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September 12, 2024

VIA E-MAIL ONLY: jbial@opb.org

Amelia Templeton
c/o Jon Bial
7140 S Macadam Avenue
Portland, OR 97219

Re: Petition for Public Records Disclosure Order
Oregon State Medical Examiner
DOJ File No.: 257001-GA0087-24

Dear Mr. Bial:

This letter is the Attorney General's response to the petition for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478, that you filed on behalf of Ms. Templeton. Your petition asks the Attorney General to order the Office of the Oregon State Medical Examiner (ME) to disclose all records pertaining to an individual's weight and dehydration at death, which Ms. Templeton originally requested from the ME on May 28, 2024. In response to that request, the ME informed Ms. Templeton shortly thereafter that it did not possess any records containing the specific information requested, after conducting a search for responsive records. Your appeal followed on September 4, 2024.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). "The law applies only to records that exist at the time of a public records request." Public Records Order, Sep 20, 2021, Volin. And agencies are "not required to create new records" in response to such requests, nor are they required to "answer questions in response to a public records request." Public Records Order, Apr 28, 2023, MacKenzie; *see Attorney General's Public Records and Meetings Manual* at 7 (2019).

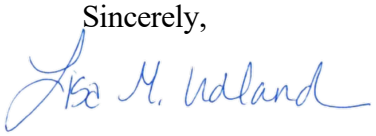
In response to your petition, we contacted Assistant Attorney General Matthew McCauley, ME's DOJ-assigned contact counsel. He reiterated the ME's position that the ME did not possess any responsive records at the time of the search conducted in response to Ms. Templeton's request. He also noted that, under the Public Records Law, the ME was under no obligation to disclose, on a rolling basis, records that are created after the date of the search

conducted in response to the request. He informed us that, on September 6, 2024, as a courtesy, the ME provided Ms. Templeton with the information originally requested about the individual's weight and dehydration at death, but did not produce any underlying records.

We note that requesters are always welcome to submit subsequent requests for public records if they are aware or suspect that records have been created after the date of their original request and successive denial from the agency. In that vein, we understand that the ME is, as a courtesy, treating your current petition as a new public records request of the ME for the records underlying the information recently provided to you about the individual's weight and dehydration at death.

Under the circumstances here, we have no reason to second-guess the representation that the ME did not possess any responsive records in existence at the time the ME conducted a search for records responsive to Ms. Templeton's request. And because we cannot order the ME to disclose records that did not exist at that time, we must respectfully deny your petition. You are, of course, welcome to make a new public records request of the ME based on the information you recently received or information you became aware of in the months since Ms. Templeton's original request.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

KG9/pjn
c via e-mail only: Kelsey Evans (Oregon State Medical Examiner)