MICHAEL D. SCHRUNK, District Attorney for Multnomah County
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November 29, 1991

Ashbel S. Green, Reporter
The Oregonian
1320 S.W. Broadway
Portland, Oregon 97201

Sgt. Jim Kalbasky
Police Department
City of Gresham
1333 N.W. Eastman
Gresham, Oregon 97030

Re: Petition of Ashbel S. Green for The Oregonian Dated October 24, 1991 to disclose certain records of the City of Gresham, Police Department.

Dear Mr. Green and Sgt. Kalbasky:

1. The petition and exemption claims.

On this public records petition, ORS 192.410 et seq., petitioner Ashbel (Tony) Green, as reporter for The Oregonian newspaper, asks the District Attorney to order the Gresham Police Department to disclose: "...[T]he name and age of the juvenile arrested in Gresham Police Case No. 91-7059...[and]...a description of the incident, including the age or ages of the victim or victims, the general vicinity of the alleged crime as well as any other pertinent criminal jurisdictional information." The Gresham Police Department, through Sgt. Kalbasky, has put in a telephone claim of exemption from disclosure under ORS 419.567 (confidentiality of juvenile court case records), ORS 192.501(3) (exemption of investigatory information compiled for criminal law purposes) and ORS 418.770 (confidentiality of "child abuse" reports). The police report in question clearly does relate to an incident of alleged "child abuse" as broadly defined by ORS 418.740, and generally made confidential by ORS 418.770; and a juvenile court petition has been filed

against the alleged juvenile perpetrator. In making the claim of exemption from disclosure, Sgt. Kalbasky has made clear to this office that his Department's principal concern is only to clarify what minimal factual information concerning arrested juveniles is disclosable to members of the public (such as the news media) under the statutes cited, and under a prior public records letter order of this office dated May 22, 1989 (issued on the Petition of Aaron Eastlund)(copy attached as Exhibit A).

2. District Attorney's prior (May 22, 1989) Letter Decision concerning juvenile-related police reports.

This office continues to adhere to the general approach to the release of information concerning arrest of juveniles discussed in the District Attorney's prior letter decision dated May 22, 1989, arising from the public records petition of Aaron Eastlund (Exhibit A). There is no need to repeat the analysis set forth in the 1989 letter decision: basically, this office reached the conclusion that disclosure of police reports in the hands of local police agencies relating to "temporary custody" (arrest) of juveniles for conduct which would be criminal if committed by adults impliedly is restricted by the confidentiality provision of the juvenile court laws, ORS 419.567, which makes records concerning juvenile court cases confidential, with only the exceptions set forth in ORS 419.567(5). This office took the position that release of information from records declared confidential under ORS 419.567 should be determined by the juvenile court itself under its authority to "consent" to release of such information, ORS 419.567(3) (see, Exhibit A attached).

But that same letter decision clearly implied that the few particulars made non-confidential by ORS 419.567(5) ordinarily would be disclosable by any

government agency, since those particulars generally are not confidential even when in the possession of the juvenile court itself. Thus, to the extent that the Gresham Police Department has refused to disclose the basic particulars permitted by ORS 419.567(5), the Department apparently is acting contrary to statute and this office's prior letter decision, unless some other exemption from disclosure applies to this case.

3. Certain minimal information ordinarily must be disclosed by local police agency when juvenile is "arrested" (or cited) for quasi-criminal conduct, ORS 419.567(5); but exceptions may apply in some cases (discussed in part 5).

ORS 419.567, part of the juvenile court laws, makes all juvenile court records relating to a particular juvenile confidential, with only very limited exceptions in favor of particular persons (such as the attorneys for the parties in a juvenile court proceeding), not including the news media or members of the general public, except as provided by ORS 419.567(5):

> "Notwithstanding any other provision of law, the name of the juvenile, the basis for the juvenile court's jurisdiction over the juvenile, the date, time and place of any juvenile court proceeding in which the juvenile is involved and that portion of the juvenile court order providing for the legal disposition of the juvenile where jurisdiction is based on ORS 419.476(1)(a) or (g) shall not be confidential." (Emphasis added).

