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November 10, 2014

Dylan Darling
1777 SW Chandler Ave.
Bend, OR 97702

RE: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0103-14

Dear Mr. Darling:

This letter is the Attorney General's order in response to your petition asking our office to order the Oregon State Police, State Medical Examiner (OSP) to disclose certain records to you under the Oregon Public Records law. Specifically, you asked that office to provide you with copies of records pertaining to the discovery of skeletal remains in the Steen Mountain area that have recently been confirmed as the remains of Dustin Self.

The Oregon Public Records Law, ORS 192.410 to 192.505, provides that "[e]very person has a 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). Exemptions from disclosure are construed narrowly, meaning that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." Colby v. Gunson, 224 Or 666, 676 (2008). A public body that asserts a statutory exemption from disclosure has the burden of demonstrating that the law permits the material in question to be withheld from public disclosure. ORS 192.450(1); ORS 192.490(1).

In denying your request, OSP relied on ORS 192.501(36), which exempts from disclosure "[a] medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117." As your petition notes, that exemption is conditional in that it applies "unless the public interest requires disclosure in the particular instance." ORS 192.501.

After receiving your petition, we spoke to OSP about your request. OSP informs us that the documents in its possession relating to these remains consist of the following:

- A skeletal survey (pictures and a catalogue of bones) with an anthropologic analysis;
- Police reports prepared by the Harney County Sheriff's Office;
- A brief email concerning the forensic dental work done to confirm the identity of the remains.

OSP states that it is willing to provide you with the email pertaining to forensic dental work. If you would like to obtain that document, please inform Eugene Gray of OSP. OSP also states that it is willing to evaluate whether any exemptions apply to the police reports in cooperation with the Harney County Sheriff's Office, but suggests that it might be simpler for you to simply request those records from the sheriff's office directly. You have agreed to approach that office about the police reports. As to those items we deny your petition on the basis that OSP is no longer denying your request.

We turn to the various documents and photographs regarding the skeletal remains. As noted above, these materials are exempt from public disclosure "unless the public interest requires disclosure in the particular instance." You assert that the public interest requires disclosure, noting media coverage of Mr. Self's disappearance. Specifically, you state that "[w]hile we now know where Mr. Self died, there are many lingering questions about how he died." In this case, however, disclosure of the skeletal survey and analysis would not advance that interest. As for the general media interest in the case, we believe that general curiosity about a matter, without any connection to some question of public policy (or, possibly, to a public figure), will typically be insufficient to tilt the balance in favor of disclosing the kind of information that is protected by ORS 192.501(36). We cannot see how disclosure of a catalogue, photographs, and analysis of Mr. Self's skeletal remains would contribute meaningfully to the discussion of any larger issues that are of concern to the public. Consequently, we cannot conclude that the public interest requires disclosure and we respectfully deny your petition with respect to those items.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

c: Dr. Karen Gunson, State Medical Examiner