DAN RAYFIELD
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

March 3, 2025

VIA E-MAIL ONLY: rhaas@opb.org

Ryan Haas
Oregon Public Broadcasting
7140 S Macadam Avenue
Portland, OR 97219

Re: Petition for Public Records Disclosure Order
Oregon State Medical Examiner Office
DOJ File No.: 257001-GA0023-25

Dear Mr. Haas:

This letter is the Attorney General's response to a petition from Oregon Public Broadcasting (OPB) under the Oregon Public Records Law, ORS 192.311 to 192.431. OPB's petition asks the Attorney General to order the Oregon State Medical Examiner's (ME) Office to disclose records associated with one its Deputy State Medical Examiners. For the reasons discussed below, we respectfully deny OPB's petition.

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 is a disclosure law, and exemptions from disclosure must be express. Any person denied the right to inspect or to receive 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). The agency carries the burden to sustain its actions. *Id*.

OPB's petition stems from a request for "a list of names Dr. Rebecca Millius has worked on as the lead pathologist between January 1, 2019, and December 31, 2024." The ME denied OPB's request claiming that the records are exempt from disclosure under ORS 192.345(36), which makes ME reports conditionally exempt unless the public interest requires disclosure in the particular interest. In responding to OPB's request, the ME explained that "on balance, we find that the privacy interests of the decedents and their families outweigh the general public interest stated in your request." OPB's petition followed.

OPB's petition makes two arguments for disclosure. First, OPB argues that a list of the names of the decedents investigated by Dr. Millius does not fall within the scope of the exemption for ME reports provided by ORS 192.345(36). OPB then argues, alternatively, that if the exemption does apply then the public interest requires disclosure in this instance. We begin by discussing whether the exemption provided by ORS.345(36) applies to the records at issue.

I. Application of ORS 192.345(36) to the requested records

OPB contends that the list of names requested is not part of a "medical examiner's report" as that term is used in ORS 192.345(36). In response to OPB's petition, we contacted Kelsey Evans, Forensic Administrator for the ME. She informed us that the decedent names associated with Dr. Millius's investigations reside only in the ME's Medical-Legal Death Investigation Log (MDIL), which is an electronic repository for ME reports submitted by the ME's forensic pathologists, including Dr. Millius. In two prior orders addressing the MDIL[1] database, we concluded that information in the MDIL system, including the names of decedents, is a "medical examiner's report" within the meaning of ORS 192.345(36) and is thereby conditionally exempt from disclosure.[2] Consistent with our prior analysis, we conclude that the information OPB seeks falls within the scope of the exemption. It is therefore exempt from disclosure unless the public interest requires disclosure in this particular instance.

II. The public interest balancing test

OPB's petition argues that the public has an interest in learning "if a deputy medical examiner's job performance is substandard." As background, OPB's petition notes that Dr. Millius was the Deputy State Medical Examiner who performed an autopsy of a young woman named Sarah Zuber. OPB indicates that Dr. Millius initially classified Ms. Zuber's cause of death as "undetermined," but later changed the cause of death to a combination of intoxication and hypothermia. OPB's petition states that this change was made without new forensic evidence and that the district attorney then closed Ms. Zuber's case. OPB's petition further states that an OPB editor interviewed "several members of law enforcement connected with Ms. Zuber's case" who criticized Dr. Millius's "amendment" to her report.

In support of its public interest argument, OPB's petition also indicates that Dr. Millius performed the autopsy of Skye Baskin, who died while being transported to the Oregon State Hospital from the Douglas County jail. The petition notes that Dr. Millius's autopsy contained a finding associated with people suffering from malnutrition, and indicates that "Dr. Millius's

[1] Ms. Evans informed us that the MDIL database was formerly known as the Medical Examiner Reporting (MER) database, which is how it is referenced in prior Attorney General Orders.
[2] *See* Public Records Order, Jul 1, 2015, Brosseau; Public Records Order, Jul 30, 2021, Sondag, Budnick, and Evans.

determinations coincide with the widespread mismanagement of the Oregon Department of Corrections Health Services."

We discussed the ME's position on the public interest in disclosure with Kelsey Evans. Ms. Evans indicates that OPB's request would require the ME to release the names of approximately 1,300 decedents. Ms. Evans argues that there is a strong public interest supporting the privacy of these decedents and their families. She notes that the 1,300 death investigations include not only homicides (which comprise less than half of the investigations), but also suicides, drug overdoses, non-homicidal infant deaths, and other cases where decedent names have not previously been released to the public. Ms. Evans argues that many of the decedents' families may not have discussed the circumstances of their relatives' deaths with others and that revealing the decedents' names in connection with a ME death investigation could raise questions from friends, family members, or reporters. Ms. Evans explained that the ME seeks to avoid needlessly retraumatizing these parents, children, siblings, and grandparents.[3]

In evaluating whether the public interest requires disclosure in this instance, we must determine whether the public's interest in disclosure outweighs the competing interests in confidentiality, with the presumption favoring disclosure when the parties' interests are of equal value. *See ACLU v. City of Eugene,* 360 Or 269, 280 (2016). The Oregon Court of Appeals has described the public interest in disclosure as the right of the public at large to monitor how public business is conducted and how public officials are performing their jobs. *See Guard Publishing Co. v. Lane County School Dist.*, 96 Or App 463, 469 (1989); and *Jensen v. Schiffman*, 24 Or App 11, 17 (1976).

