C: Kelly Carlson

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April 17, 2006

Craig Colby, Esq.
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812 SW Washington St
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Re: *Petition for Public Records Disclosure Order*:
Department of State Police, State Medical Examiner

Dear Mr. Colby:

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 April 4, 2006,[1] asks the Attorney General to order the Department of State Police, State Medical Examiner, "to produce a copy of the report of the examination of Dennis Lamar Young, deceased 1/4/06, dob 1/23/77." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1).

The State Medical Examiner, Karen Gunson, told us that Deputy State Medical Examiner Christopher Young performed an autopsy in the death of Mr. Lamar and produced the report that you have requested. We also spoke with Vivian Oberg, a Senior Office Assistant for the Medical Examiner, who confirmed that she denied your request.

[1] We appreciate your agreement to extend the deadline for this order.

In correspondence dated March 13, 2006, Ms. Oberg cited to ORS 146.035(5) in support of the denial.[2] ORS 146.035(5) provides, in pertinent part:

> 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 under ORS 146.117.

ORS 146.117 authorizes either a medical examiner or district attorney to order an autopsy performed in any death requiring investigation. We have confirmed with Dr. Young that he performed the autopsy in this case based upon his determination that an investigation into Mr. Lamar's death was necessary. In this situation, the quoted portion of ORS 146.035(5) restricts public access to the resulting report to only those persons described in the statute.

Neither your written request nor your petition specified whether you were seeking access to the medical examiner's report in a representational capacity or if you had a relationship identified in ORS 146.035(5) with the deceased. When we contacted you, you explained that you are seeking disclosure of the records as an interested citizen and homeowner in the vicinity of where Mr. Lamar was killed. Based on this information, you do not come within a class of persons authorized by ORS 146.035(5) to examine and obtain a copy of the requested report.

The March 18th petition for a public records order that you sent to the Multnomah County District Attorney, and included as an attachment to your petition to this office, asserts that ORS 146.035(5) should not be interpreted as imposing a permanent restriction on public access to the requested report:

> Apparently the examiner reasons that this statute's grant of access to particular persons implies that citizens in general are denied access. That's fallacious. ORS 192.420 makes the reports generally available. So far as the public is concerned, ORS 192.501(3) may delay release when the examination has been undertaken for criminal law purposes. The cited statute gives relatives and litigants the reports during the period when the general public is denied.

Since 1988, we have issued five 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. Public Records Orders January 13, 1988, Woodall; May 10, 1988, Larson, July 22, 1988, Goffredi; July 24, 1990, Westberg; and October 8, 2003, Sowell. For the reasons described in our prior opinions, all of which are enclosed, we adhere to our interpretation of the statute.

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[2] Ms. Oberg's letter also cited to a second statute, ORS 146.780. This order does not address that statute.

ORS 192.502(9) provides an exemption from the general disclosure requirement imposed on public bodies by the Public Records Law for:

> Public records or information the disclosure of which is prohibited or *restricted* or otherwise made confidential or privileged under Oregon law. [emphasis added].

ORS 146.035(5) restricts access to certain medical examiner reports, making those reports exempt from disclosure under ORS 192.502(9). Because you do not seek disclosure in a capacity identified in ORS 146.035(5) we deny your petition under ORS 192.502(9).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS17228
c: Dr. Karen Gunson, Oregon State Medical Examiner