

Bill Windsor

From: Denker-Eccles, Claudia <claudia.eccles@mso.umt.edu>
Sent: Thursday, August 29, 2013 12:31 PM
To: Nobodies@att.net
Cc: claudia.eccles@umontana.edu
Subject: Your Public Records Request
Attachments: Windsor CCJI.pdf; Boushie complaints.pdf

Follow Up Flag: Follow up
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Mr. Windsor,
This email is in response to your Public Records Request dated August 21, 2013.

You requested the following information:

- Personnel File of Sean Boushie.
- Performance evaluations of Sean Boushie.
- All complaints filed against or issued (sic) raised about Sean Boushie.
- Communications with Sean Boushie or about Sean Boushie

Even though Mr. Boushie is an employee of a public university, his personnel file is not a public record and cannot be produced in response to your request. The four requests listed above all refer to information that would be contained in Mr. Boushie's personnel file. Under privacy provisions under the Montana Constitution, an individual's right to privacy in employment-related matters outweighs the public's right to know. Thus we are unable to provide you with records addressing those requests.

- You also requested the Dashcam video taken of you by the officers on August 20, 2013.

I am attaching a letter from The Office of Public Safety explaining that this video is considered Confidential Criminal Justice Information under Montana law, and cannot be released to you at this time.

- You requested all video and audio of interaction by the police Boushie.

The University has no records relevant to this request.

- You requested "Any and all mentions of me in any University documents of any type".

Locating such records will require a search of all University emails. The University is not able to search all the emails of its employees as a whole – employee email accounts must be search individually. We request that you narrow your search from what amount to an "all employees" request and identify specific individuals whose email accounts you wish to be searched. Searching an individual's email account takes approximately 2 hours to complete. Under the Montana Public Records Act, the University can charge you for the time to collect the requested records as well as the cost to copy the records. The University of Montana will charge you \$25.00 per hour for searching email accounts, plus \$0.25 per copy. When we receive your narrowed request, I can better estimate the cost to locate records relevant to your request and will communicate that estimated cost to you. You will be expected to pay the estimated amount in advance of the University conducting the search or producing the records. I remind you that communication records protected under the attorney-client privilege are not considered public records and will not be produced for you.

- You requested "Any police complaints communicated by Sean Boushie".


Attached you will find a list of complaints filed by Mr. Boushie to the Office of Public Safety. The full police report is not available as it contains Confidential Criminal Justice Information that is not part of the public record.

Claudia Eccles

Claudia Denker Eccles

University of Montana | Associate Legal Counsel

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If you received this message in error, please notify the sender and delete this message from your system. Thank you.



The University of
Montana

Office of Public Safety
Physical Plant
The University of Montana
Missoula, Montana 59812-8928
Phone: (406) 243-6131

August 23, 2013

William M. Windsor
nobodies@att.net
770-578-1094

RE: Request for CCJI

Dear William,

You made a request to the University of Montana Office of Public Safety on August 22, 2013 seeking release of Confidential Criminal Justice Information (CCJI) regarding Police dash cam video, audio and video recordings, and police investigative reports from an incident in Parking Lot H on the University of Montana Campus from August 21, 2013. Specifically, you sought a copy of Police dash cam video, audio and video recordings of interaction between yourself and UM Police and any reports communicated to our office by Sean Boushie.

Based on the provisions of §44-5-303, MCA and subsequent case law, there are a number of issues that must be addressed when considering a request for release of confidential criminal justice information. Initially, CCJI is restricted to other law enforcement agencies or those authorized to receive it by a District Court order:

Subsection 44-5-303(1), MCA provides: "Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure." §44-5-303, MCA (2011).

Subsection 44-5-303(2), MCA provides:
(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

In order to release the confidential criminal justice information to you, UM PD must first determine if the information you seek is confidential criminal justice information and if so, then determine whether you are "authorized by law" to receive it or if there are any individual privacy rights present that exceed the merits of public disclosure.

Pursuant to §44-5-103, MCA (2011), confidential criminal justice information is defined as:

- (a) criminal investigative information;
- (b) criminal intelligence information;
- (c) fingerprints and photographs;
- (d) criminal justice information or records made confidential by law; and
- (e) any other criminal justice information not clearly defined as public criminal justice information.

Criminal investigative information is defined as:

information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

Thus, it is clear that the information you seek is CCJI. Next, a determination must be made whether or not you are entitled to dissemination of that information under Montana Law.

Pursuant to § 44-5-303 MCA dissemination of CCJI is restricted to other criminal justice agencies, to those authorized by law to receive it and to those obtaining a District Court Order authorizing its release. The reason for this law is that, by its nature, confidential criminal justice information raises the constitutional individual right of privacy, especially for others named in any documents. *Bozeman Daily Chronicle v. City of Bozeman Police Dep't.* (1993), 260 Mont. 218, 859 P.2d 435. Witnesses, victims, suspects who have not been charged with a crime, and confidential sources are all individuals who the Court has recognized have an actual right of privacy. *Bozeman Daily Chronicle*, 260 Mont. at 228, 859 P.2d at 441; *Engrav v. Cragun* (1989), 236 Mont. 260, 264-265, 769 P.2d 1224, 1227.


Because the judiciary has authority over the interpretation of the Constitution, it is the courts' duty to balance the competing rights at issue in order to determine what, if any information, should be given to a party requesting information from the government. **In view of the policies behind the Criminal Justice Information Act, it is incumbent upon a party to make a proper showing in order to be eligible to receive such specific confidential information.**

Allstate, 239 Mont. at 326.

You are not a criminal justice agency and from my determination, you are not directly authorized under Montana Law to receive any CCJI. In addition the investigation is on going and the statutes clearly prohibit release of CCJI on a pending investigation especially when it could jeopardize the investigation and ultimate criminal case. If charges are filed, you can contact the prosecuting agency for a copy of the report because the prosecutor will make the decision to give you a copy of the report.

If no charges are filed or if you disagree with this determination, you are free to go to the District Court to have a determination made by the Court of whether the right to privacy outweighs your right to know this information. The statutes provide that only the District Court has the authority to order viewing of CCJI.

Sincerely,


Ben Gladwin
Police Captain

cc: Claudia Denker-Eccles

**The University fo Montana
Office of Public Safety**

Contact History for Sean Boushie

| Date | Involvement Reporting Party | Reference | Code Section | |
|------------|--------------------------------|------------|--------------|----------------------------------|
| 11/17/2009 | Reporting Party | 0911-00541 | CAD | ASSIST |
| 05/17/2007 | Reporting Party | 0705-0242 | 46-6-402 | PUBLIC ASSISTANCE REQUIRED |
| 08/04/2005 | Reporting Party | 0508-0406 | 45-6-204 | BURGLARY, RESIDENCE |