DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

# DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

January 13, 1988

Bill Woodall, Publisher
North Santiam Newspapers
Stayton Mail
Silverton Appeal
Box 400
Stayton, Oregon 97383

Randy Henry, Reporter
North Santiam Newspapers
Stayton Mail
Silverton Appeal
Box 400
Stayton, Oregon 97383

**Re: Request for Public Records Disclosure Order**

Dear Mr. Woodall and Mr. Henry:

This letter responds to your undated letter requesting the Attorney General " . . . to make available for inspection the state medical examiners [sic] autopsy report for John Lucas,. . ." We received your letter on January 8, 1988. We treat that letter as a petition, filed under the state Public Records Law, for an Attorney General's order directing government officials to disclose certain public records to you. See ORS 192.450. For the reasons set forth below, we respectfully deny your petition.

Your letter to the Attorney General states that your previous requests to inspect records of the Lucas autopsy were denied by Linn County Sheriff Art Martinak and by the State Medical Examiner's office. Please be advised that the Attorney

General has no authority under the Public Records Law, ORS 192.410 to 192.505, to order a local government official, such as the Linn County Sheriff, to disclose public records. ORS 192.450 authorizes the Attorney General to order only state officials to disclose public records to which members of the public have been denied access. The appropriate official to review denials of disclosure by local government officials is the local district attorney. ORS 192.460. We therefore deny your petition with regard to Sheriff Martinak on the ground that we lack jurisdiction to order him to disclose the records that are the subject of your petition. We, however, are forwarding a copy of your petition and our response to Mr. Jackson Frost, District Attorney of Linn County.

Regarding the State Medical Examiner's alleged denial of your request to inspect autopsy reports, we deny your petition on the ground that the information you seek to inspect is exempt from the disclosure requirements of the Public Records Law.

ORS 192.502(8) provides that the following public records are exempt from disclosure under ORS 192.410 to 192.505:

> "Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon Law."

This exemption incorporates an Oregon law, outside the Public Records Law, that restricts disclosure of the records you wish to inspect.

ORS 146.035(5) specifically restricts disclosure of autopsy reports by limiting examination of those records to designated classes of persons. ORS 146.035(5) states:

> "(5) Any parent, spouse, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, 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."

That this statutory language was intended to be restrictive rather than merely permissive is borne out by

examination of a companion statute relating to autopsy reports in the custody of district medical examiners. ORS 146.075(7) states:

> "(7) Reports [including autopsy reports maintained pursuant to ORS 146.075(6)(b)] . . . shall be available for inspection as provided by ORS 146.035(5)." (Emphasis added.)

We conclude that because you are not within a class of person authorized by ORS 146.035 to examine and receive a copy of an autopsy report, the restriction of ORS 146.035 applies; and, as incorporated by ORS 192.502(8), the restriction is not subject to any further public interest balancing test. We also note that, in this particular instance, the autopsy records appear to be exempt from disclosure under ORS 192.501(3). That subsection of the Public Records Law conditionally exempts "[i]nvestigatory information compiled for criminal law purposes. . . ."

Your petition for a public records disclosure order is denied.

Respectfully submitted,

James E. Mountain Jr

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Larry V. Lewman, M.D., State Medical Examiner
The Honorable Jackson L. Frost, Linn County District Attorney
The Honorable Art Martinak, Linn County Sheriff
Leonard Pearlman, Assistant Attorney General
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