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May 26, 2009

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Re: Petition for Public Records Disclosure Order:
Department of State Police, State Medical Examiner's Office Records

Dear Mr. Ryan:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 19, 2009, asks the Attorney General to direct the Oregon State Police, State Medical Examiner's Office ("Medical Examiner") to make available "[t]he entire medical examiner's file, including but not limited to the medical examiner's report, toxicology report, autopsy report, and any and all documents in the file relating to the death of Douglas Powers." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers upon "any person" the "right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). The Public Records Law reflects a "strong and enduring policy that public records and governmental activities be open to the public," ***Jordan v. MVD***, 308 Ore. 433, 438, 781 P.2d 1203 (1989). As a consequence, exemptions from disclosure not only must be "express," ORS 192.420(1), but express exemptions "are to be narrowly construed." ***City of Portland v. Oregonian Publishing Co.***, 200 Or App 120, 124, 112 P3d 457 (2005).

ORS 192.502(9) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 146.035(1) establishes the Medical Examiner and requires the Medical Examiner to direct and support the state death investigation program. ORS 146.035(1). Among its various duties, the Medical Examiner is required to "[f]ile and maintain appropriate reports on all deaths

requiring investigation." ORS 146.035(4)(a). Concerning the disclosure of information regarding death investigations, ORS 146.035(5) provides, in pertinent part, that:

> Any parent, spouse, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner[.]

We have issued a number of public records orders concluding that ORS 146.035(5) restricts access to reports ordered by a medical examiner under the authority of ORS 146.117. *See, for example*, Public Records Order, January 13, 1988, Woodall; Public Records Order, May 10, 1988, Larson; Public Records Order, July 22, 1988, Goffredi; Public Records Order, July 24, 1990, Westberg; Public Records Order, October 8, 2003, Sowell.

You base your petition, in part, on ***Colby v. Gunson***, 224 Or App 666, ___ P3d ___ (2008) and state that the Medical Examiner staff's denial of your request was based on the "belief that the decision of the Court of Appeals in ***Colby*** is somehow not controlling." On December 24, 2008, the ***Colby*** court did rule that ORS 146.035(5) does not exempt medical examiner autopsy reports from disclosure under the Public Records Law.

However, in denying your request, the Medical Examiner's staff explained to you that the Medical Examiner anticipates further litigation on this subject. Specifically, the Medical Examiner intends to petition the Oregon Supreme Court to review the decision by the Oregon Court of Appeals, and has received extensions of the usual deadline for filing its petition. Because the Medical Examiner intends to appeal the decision of the court of appeals, we decline to order the Medical Examiner to disclose the records. If the Attorney General were to order disclosure of these records under the circumstances, the Oregon Supreme Court's possible review of ***Colby*** could be effectively circumvented. Once the Oregon Supreme Court has made a final decision, whether it declines to review ***Colby*** or issues an opinion on the merits, you are free to resubmit your request to the Medical Examiner or to renew your petition to our office. For now, however, your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Kari Ellis