

Opinion: Fix Oregon's public records law to allow scrutiny of police

Posted Jun 24, 2020

Oregon legislators should change a law that exempts police discipline records from public release, writes Ginger McCall, former Oregon public records advocate.

By Guest Columnist
Ginger McCall

McCall served as Oregon's first public records advocate from April 2018 to October 2019.

<https://www.oregonlive.com/opinion/2020/06/opinion-fix-oregons-public-records-law-to-allow-scrutiny-of-police.html>

In my previous role as Oregon's public records advocate, I encountered many troubling aspects of Oregon's public records law. Perhaps the most concerning is the secrecy surrounding disciplinary proceedings and records for police officers accused of wrongdoing. The continued evidence of police brutality by officers with previous complaints clearly demonstrates that this policy is unacceptable and must change.

A few months into my tenure as public records advocate, I was contacted by a young woman who shared her story about a Portland Police officer – her former stepmother – who had inappropriately used a law enforcement database to track her in 2015. As news accounts at the time reported, Officer Scherise Hobbs had prior disciplinary actions on record and a well-documented animosity toward the young woman. An investigation by internal affairs sustained wrongdoing, but the officer remained on the job with no punishment for several months. In fact, it's unclear whether Hobbs, who remains employed by Portland Police, was ever disciplined. A 2016 public-records request to view the investigation files was denied, despite the clear public interest in keeping police officers from unethically monitoring innocent citizens. The Multnomah County District Attorney's office denied an appeal, noting that two provisions exempt "all personnel investigations of law enforcement officers from disclosure under the public records law" and referred to the exemption again in a follow-up discussion two years later.

This practice denied the victim - and the public - the opportunity to evaluate the fairness of the internal affairs investigation and understand whether an abusive officer ever faced any consequences.

Unfortunately, Oregon's public records law is deliberately set up to make it difficult for the public to learn about a police officer's disciplinary record. If an ordinary government employee is found guilty of wrongdoing during a disciplinary proceeding, the documents related to that proceeding are exempt from public records requests. Police officers are afforded an even greater level of secrecy; personnel disciplinary actions for police officers are typically withheld whether the officer is found guilty of wrongdoing or not. This shrouds both the questionable actions of police and the efficacy of the disciplinary system in secrecy.

I saw similar secrecy many times. Even when police officers kill civilians, there is little transparency regarding internal affairs investigations. While the law appears to allow for disclosure if the requester can prove a public interest, in practice, there is little that any requester, even a journalist, can do to pry police disciplinary records loose from the hands of the government. This practice potentially allows abusive officers to continue on the job protected by inadequate internal affairs investigations or an indulgent command staff and, over time, it erodes public trust in police and government.

Police officers exercise the most extreme forms of government power - they are armed with deadly weapons and are sometimes permitted to use deadly force. That level of power ought to be subject to greater transparency than your average government employee, not less.

In the interest of justice, these public records exemptions must be repealed. If a police officer is found guilty of wrongdoing, all records related to that should be made public. This is the only way for the community to determine if there is actual accountability for governmental agents armed with deadly weapons.

If, on the other hand, the officer is found not to be guilty of wrongdoing, the records of that disciplinary action ought to be released with as few redactions as possible, because there is a strong public interest in transparency of the investigation itself. This ensures fairness and efficacy of internal affairs investigations and builds trust with the public, which must be able to see the details of the investigatory process and the decision-making to have faith that the actions made sense.

It is worth remembering that the stated purpose of policing is ultimately the welfare of the community. Without the confidence of that community, police departments have no hope of achieving this goal. These reforms may be uncomfortable for some departments, but police departments and unions must recognize that the current system is not working and embrace changes that ensure accountability and build greater trust.

Public records exemptions which allow for withholding of police misconduct investigations have been repealed in other states – including recently in New York and California. This is just one small reform that must be part of a larger slate of reforms which address systemic injustices.

The deaths of George Floyd, Breonna Taylor, and so many others illustrate the urgent need for change. It is long past time for the Legislature and the police unions to stop protecting abusive officers and, instead, work to protect justice and public safety by fostering transparency and accountability for Oregon police officers.

Above text is as published by OregonLive June 20, 2020. Submitted by Tom Holt, for the Society of Professional Journalists