JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

March 7, 2012

Via Email and Regular Mail
Lynn S. Walsh
Attorney at Law
209 SW Oak Street, #400
Portland, OR 97204
walsh@europa.com

Re: Petition for Public Records Disclosure Order
Department of Corrections
DOJ File No. 291020-GA0007-12

Dear Ms. Walsh:

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. We received your petition on February 2, 2012. Your petition asks the Attorney General to direct the Oregon Department of Corrections to provide copies of the following documents and to grant your fee-waiver request:

> "All Deaths in Custody Reports (Form NPS 4A) from January 1, 2008 to present."

The Department responded to your request, explaining that it would provide the requested records, but that it would redact protected health information pursuant to ORS 179.495. You contend that the information the Department intends to redact does not meet the statutory definition of protected health information and is thus not exempt from disclosure. You also contend that the fees charged by the Department for segregation and copying are unreasonable as compared to the rates charged by other states, such as New York and Washington. For the reasons that follow, we respectfully deny your petition.

ORS 192.502(9) exempts from disclosure public records that are confidential, privileged, or otherwise not subject to disclosure under state law. ORS 179.495 prohibits any person from knowingly disclosing "information from a written account," except as expressly authorized by ORS 179.505. A "written account" is a record that contains "only individually identifiable

health information." ORS 179.505(1)(h). ORS 179.505(1)(c), in turn, broadly defines "individually identifiable health information" as any health information[1] that is:

> (A) *Created or received by* a health care services provider; and
>
> (B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:
>
> > (i) *The past, present or future physical or mental health or condition of an individual*;
> >
> > (ii) The provision of health care to an individual; or
> >
> > (iii) The past, present or future payment for the provision of health care to an individual.

(Emphasis added).

Thus, absent an enumerated statutory exception, the Department of Corrections is generally prohibited from disclosing written accounts or individually identifiable health information.[2] ORS 179.495; ORS 179.505; ORS 179.508. Accordingly, the questions to be resolved here are whether the records you have requested are "written accounts" or otherwise contain "individually identifiable health information" as those terms are defined by statute and, if so, whether any of the statutory exceptions applies.

The Department has informed us that the records you have requested are forms that are completed by each institution's medical services manager based on information he obtains from the inmate's medical charts, hospital records, and medical examiner. The medical services manager is a person employed by the department to provide health care to the inmates and is thus a "health care services provider" as defined by ORS 179.505(1)(b).

Similarly, the inmate's medical chart, hospital records, and medical examiner's report are "written accounts" in that they contain "individually identifiable health information"—that is, information *created or received* by the health services provider that relates to the past, present, or future physical or mental health condition of the inmate (including identifying demographic information). ORS 179.505(1)(c), (1)(h). More specifically, the usual definition of "condition" is "a state of being." *Webster's Third New Int'l Dictionary* 473 (unabridged ed 1993). Thus, the fact of a person's death, and the causes thereof, are "related to" both that person's past physical condition— namely, the source of the injuries or other physical insults that resulted in the person's death— and to the person's present physical condition—namely, the individual's state

---

[1] Although the term "health information" is not specifically defined in ORS 179.505, it is defined in ORS 192.519, which governs protected health information generally. That statute defines "health information" in pertinent part as "any oral or written information in any form or medium" that is "created or received by a covered entity" and which relates to the "past, present or future physical or mental health or condition of an individual," or the "provision of health care to an individual."

[2] Notably, this statutory prohibition on disclosure specifically continues "irrespective of whether or when the individual ceases to receive treatment." ORS 179.505(13).

of being deceased and any associated demographic data—and therefore constitute individually identifiable health information. This conclusion is reinforced by the fact that the information in the forms comes exclusively from the inmate's medical treatment files.

Nonetheless, you contend that the cause of death for other than natural circumstances—such as accident, homicide, or suicide—is not related to the person's physical condition. We see no reason to distinguish between a cause of death that was related to illness and a cause of death that was related to mental health issues or drug addiction, such as in the case of suicide or accidental drug overdose. [3] Even in the case of a homicide, the health care services provider—that is, the Department's medical services manager—has received information that is related to the inmate's physical condition, thus bringing the information within the statutory definition of individually identifiable health information. Indeed, it is entirely possible that the inmate received medical treatment for the injuries or affliction that ultimately led to his or her death, regardless of the manner in which the inmate received those ailments.

Because the information in the forms constitutes individually identifiable health information that comes exclusively from the inmates' medical records, as maintained by a health services provider, we conclude that the forms are "written accounts," as defined by statute. The Department of Corrections is thus prohibited from disclosing any aspect of the completed forms unless one of the specific exceptions in ORS 179.505 or ORS 179.508 applies. We have been unable to discern any applicable exception, and you have not suggested that any exception applies. We therefore respectfully deny your petition for a public records order.

Finally, because we conclude that the Department of Corrections was not authorized to provide a redacted version of the forms, we deny the portion of your petition regarding fees as moot.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:smg/3268413-v1
c: Zachary Erdman, ODOC

[3] Because we resolve the issue under ORS 192.502(9), we do not decide whether the records are exempt under ORS 192.502(2), which governs "information of a personal nature," such as that found in a medical file. Nor do we resolve whether the cause of death, in the case of a homicide with an ongoing criminal investigation, would be exempt under ORS 192.501(3).