The legislative history of this provision, enacted in 1981, is fully discussed in the District Attorney's 1989 letter decision on the petition of Aaron Eastlund

previously mentioned (Exhibit A). That history discloses that the main purpose of ORS 419.567(5) is to permit the news media (or any other citizen) to "track" a juvenile court case by obtaining sufficient identification of the case and the date, time and place of any hearings occurring in that case (plus the grounds of juvenile court jurisdiction and disposition). This is as far as the legislature has been willing to go in specifically authorizing disclosure of records concerning juveniles arrested for quasi-criminal conduct. [1]

But the fact that the legislature has declared that this minimal information is non-confidential means that any public agency which possesses the same information, including local police agencies, ordinarily must disclose these particulars (unless some other statutory exemption applies in the individual case, see, part 5 following). Consequently, it is the opinion of this office that the following minimal information generally is non-confidential and therefore usually must be disclosed directly by local police agencies concerning the "temporary custody" (arrest) of juveniles accused of quasi-criminal conduct (that is, acts which would be crimes if the juvenile was an adult):

> A. The juvenile's full true name, and any aliases relevant to the particular temporary custody;
>
> B. The date of taking temporary custody (or issuing citation) (and the date of the quasi-criminal incident, if different);

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[1] The statute permits release of this information only in juvenile delinquency (quasi-criminal) or emancipation cases, ORS 419.476(1)(a) or (g), -- not in other juvenile cases, such as "dependency" proceedings, ORS 419.476(1)(b) through (f). ORS 419.567(5) has not yet been construed by any Oregon appellate court decisions.

C. The basis of temporary custody (or citation), namely, the charge of crime which would be applicable in the case of an adult;

D. The police agency case number. [2]

(But see, discussion of exceptional cases, part 5 following).

4. The same minimal information is likewise disclosable in "child abuse" cases, ORS 418.740 et seq., ORS 418.770, ORS 419.567(5).

As already noted, the report in question here is, in fact, a report of "child abuse," ORS 418.740 et seq., ORS 418.770 (in this case, sexual abuse); so that we must also decide whether those statutes preclude release of the limited information concerning an "arrested" juvenile which this letter decision finds to be generally disclosable, specifications A - D, pages 4 - 5 supra. We conclude that, in our opinion, those statutes do not bar the release of those limited specifications because ORS 419.567(5), enacted in 1981, mandates disclosure of limited particulars "Notwithstanding any other provision of law...," and was enacted subsequent to the cited Chapter 418 provisions. Clearly, the juvenile

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[2] We refer to "temporary custody" rather than arrest, because the juvenile code uses that terminology: "Temporary custody shall not be deemed an arrest so far as the child is concerned," ORS 419.571(1), although police officers have the same "privileges and immunities" in taking a juvenile into "temporary custody" as peace officers have in making an arrest, ORS 419.571(2). Our references above to temporary custody also include citation of a juvenile in lieu of temporary custody, which is permitted by ORS 419.569(2) in the same cases in which citation in lieu of arrest is permitted for adults in criminal cases, ORS 133.045 et seq., ORS 133.070.

perpetrator's name would be disclosable under ORS 419.567(5) if a juvenile court case were filed alleging "child abuse" quasi-criminal conduct as the basis of jurisdiction -- and juvenile court jurisdiction "...shall attach from the time the child is taken into custody." ORS 419.579(1). For these reasons the same limited information is disclosable in child abuse cases as in other juvenile quasi-criminal cases.

5. Denial of disclosure or delay of release of the limited information concerning juveniles generally non-confidential under ORS 419.567(5) may be justified in exceptional cases controlled by other statutes.

There may, however, be exceptional cases in which release of any or all of the informational specifications A - D, pages 4 - 5 above, may be delayed (or denied) if the particular police agency can show special justification under some other statute.

5.1 Delay of release: "Criminal investigation information" exemption, ORS 192.501(3).

Although police reports concerning juvenile quasi-criminal conduct are subject to the confidentiality provisions of the juvenile court code, ORS 419.567, the same information also constitutes "investigatory information compiled for criminal law purposes," which is conditionally exempt from disclosure under the public records law, ORS 192.501(3), "...unless the public interest requires disclosure in the particular instance[.]" ORS 192.501.

As amended by Oregon Laws 1991, Chapter 636, §1 (HB 3418), the relevant part of ORS 192.501(3) provides: "The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a

specific investigation, including the need to protect the complaining party or the victim." (Emphasis added).[3] If the local police agency is able to show specific justification under ORS 192.501(3), it would be permissible for the local police agency to withhold disclosure of any or all of the minimal particulars of specifications A to D, pages 4 - 5 above, as long as the special need for delaying disclosure continued to exist. This is, however, clearly intended by the legislature to be only a very narrow, limited exemption. It presumably would not be applicable to the general run of juvenile quasi-criminal investigations.

