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April 13, 2015

Stephen A. Forrester
Editor and Publisher, The Daily Astorian
PO Box 210
949 Exchange Street
Astoria, Oregon 97103

Re: Petition for Public Records Disclosure Order
Oregon State Police; State Medical Examiner
DOJ File No. 257001-GA0075-15

Dear Mr. Forrester:

This letter is the Attorney General's order in response to your petition asking that we order the Oregon State Medical Examiner to disclose certain records to you pursuant to the Oregon public records law, ORS 192.410 to 192.505. Specifically, you seek a copy of the autopsy report for Melissa Ann Yowell, who recently died following a car accident. The Medical Examiner disclosed the manner and cause of Ms. Yowell's death, but denied your request for underlying records.

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." 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). 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). A person whose request for a public record has been denied by a state agency may petition this office for review of that decision. *Id.*

In denying your request, the Medical Examiner relies on ORS 192.501(36), which conditionally exempts from disclosure "A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117." Like all of the exemptions codified within ORS 192.501, this exemption is conditional in that it applies "unless the public interest requires disclosure in the particular instance." Your petition thus requires us to determine whether the public interest requires disclosure of this particular report.

In support of your contention that the public interest requires disclosure, your petition notes that Ms. Yowell's death at the hospital was apparently surprising to Astoria Police Chief Brad Johnston and to friends of Ms. Yowell who witnessed the accident: "To anyone familiar with the accident * * * Yowell's subsequent death at the hospital has raised questions." Your petition does not, however, explain what those questions are or why they implicate any particular matter of public interest.

To the extent you are implying that her death may have been preventable – and your petition certainly does not say so explicitly – the basis for such a claim would seem highly speculative. Moreover, ORS 146.035 clearly authorizes certain categories of individuals to obtain the reports you are requesting. Should they conclude that the information is of public interest they would then be free to share it with the press or make it public in other ways (for example by bringing a legal action of some kind.) We acknowledge that the public interest test of ORS 192.501(36) means that the media and interested members of the public are not completely reliant on authorized recipients of these reports sharing information. But in this case, we see essentially no support for your view that the public interest requires disclosure. You clearly are curious about the cause of Ms. Yowell's death. But Ms. Yowell passed away following a car accident, and the manner and cause of her death have both been disclosed. Under the circumstances, we do not think that curiosity rises to the level of public interest that would support disclosure of the records you seek. We have found a public interest in disclosure of this kind of information when the disclosure could meaningfully contribute to understanding matters that affect the public at large. For example, in a prior order issued to Patrick Webb and Dr. Karen Gunson, we ordered disclosure of the Medical Examiner's toxicology report because we concluded that its disclosure could contribute to meaningful discussions regarding the cause of a fatal accident, and the safety of the Astoria-Megler Bridge. Public Records Order, Webb and Gunson, December 14, 2012. We see no reason to think that disclosure of the reports at issue here would serve any similar public interest. As a consequence, we respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

C: Karen Gunson, OSP ME