



MICHAEL D. SCHRUNK, District Attorney for Multnomah County
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February 28, 1996

Maureen O'Hagan
Willamette Week
822 Southwest 10th Avenue
Portland, Or 97205

Jacqueline A. Weber
Assistant County Counsel
1120 Southwest 5th Avenue, Suite 1530
P.O. BOX 849
Portland, Or 97207-0849

Re: Petition of Maureen O'Hagan for Willamette Week
dated February 9, 1996 to disclose certain
records of the Multnomah County
Sheriff's office

Dear Ms. O'Hagan & Counselor Weber:

On this public records petition, ORS 192.410 et seq., petitioner Maureen O'Hagan for Willamette Week newspaper requests the District Attorney to order the Multnomah County Sheriff's office to disclose "...all investigative materials available..." dealing with David Allen and "... a young man named Stephen Todd Lewis (dob 9/9/68) {who} died of an overdose at Mr. Allen's home..." on March 14 or 15, 1994.¹ By exemption claim letter dated February 15, 1996, the Sheriff's Office, through Assistant County Counsel Jacquie Weber, claims that these records are exempt from disclosure as materials pertaining to reasonably expectable litigation to which the Sheriff's Office could become a party, arising from the deceased Lewis' death (which occurred shortly after his release from the Multnomah County Jail), citing ORS 192.501 (1).

The Sheriff's Office explains that it was not the law enforcement agency which investigated possible criminal charges--that investigation was conducted by the Portland Police Bureau.² Instead, the Sheriff's Office actually investigated the circumstances of this incident from the standpoint of possible claims of liability if some party were to contend that the release of the deceased from jail was improper, which release apparently was done at the request of Mr. Allen (an attorney, although not Lewis'

¹Petitioner also requested a photo of the deceased, which the Sheriff's Office already has granted.

²In fact, by telephone conference with petitioner we learned that she had mistakenly assumed that the criminal investigation was conducted by the Sheriff's Office: petitioner presumably will be making a separate request to the Portland Police Bureau for the police investigative reports, but petitioner requests a final decision on this present petition anyway.

attorney). In support of this exemption claim the Sheriff's Office provided a copy of a tort claim notice letter from attorney James R. Cartwright dated September 13, 1994 giving notice of a potential claim against "...the Multnomah County Sheriff, the Multnomah County Sheriff's Office, Multnomah County Inverness Jail and those persons responsible for the improper release of Stephen Todd Lewis from MCIJ on March 14, 1994." Mr. Cartwright represents claimant Stephen R. Lewis in his capacity as personal representative of the estate of the deceased. Clearly, therefore, the Sheriff's Office has met its initial burden to show prima facie that litigation is reasonably likely to occur, as required by ORS 192.501 (1).

However, by telephone conference on February 16, 1996 with attorney James Cartwright we were told frankly that the personal representative of the estate, represented by Mr. Cartwright, has no present intention of bringing suit. On the other hand, there still is a chance, although apparently remote, that some other party, such as the deceased's mother, possibly may obtain substitute counsel and file an action. Although we are not rendering any legal opinion upon the subject, it does appear to us probable that the two-year tort claim statute of limitation would be applicable to these events, which do appear to have been fully discovered virtually as of the date of the death of the deceased, March 15, 1994. Thus, it appears probable that the statute of limitation will close on or about March 15, 1996.

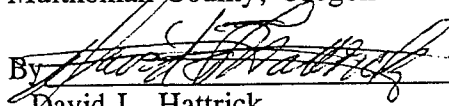
Although ORS 192.501 (1) is one of the "conditional" exemptions which may be overcome if it is shown that "...the public interest requires disclosure in the particular instance...", no particular showing has been made at this point that such an overriding public interest requires disclosure. For that reason, we conclude that the exemption should be sustained until March 15, 1996, on or after which date petitioner may reactivate this petition by telephone or written request to this office. If that occurs, this office will then require the Sheriff's Office to make a more substantial showing why there would be any further reasonable prospect of litigation: otherwise disclosure will then be ordered.

ORDER

Accordingly, the disposition stated above is now ordered: the petition is denied with leave to renew it on or after March 15, 1996.

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

By 
David L. Hatrick
Senior Deputy District Attorney

96-03

DLH:bjh

cc: James R. Cartwright, Esq.
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