5.2. Other possible exceptions.

We note the possibility that some other provision of law occasionally may justify delay or denial of release of information concerning an arrested juvenile in a particular case (although no obvious examples immediately occur to us). When in doubt, police agencies may consult their regular legal advisor (County Counsel, City Attorney, etc.). (This office also provides general information about the public records law, but can not act as legal advisor to a particular agency).

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[3] "The record of an arrest or the report of a crime," it should be noted, is a technical statutory term which refers to the list of limited identity, biographical and other particulars specified by ORS 192.501(3)(a) - (g), and does not include the general narrative portions of police reports. The narrative portions of police reports are not presumptively disclosable, but rather are exempt "criminal investigation information" unless the public interest requires disclosure, ORS 192.501; see, Jensen v. Schiffman, 24 Or App 11, 544 P2d 1048 (1976) (public interest balancing test requires disclosure of narrative portions of police reports after investigation and prosecution is concluded, unless one or more of several criteria discussed in that case justify non-disclosure).

CONCLUSION

From the above analysis it follows that the Gresham Police Department should disclose to petitioner the particulars in specifications A through D, pages 4 - 5 supra, unless that department was able to show that some other special justification existed for delaying (or denying) disclosure under another statutory provision. We understand that the Department makes no such claim in this case; consequently, all of the minimal information specified should be promptly disclosed to petitioner.

On the other hand, the scope of information requested by petitioner's petition is substantially greater than the limited particulars disclosable under ORS 419.567(5). To that extent, the petition should be denied; but petitioner may, of course, seek any such additional information directly from the juvenile court (as more fully discussed in Exhibit A).

ORDER

Accordingly, it is now ordered that:

1. The petition of Ashbel Green for The Oregonian dated October 24, 1991 is granted in part as follows: The Gresham Police Department shall promptly disclose to petitioner the limited particulars of information specified in part 3, specifications A through D, pages 4 - 5, of this letter decision (subject to payment of the department's fee, if any, not exceeding the actual cost of providing the information, consistent with ORS 192.440).

2. The petition is denied in part: Disclosure of any particulars not included under paragraph 1 preceding is denied (without prejudice to petitioner's option to seek such information from the juvenile court).

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

MDS:an
Attachment

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 fees in any court action (regardless whether petitioner prevails on the merits of disclosure) if you do not comply with this order and also fail to issue within seven (7) days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven (7) additional days thereafter.

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MICHAEL D. SCHRUNK, District Attorney for Multnomah County
600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

May 22, 1989

Aaron Eastlund
2703 S. E. Evans
Troutdale, OR 97060

Betty Reed, Esq.
Assistant City Attorney
1333 N. W. Eastman Parkway
Gresham, OR 97030-3825

Re: Petition of Aaron Eastlund to disclose certain records of the City of Gresham, Police Department (Incident #87-3305)

Dear Mr. Eastlund and Counsellor Reed:

On this public records petition, ORS 192.410 et. seq., petitioner Eastlund requests the District Attorney to order the City of Gresham Police Department to disclose "Any documents relating to or associated with the case that resulted in the apprehension of Derrick Worthington, a juvenile." (GPD Case No. 87-3305) The City resists disclosure on the grounds that the reports are confidential under the juvenile court laws, ORS Chapter 419, and that the disclosure question should be determined by that court rather than this office.

This petition requires interpretation of ORS 419.567, which declares that records of the juvenile court relating to juveniles generally are confidential, except: "(5) Notwithstanding any other provision of law, the name of the juvenile, the basis for the juvenile court's jurisdiction over the juvenile, the date, time and place of any juvenile court proceeding in which the juvenile is involved and that portion of the juvenile court order providing for the legal disposition of the juvenile where jurisdiction is based on ORS 419.476(1)(a) or (g) shall not be confidential." (ORS 419.476(1)(a) and (g) grant jurisdiction to the juvenile court over juveniles who have committed acts which would be criminal if committed by an adult or who have filed a petition for emancipation.)

EXHIBIT A

ORS 419.567(5) was enacted by Oregon Laws 1981, Chapter 524, Section 1, in response to the decision of the Supreme Court of Oregon in State ex rel Oregonian v. Deiz, 289 Or 277, 613 P2d 23 (1980). That case determined that the requirement of Oregon Constitution, Article I, Section 10 that "No court shall be secret . . . " rendered unconstitutional the then-existing statute which closed juvenile court hearings to the public and press. However, that case did not directly deal with the question of confidentiality of juvenile court records, as such.

