[LINK: <http://isdreporters.com>] isdreporters.com

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(ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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Littler Mendelson, P.C.

[LINK: <http://www.littler.com>] <http://www.littler.com>

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To reply to our email administrator directly, send an email to postmaster@littler.com

Littler Mendelson, P.C.
<http://www.littler.com>



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Linda Meng, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

July 13, 2011

FOR PICK UP

Anil Karia
Law Office of Michael Tedesco
14183 Taylors Crest Lane
Lake Oswego, OR 97035

Re: Campbell/Frashour Arbitration

Dear Anil:

Enclosed are additional documents responsive to the PPA's information requests, along with a bill. These materials, along with the Training course materials provided to you at the end of last week are covered by our agreed upon protective order.

Brief Response to July 6 Email

In brief response to your 9 p.m. email from Wednesday July 6, I found it extremely unfair. I have to note for the record that the PPA has had the materials contained in the binders that went to the Review Board since before the due process meetings. You and the PPA attended all of the presentations made to the Review Board by the various divisions (Detectives, Internal Affairs, Training), and have had access on a timely basis to thousands of pages of records that formed the basis for the employment decisions, as well as access to materials on the PPB website.

In my view, the PPA's follow up requests for information fall into three categories: (1) underlying work product of individual people that led up to the presentations made to the Review Board; (2) internal, candid and frank deliberative discussions prior to the employment decisions; and (3) fishing for information for the purpose of making disparate treatment arguments. Under PECBA, documents that reflect the candid, subjective, internal thought processes of the employer (categories 1 and 2) do not have to be disclosed. *See Lane County Public Works Ass'n., Local 626 v. Lane County*, 13 PECBR 187, *recons. denied*, 13 PECBR 233 (1991) *aff'd*, 118 Or App 46 (1993) (employer not obligated to produce subjective or confidential information like interview notes made during interviews of applicants for hire or promotion); *AFSCME Local 328 v. OHSU*, 18 PECBR 804, 811 (2000) (no employer duty to supply subjective explanation of party's reasoning) *citing OSEA, Chapter 68 v. Colton School District 53*, 6 PECBR 5027 (1982). Under PECBA documents that are not potentially relevant do not

have to be disclosed (category 3). As this shooting occurred when Chief Sizer was the Chief and the employment decisions were made by Chief Reese, it seems to me the furthest back that other deadly force shootings might be potentially relevant would be those occurring during Chief Sizer's administration (June 2006).

Rather than assert and argue about these PECBA exemptions, we have worked out a mutually agreeable process for disclosure. This does not constitute a waiver of any of the City's objections.

While I take responsibility and apologize for not keeping the information requests moving as promptly as I hoped, or providing written updates, you and I have had numerous telephone conversations as I have received information from the personnel who are helping me with processing the information requests. In addition, you have made additional information requests in our discussions. Further, my time has been monopolized mainly by other matters that the PPA thinks are important. When I have asked the PPA to prioritize, the answer is that everything is important. That is not a realistic approach in our continuing relationship.

The courtesies being extended to the PPA in this information disclosure process are not intended to establish a binding way of dealing with information requests, and are particular to the unique circumstances of this case. For example, the fact that a number of documents have been gathered because of the federal civil trial has been helpful in facilitating the PPA's information requests; that is not a factor that always exists and the City/Bureau does not waive its rights to assert any objections in terms of scope, cost, burdensomeness, or relevance that it might have in the remainder of this case, or in any future case.

Materials Enclosed

The materials enclosed are:

- The crime scene video;
- All photographs not posted on PPB website including autopsy photos;
- The Use of Force reports reviewed by Jim Ferraris (for Lewton and Frashour);
- Training Review files of Lt. Robert King and Lt. David Virtue;
- Use of Force Review Board documents;
- Mayor's e-mails;

