CITY OF PORTLAND, OREGON

Bureau of Police
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Integrity • Compassion • Accountability • Respect • Excellence • Service

USE OF SUBPOENA DUCES TECUM / CRIMINAL PROCEEDINGS

ATTN: DEFENSE ATTORNEYS AND PRIVATE INVESTIGATORS

ORS 136.580 and FRCrP Rule 17 require that records subpoenaed be documentary evidence intended to be offered into evidence at trial and which defense can substantiate how the item may be relevant and admissible at trial. Neither ORS 136.580 nor FRCrP Rule 17 is a discovery tool. [*See, e.g.*, *State v. Cartwright*, 336 Or. 408 (2004); *U.S. v. Nixon*, 418 U.S. 683 (1974).] We understand that it is a common practice to seek any and all information related to a witness to "fish" for information that may be used against that witness. This is the reason why defense often asks for PPDS printouts and all police reports pertaining to the witness regardless if the witness was a complainant or a suspect in those prior police reports.

If you seek criminal discovery pursuant to ORS 135.805 *et seq* or FRCrP Rule 16, your request should be made to the District Attorney's Office or the U.S. Attorney's Office, as appropriate, who will in turn provide discovery to you. PPB cooperates with the District Attorney's and U.S. Attorney's offices, and will provide discoverable police reports or other records for the prosecutor to disseminate to defense. You should contact the DA's discovery desk or the U.S. Attorney's Office to obtain copies of the discoverable police reports.

As to reports that are not subject to discovery, unless you can substantiate to the court and obtain the court's ruling of admissibility and relevance, then the subpoena duces tecum is the wrong tool. You may be able to get the same information via a public records request. Information related to the public records request process can be found at http://www.portlandonline.com/police/index.cfm?c=30557&a=169005. If you think that any report should be produced as part of discovery, then you should contact the assigned Deputy District Attorney or Asst. U.S. Attorney to discuss discovery for your case. For those reports you do not receive in discovery, please submit a public records request to PPB along with the requisite records production fees.

If you still wish to subpoena the PPDS Name Record or reports pertaining to a witness, records responsive to your request will be provided directly to the court.