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November 6, 2015

SENT VIA EMAIL ONLY
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Melvin N. Kramer, Ph.D., M.P.H.
President
EHA Consulting Group Inc
7904 Starburst Drive
Baltimore MD 21208

Re: Petition for Public Records Disclosure Order
Oregon Health Authority / Public Health Division
DOJ File No. 443720-GA0135-15

Dear Dr. Kramer,

This letter is the Attorney General's order in response to your petition asking us to order the Public Health Division of the Oregon Health Authority (OHA) to disclose certain records to you under the Oregon Public Records law. Specifically you are seeking the following documents in connection with an individual death investigated by DHS in connection with a Salmonella Heidelberg outbreak:

- "line list"
- questionnaire
- death certificate

You indicate that you are willing to accept these documents in redacted form to protect the identity of the deceased. You explain that you are acting on behalf of Foster Farms in this request, and that you dispute statements made by OHA employees to national media indicating that a death was caused by Salmonella Heidelberg traceable to Foster Farms chicken.

The Oregon Public Records Law 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). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means 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 App 666, 676 (2008).

In denying your request, OHA cited ORS 433.008, which generally provides that "information obtained by the Oregon Health Authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak is confidential and is exempt from disclosure under ORS 192.410 to 192.505." You do not dispute that the statute generally exempts from disclosure the records that you are seeking, but you argue nevertheless that you are entitled to the information. We understand you to be making essentially two arguments in this regard. First, you argue that the information can be disclosed to you under the exception to the exemption allowing information obtained in an investigation to be disclosed to "[t]he individual who is the subject of the information or the legal representative of that individual." ORS 433.008(2)(f). Second, you allege that OHA employees disclosed information to media in violation of ORS 433.008 and suggest that it is unfair for OHA to rely on the statute to refuse to provide information to you.

With respect to your first argument, we have no trouble concluding that Foster Farms is not an "individual" within the plain meaning of that term. The term individual is commonly used to mean a single person. It is not used to refer to a business entity like Foster Farms. For example, ORS 174.100(5) gives a general definition of person: "'Person' includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies." If "individual" included business entities like Foster Farms, much of that definition would be redundant. Moreover, Foster Farms is not the subject of the records you request, despite the fact that OHA has made statements implicating Foster Farms in the death.

With regard to your second argument, we begin by observing that the information you allege was disclosed by OHA in violation of ORS 433.008 is not the information that you are seeking. That is, OHA has not disclosed a line list, questionnaire or death certificate. Moreover, Dr. Paul Cieslak and Dr. Collette Young of OHA explained to our office that any determination that a death is connected with a specific outbreak would be made based on the entirety of epidemiological evidence available, not simply the three documents that you request. Other information that was disclosed to the media – information about the surviving family of the deceased, essentially – is not directly relevant to the correlation between the death and Foster Farms chicken. We cannot conclude that disclosures made to the media require OHA to provide you with the information you seek.

For the foregoing reasons, your petition is respectfully denied.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

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cc via email only:
Keely West, OHA

Dr. Paul Cieslak, OHA
Dr. Collette Young, OHA