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December 30, 2014

Martin A. Johnson
SID: 5410056
Oregon State Penitentiary
2605 State Street NE
Salem OR 97310

Re: Petition for Public Records Order
*Oregon Department of Corrections*
DOJ File No. 257001-GA0124-14

Dear Mr. Johnson,

This letter is the Attorney General's order on your petition for public records disclosure under the Oregon Public Records Law, ORS 192.410 to ORS 192.505. Your petition, which we received on December 23, 2014, requests that the Attorney General order the Office of the State Medical Examiner (OSME) to provide you with copies of various records. A copy of your petition and your initial request for records are attached hereto for reference.. Att-1. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities to inspect and copy the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1).

Your petition states that OSME denied your request for public records. Your petition also states that OSME did not provide any response to your fifth, sixth, and seventh records request. Your petition does not indicate which requests you believe OSME denied. As we understand your petition, you take issue with: (1) the purported denial of your first, second, third, and fourth request for records; and (2) the purported failure of OSME to respond to your fifth, sixth, and seventh request for records.

We have spoken with Eugene Gray, Forensic Administrator for OSME, regarding your request. Mr. Gray informs us that OSME responded to each of your requests and provided our office with a copy of the response that OSME sent to you. Unlike the document attached to your petition, the attached letter from OSME—dated November 25, 2014—includes a response to your fifth, sixth, and seventh request. We have attached a copy of that letter to this order for your reference. Att-2. Finally, Mr. Gray indicates that OSME will reevaluate its fee estimate for your first request and provide you with a fee estimate for the entirety of your first records request.

With that background in mind, we turn to your petition.

**1. Denial of Records Requests**

In response to your first request, OSME provided you with fee estimates. A public body is entitled to establish and charge fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request." ORS 192.440(4)(a). That is what OSME did here. In addition, to the extent that OSME's letter initially suggested that your request was overly broad, OSME has agreed to revisit your request and provide you with an updated fee estimate that accounts for all of the records sought in your first request for records.

In response to your second request for records, OSME's letter indicates that it does not have responsive documents. The Public Records Law does not require an agency to create or provide documents that it does not possess. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 7 (2014). In sum, OSME has responded to your request, and we cannot order OSME to provide what it does not possess.

In response to your third request for records, OSME indicates that it does not have responsive records for inventory of equipment. OSME provided you with fee estimates to search for responsive records that the agency may have in its possession. As noted above, both responses are appropriate under the Public Records Law. ORS 192.440(4)(a); MANUAL at 7.

In response to your fourth records request, OSME cites ORS 192.501(36)—formerly ORS 192.501(34)—which exempts from disclosure under the Public Records Law any "medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117" unless "the public interest requires disclosure in the particular instance."[1] Your fourth records request seeks "all autopsy reports, photos of autopsies that Dr [sic] Clifford Nelson has done to date." Based on the nature of that request, we conclude that ORS 192.501(36) applies. Yet neither your initial request nor your petition provides any indication of

[1] ORS 146.035(5) provides a narrow exception to ORS 192.501(36) for "[a]ny parent, spouse, sibling, 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." However, neither your initial request nor your petition provides adequate information upon which to determine that ORS 146.035(5) applies here.

how disclosure of the requested records would serve the public interest; nor can we discern any such interest. We thus cannot conclude that OSME improperly invoked ORS 192.501(36) to deny your fourth request for records.

Under the circumstances, we cannot conclude that OSME improperly denied your first, second, third, or fourth request for records.

**2. Responses to Requests Five, Six, and Seven**

Your petition takes issue that OSME did not respond to your fifth, sixth, or seventh requests for records. However, OSME did respond to those requests. We therefore deny your petition as moot to the extent it states that OSME failed to respond to those requests.[2]

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

for FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Eugene Gray, Office of the State Medical Examiner

Enclosures

[2] With respect to your sixth request for records, to the extent that you seek copyrighted materials, the Public Records Law does not authorize public bodies to violate federal copyright law. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at A-1, A-2 (2014). Additionally, it appears that at least some of the records you have requested are publicly accessible.