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February 9, 2022

VIA E-MAIL ONLY: eolson@erinolsonlaw.com

Erin Olson
1631 NE Broadway St., #816
Portland, OR 97232

Re: Petition for Public Records Disclosure Order
Oregon State Medical Examiner
DOJ File No.: 257001-GA0018-22

Dear Ms. Olson:

This letter is the Attorney General's response to your petition, on behalf of a client, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks us to order the Office of the Oregon State Medical Examiner ("ME") to disclose any ME reports, autopsy reports, and laboratory test reports relating to your client's deceased son.

Your petition explains that the ME denied your request for these records at the request of the Deschutes County District Attorney ("DA"), who has asserted that the ME's records are currently exempt from disclosure under ORS 192.345(3) (information compiled for criminal investigatory purposes). Your petition asserts that your client has a statutory right to these records under ORS 146.035(5)(a).[1]

After receiving your petition, we contacted John Hummel, the elected DA for Deschutes County. He informed us that he has claimed the right to withhold disclosure in this instance.

Ordinarily, any person denied the right to inspect a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). However, if an elected official asserts the right to withhold a record,

[1] ORS 146.035(5)(a) states, in relevant part, "[n]otwithstanding ORS 192.345(36) * * * [a]ny parent, spouse, sibling, child or personal representative of the deceased * * * may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117."

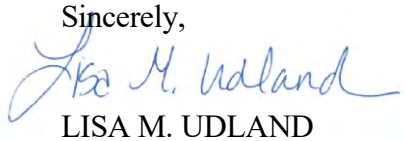
our office does not have that authority, and the requester must instead bring suit against the elected official.

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, *or in the custody of any other person but as to which an elected official claims the right to withhold disclosure*, no petition to require disclosure may be filed with the Attorney General or district attorney, *or if a petition is filed it shall not be considered by the Attorney General* or district attorney *after a claim of right to withhold disclosure by an elected official*. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.401, 192.411 or 192.415, and the Attorney General or district attorney may upon request serve or decline to serve, in the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney ordinarily serves as counsel. * * * (Emphases added.)

ORS 192.427.

Under the circumstances, we are prohibited from considering your appeal; any remedy must be pursued against DA Hummel. We therefore respectfully dismiss your petition due to a lack of jurisdiction.

Sincerely,



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Deputy Attorney General

LMU:pjn/
c via e-mail only: Kelsey Evans (ME)