

'He [Lehner] did not provide an applicable legal rationale for his action.'

— POLICE AUDITOR CRISTINA BEAMUD

Ignoring the city code may mean the chief and city manager have broken state law. ORS 162.405 states: "A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person."

Lehner claims he did not break the law. He said in his statement that when he decides to release more information: "I am confident my actions will be viewed as reasonable and necessary."

But Beamud said she's heard the legal argument from the chief and said in a statement, "He did not provide an applicable legal rationale for his action." She said the city attorney "confirmed" her interpretation of city law.

"There are no exceptions within the ordinance or state law that applied to this case," Beamud wrote of the chief's "improper" withholding of the complaint. Beamud wrote that while she was allowed some late access to limited, redacted information, the delay "foreclosed much of the auditor's ability to monitor and review the investigation."

"It is a dangerous precedent to carve out exceptions based on one individual's determination that special circumstances exist," Beamud wrote.

City Manager Ruiz, a Republican retired U.S. Army colonel, appears to back, firmly, the chief's decision to keep the complaint secret from the police auditor. In an email to the council, Ruiz wrote that it is "very unfortunate" that the issue "has been aired as a contentious, black and white question." He wrote, "I have high respect for Chief Lehner's integrity."

Ruiz wrote that he has been aware that the complaint was withheld from the auditor "since May," but he apparently did not tell the auditor, in violation of city law. Beamud said that she did not discover the existence of the complaint until June 6.

The news that the chief and manager were ignoring the police auditor law alarmed many citizens who spoke out to the council at a public forum or in letters.

"I was just livid," said Chuck Dalton, president emeritus of the local NAACP chapter. "I was so disappointed."

Dalton wrote the council: "It is clear to me that both the city manager and chief of police believe that they are above the law." Dalton added, "Neither of them believes the independent police auditor ordinance applies to them. When the leaders won't follow the law, the rank and file won't respect the law."

In other cities with independent police oversight, police auditors are allowed access to complaints involving confidential informants, according to Beamud. Beamud said she researched the issue and was unable to find any other city that blocked confidential informant complaints from oversight as has happened in Eugene.

A quick Internet search reveals records of independent police auditors and review boards handling complaints involving confidential informants in New York City and Albany, N.Y.

Confidential informants are frequently involved in complaint cases against police due to the "very high risk" nature of using

such sources, Beamud said. Such informants may be motivated to give false information to avoid arrest for their drug addictions or to eliminate the criminal competition, according to Beamud. "Most all of the oversight professionals consider these types of cases to be very serious," she said.

Indeed, Beamud herself recently accepted a job as police auditor in Atlanta, Ga., a job created in the wake of a police scandal involving a confidential informant. According to press accounts, police claimed they used a confidential informant's accusation of drug dealing to raid a 92-year-old woman's house, killing her in a 39-shot burst of gunfire. The "confidential informant" later came forward in the media to report that police had lied in saying he identified the innocent woman's house as a place of drug sales.

The Atlanta case and other police confidential informant abuses helped prompt the U.S. House Judiciary Committee to hold a hearing last year on the issue. Experts testified that police use of confidential informants needed increased independent oversight.

In the Magaña case, one frequent victim of coerced sex testified that Magaña threatened to tell criminals that she was a confidential informant, putting her life at risk.

The criminal prosecutor and victim's attorney in the Magaña case pointed out that the police had trusted some of the women as "reliable" confidential informants in pursuing criminal cases but did not trust them when they complained about Magaña.

Magaña wasn't the first Eugene officer to target a confidential informant with sex abuse. Documents in the victims' lawsuit against the city refer to an earlier case in which a Eugene school officer sexually harassed and furnished alcohol to a minor whom he used as an informant.

Lehner said that he should also be allowed to withhold information from the auditor in cases involving "national security." Lehner said, "I have national security clearance" that forbids him from disclosing such information to anyone, including the city manager and the police auditor, "under any circumstance."

The national security and police oversight issue came up in Portland in 2005. The Portland City Council voted to withdraw city officers from the federal Joint Terrorism Taskforce for the area because the secrecy provisions would not allow for adequate police oversight and supervision.

Lehner declined to elaborate on just how his "national security clearance" could block the police auditor from taking complaints and complaint oversight. He claimed "there are other examples" of laws that conflict with the auditor function but declined to cite those examples. "I don't have time," he said.

Lehner and Ruiz have said publicly that they support the independent police auditor, whose position was enacted by voters.

But before he came to Eugene, Lehner opposed the creation of an independent police review board while serving as the police chief of staff in Tucson, according to press reports. In the wake of a dozen police officers charged with robbery, molesting minors, assault and other crimes, the Tucson

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