During the legislative consideration of Senate Bill 530 (1981), enacted as ORS 419.567(5), the legislators were advised by representatives of the Department of Justice that the Oregonian v. Deiz decision definitely implied that at least some juvenile court records would be accessible as a matter of constitutional right, although the outer limits of this could not be exactly ascertained without further court decision. See, Minutes, Senate Justice Committee, April 14, 1981, pp. 1-4; May 5, 1981, pp. 5-14; June 2, 1981, pp. 1-2; and Minutes, House Judiciary Subcommittee No. 3, June 29, 1981 at page 3 and July 3, 1981 at pp. 5-7. Various views were expressed respecting the wisdom of opening up juvenile court records. Although this legislation appears to have been a compromise among competing views (as is so often the case), we draw the conclusion from the totality of legislative history that the legislators by enacting ORS 419.567(5) intended to strike a balance between the principle of open court proceedings declared by Oregonian v. Deiz and the important objectives of rehabilitation and protection of privacy served by keeping sensitive juvenile court records confidential. See, Minutes, House Committee on Judiciary, July 3, 1981, Exhibit A (written Statement of Testimony by Assistant Attorney General Karen Green regarding Senate Bill 530-A, submitted June 30, 1981)(Copy attached as Exhibit "A").

However, about ten days after the legislature had settled upon the final form of Senate Bill 530, the Attorney General issued an opinion, 42 Op. Atty. Gen. 17 (July 13, 1981), in response to a question posed by State Representative Bill Markham. The representative wished to know whether ORS 419.567 prohibited release by police agencies of a juvenile's name at the time of his or her arrest, the grounds of the arrest, and whether a news agency would incur civil liability to the juvenile if it published the juvenile's name and the grounds of arrest. In light of Oregonian v. Deiz, supra, the Attorney General overruled a prior opinion of that office and advised that the name and grounds of arrest of a juvenile properly could be released.

The Attorney General's 1981 opinion noted that ORS 419.567 only refers to juvenile court records rather than records in the possession of any other agency -- such as police reports in the custody of a local police agency. In the former, overruled opinion, the Attorney General had reached the conclusion that even though ORS 419.567 expressly addressed only juvenile court records, it implied a requirement of confidentiality for records generated by other agencies of a kind which ordinarily might be forwarded to the juvenile court in connection with juvenile proceedings. 36 Op. Atty. Gen. 782 (1974). The 1981 opinion stated in part: "***There is no longer any significant public policy to be served by reading ORS 419.567 so broadly as to prohibit disclosure, in the hands of police agencies, of basically the same information which can be obtained by attending a court session and which may be freely available in court records." 42 Op. Atty. Gen. 17, at 21.

But it is significant that this 1981 opinion took no notice of the virtually contemporaneous action of the Legislative Assembly in enacting the present provision of ORS 419.567(5). As we read the legislative history -- somewhat ambiguous though it may be -- the legislature attempted to strike a deliberate balance regarding confidentiality of records relating to juveniles and authorized release of only the basic information covered by the 1981 statutory amendment. Whether that balance is constitutional is not for this office to say and could only be determined by the courts of law.[1] But so long as ORS 419.567 is not invalidated by the courts all public officials must give it the effect intended.

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[1] In reviewing public records petitions this office acts in an administrative and quasi-judicial capacity, ORS 192.450, 192.460. Determining the constitutionality of statutes is not a proper administrative function. 14 Op. Atty. Gen. 582 (1930); 2 Am. Jur. 2d, Administrative Law, §188, p. 21, note 7 (1962).

Furthermore, although the point certainly is debatable, we also conclude that even though ORS 419.567 does not directly address records in the hands of agencies other than the juvenile court, the intention of that statute probably is to protect the confidentiality of those records concerning juveniles which generally would be filed with the juvenile court, regardless which agency originally generates the report in question. Presuming (as we are duty-bound to do) that the Legislative Assembly lawfully may command that all juvenile-related records not releasable under ORS 419.567(5) shall remain confidential, it would be inconsistent with the legislative policy for us to conclude that many of the very same records nevertheless would be disclosable merely because the originals (or copies) happen also to be on file in the offices of the police agencies which regularly forward reports to the juvenile court. The juvenile court has authority to deal with any question of disclosure of particular records filed with it. ORS 419.567(3). For these reasons, we will decline to order disclosure of police reports relating to juvenile conduct, leaving that issue to the juvenile court. [2]

The police reports of the Gresham Police Department in this case are investigatory reports concerning the possible commission by a juvenile of an act which would be a crime if committed by an adult. The reports are of the type which ordinarily would have been referred to the juvenile court in connection with juvenile court proceedings and which were in fact so referred in this case. Thus, under the interpretation adopted here, these police reports are exempt from disclosure as ". . .records the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 192.502(8).