After weighing the competing interests in this case, we conclude that the public interest in confidentiality and family privacy predominates. We do not perceive any significant or heightened public interest in disclosing a list of decedent names associated with Dr. Millius over the last 6 years. OPB raises a single question about the change in one of Dr. Millius' conclusions—her autopsy findings in the Sarah Zuber investigation. As an initial matter, we note that the Zuber autopsy was performed more than 5 years ago. Additional reporting indicates that the autopsy reports associated with that case have been publicly posted on a Facebook forum—meaning that OPB and other media organizations likely possess the means to analyze Dr. Millius's work in the Zuber case should they choose to do so. And if, as OPB contends, some of the investigators in the Zuber case criticized Dr. Millius's amended findings, we do not find that contention alone is evidence that Dr. Millius's performance was substandard in that, or other cases. We also fail to discern any connection between OPB's mention of the Baskin autopsy, as it relates to complaints about the Department of Corrections Health Services, and the public interest OPB has identified; i.e., Dr. Millius's performance. The petition does not identify

[3] Ms. Evans stated that ordinarily the ME will contact the decedent's family when ME reports are the subject of a records request. She indicated that it was not feasible to contact 1,300 families in response to this records request.

any perceived problems with the Baskin autopsy, nor do critiques about healthcare services for adults in custody have any bearing on Dr. Millius's performance. On this record, we are not convinced that there are credible concerns about Dr. Millius's performance among the general public warranting the compelled disclosure of the list of names OPB seeks.

On the other hand, there is a clear public interest in nondisclosure of the information. We have long recognized a strong public interest in the nondisclosure of ME reports generally.[4] And we have specifically recognized the strong public interest in obtaining the cooperation of family members on matters such as authorizing autopsies and providing relevant information. Should information contained in ME reports be broadly disclosed, it may be difficult for the ME to obtain such cooperation from families in the future. [5] We also take note of the arguments made by Ms. Kelsey about the potential embarrassment and trauma that may result for the families of these individuals by publicly revealing that the deaths were investigated by the ME.

OPB correctly notes that we have ordered disclosure of decedent names from the MDIL database in two prior instances. But in both cases, the petitioners clearly articulated a significant public interest in disclosure of the names. In *Sondag*, the petitioners (representatives of two newspapers) sought the names of 83 Oregonians who lost their lives to hyperthermia during the extreme heat wave of 2021.[6] The petitioners indicated that disclosure "will help inform the public about the circumstances of the deaths and whether the government did enough to address the crisis."[7] In granting the petition, we found that petitioners had "articulated substantial public interests" that "implicate a number of important governmental polices and activities."[8] In *Brosseau*, the petitioner (a reporter for The Oregonian) sought the names of homicide victims to create a "definitive record of killing in Oregon."[9] She indicated that other data sources were incomplete, and that "accounting for how Oregon prosecutors and police respond to every killing of a human being is essential to the public's judgment of how effectively justice is served in this state."[10] In ruling for the petitioner, we recognized that "homicide is a significant public health, public safety, and criminal justice issue" and that "reliable data is a cornerstone of policy development, which in turn drives the appropriate allocation of public resources."[11] We also noted that with respect to homicide victims, the public interest in privacy was reduced because

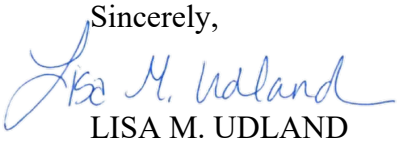
[4] *See* Public Records Order, Jul 1, 2015, Brosseau; Public Records Order, Jul 30, 2021, Sondag, Budnick, and Evans; Public Records Order, Aug 15, 2019, Bial; Public Records Order, Jun 11, 2019, Ryan.
[5] *See* Public Records Order, Jul 1, 2015, Brosseau; Public Records Order, Jul 30, 2021, Sondag, Budnick, and Evans; Public Records Order, Aug 15, 2019, Bial; Public Records Order, Jun 11, 2019, Ryan.
[6] *See* Public Records Order, Jul 30, 2021, Sondag, Budnick, and Evans.
[7] *Id*.
[8] *Id*.
[9] *See* Public Records Order, Jul 1, 2015, Brosseau.
[10] *Id*.
[11] *Id*.

data such as the victim name and cause of death are "sometimes released on a case-by-case basis."[12]

We find OPB's petition distinguishable from these past orders in two respects. First, as noted above, we are not convinced that the arguments and evidence presented in this case provide grounds to conclude that Dr. Millius's performance in the Zuber case was substandard, or that the disclosure of the requested names to OPB will meaningfully inform the public about Dr. Millius's performance generally. Second, as Ms. Evans stated, most of these decedents are not homicide victims, and their names and causes of death have largely not been made public. Thus, disclosing the names may adversely affect the privacy interests of a significant number of family members. On balance, we conclude that the public interest in these privacy concerns outweighs the public interest in monitoring Dr. Millius's performance.

For the foregoing reasons, we respectfully deny OPB's petition.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

DEP:pjn
c via e-mail only: Kelsey Evans, Forensic Director, Oregon State Police, Medical Examiner Division

[12] *Id.*