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[2] We foresee the possibility that there will be some cases where police agencies generate reports about juveniles, but refer no copy to the juvenile court; and certainly there may be cases where police reports concerning juvenile conduct are forwarded to juvenile court personnel (such as juvenile court counselors), but no court action is filed -- so that no trial court "record" is created in the usual sense of the term. If any case of this kind arises such that it appears that the juvenile court lacks authority to determine the disclosure question, this office will do so (upon a proper public records petition), with due regard for the usual practice of the Multnomah County Juvenile Court in determining disclosure of reports or records of a similar nature.

ORDER

Accordingly, it is ordered that the petition for disclosure is denied. [3]

Very truly yours

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

ATTACHMENT

[3] Petitioner already has, or has access to, the limited information authorized to be disclosed under ORS 419.567(5).

SENATE BILL 530-A

Relating to Juvenile Court Records

Testimony Before House Judiciary Committee,
Subcommittee 3

Submitted June 30, 1981

Prepared by:

Department of Justice

For Additional Information Contact:

Karen H. Green
Assistant Attorney General
Telephone: 378-6319

EXHIBIT "A"

Senate Bill 530

Madame Chairperson and Members of the Committee:

This written testimony, prepared by the Department of Justice, is being submitted to explain the purpose of Senate Bill 530-A and to clarify the oral testimony which was presented to the Committee on June 29, 1981 by Karen Green.

Senate Bill 530-A amends ORS 419.567 to make accessible to the public and press certain information about juveniles involved with the juvenile court which is confidential under present law. Specifically, the bill provides that the name of the juvenile, the basis for the juvenile court's jurisdiction, the date, time and place of any juvenile court proceeding involving the juvenile, and that portion of any order of the juvenile court, in delinquency and emancipation cases, providing for the juvenile's disposition, shall not be confidential.

Senate Bill 530-A is a response to the Oregon Supreme Court's opinion in State ex rel Oregonian v. Deiz, 289 Or 277, 613 P2d 23 (1980), in which the court held that the provisions of ORS 419.498(1), providing for the closure of juvenile court proceedings to the public and press, is unconstitutional as violative of the mandate of Article I, sec 10 of the Oregon Constitution that "[n]o court shall be secret, but justice shall be administered, openly. . . ." Notwithstanding the strong policy arguments for juvenile court confidentiality made to the court by Judge Deiz and the state, as amicus curiae, the Supreme

Court interpreted this constitutional provision, unique among the fifty state constitutions, to be a "sweeping . . . prohibition" against secret courts, and to guarantee public access to all court proceedings except such traditionally private matters as jury deliberations and court conferences. The court's rationale was that the Oregon Constitution guarantees to the public the open and visible administration of justice.

In the Oregonian case, the Supreme Court was not faced with, and consequently did not address, the question of public and press access to court records in general, or juvenile court records in particular. Thus, the provisions of ORS 419.567 relating to juvenile court records, which Senate Bill 530-A would amend, have not been declared unconstitutional. However, it is probably only a matter of time before a constitutional challenge to ORS 419.567 is lodged on the basis of the Oregonian case. And given the rationale of the case, in the opinion of the Attorney General it is very probable the Supreme Court would hold that certain juvenile court records must also be available to the public and press to guarantee the open and visible administration of justice.

Senate Bill 530-A was introduced by the Department of Justice at the request of the Oregon Newspaper Publishers Association because, while the Oregonian case has guaranteed members of the press and public access to juvenile court proceedings, many juvenile courts, relying upon the provisions of ORS 419.567, have kept the court dockets confidential. Consequently, without

knowledge of a juvenile's name and the date, time and place of proceedings involving that juvenile, members of the press and public have encountered considerable obstacles in exercising their constitutional right of access.

The Department of Justice believes that the access to juvenile court information and records provided by Senate Bill 530-A is the minimum which the Supreme Court would hold guaranteed to the press and public by Article I, section 10 of the Oregon Constitution. Further, it does not go beyond the information to which the press desires access.

Karen Green will be happy to provide any additional assistance or information the committee desires with respect to Senate Bill 530-A.