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Jeff Merrick
4800 S.W. Meadows Road, Suite 300
Lake Oswego, Oregon 97035

Will Glasson
Senior Assistant County Attorney
501 S.E. Hawthorne Boulevard, Suite 500
Portland, Oregon 97214

Re: Petition of Jeff Merrick seeking a Multnomah County Medical Examiner data relating to certain drug overdose deaths

Dear Mr. Merrick and Mr. Glasson:

In his petition, received by this office on August 29, 2018, petitioner Jeff Merrick requests that we order the Multnomah County Medical Examiner to provide him with data related to deaths occurring in and around the Bud Clark Commons in downtown Portland. On August 6, 2018, petitioner asked the medical examiner to provide him:

data on deaths occurring at, or associated with the following address: 655 NW Hoyt, Portland Oregon [Bud Clark Commons]. [...] I seek data from June 1, 2011 to date. I do not seek individually identifiable health information.

On August 20, 2018, an attorney for the county denied petitioner's request citing, generally, ORS 146.780, ORS 192.345(36), and ORS 192.355(2). This appeal ensued.

The Multnomah County medical examiner's office maintains a rudimentary computer database called the Medical Examiner Records (MER) system. This system is based on the FileMaker software and is antiquated. It contains few of the query, sorting, or reporting features assumed to be standard by anyone who has used a modern computer database. The medical examiner uses this system for the purpose of generating its official reports. Data from the autopsy, investigation, and toxicological testing is entered into the database. A report is run against that database which produces the medical examiner's "report," which is then archived in the official file. Petitioner seeks to have the medical examiner's office run a custom query against that database to extract data about a particular subset of death investigations in Multnomah County.

For the reasons discussed below we follow the reasoning of the Attorney General and deny the petition because the request, as drafted, is insufficiently precise given the manner in which medical examiner data is stored.

DISCUSSION

A. Medical Examiner Reports – ORS 192.345(36)

ORS 192.345(36) conditionally exempts from disclosure,

A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117

Data in the Medical Examiner's MER system is subject to ORS 192.345(36). *Petition of Brosseau*, Att'y Gen. PRO (7/1/15) (so holding). In *Brosseau*, the requestor, a reporter, had asked for the full record for each homicide death in the state as far back as the medical examiner maintained electronic records. The Attorney General concluded that undifferentiated request for all data contained in the MER entry for a particular death was overbroad because it contains "intimate medical details surrounding the death and findings revealed by the autopsy." *Id.* at n.3. The Attorney General found no public interest in release of this information sufficient to override the facial applicability of ORS 192.345(36). We agree.

However, in *Brosseau* the requestor also made a narrower, backup, request for only each responsive decedent's name, age, date of death, and cause of death. This second request, the Attorney General agreed, should be fulfilled as to any case that was not under active criminal investigation.

As framed, there is little to distinguish petitioner's request from the initial request made by Ms. Brosseau. Consistent with the reasoning expressed in *Brosseau* we deny the petition to the extent it requests all data as to each responsive death. That then leaves petitioner with no second-tier request to evaluate. He did not narrow his request to the medical examiner prior to filing his appeal, and we will not consider requests on appeal that the agency has not had an opportunity to evaluate in the first instance. *Morse Bros. v. Or. Dep't of Econ. Dev.*, 103 Or App 619, 622 (1990) ("The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter.")

The medical examiner expresses a second objection to the request as framed. Unlike the request in *Brosseau* which requested only "homicide" cases, this request does not permit the same binary sorting of the entire population of investigated deaths. The request is bounded by two parameters: date and location. Petitioner has defined his location parameter as "occurring at, or associated with, 655 NW Hoyt." It is unclear from the record before us if one of the data fields in the MER system would permit a query by the address of the death, but it is readily apparent that determining which deaths were "associated with" any particular address would require analysis by medical examiner staff.

The medical examiner observes that creating the report for "domicile unknown" deaths, which petitioner references in his submission, required two reviewers to independently assess the death narrative reports, supplemental information, and address information for each case and make a judgment call as to whether or not a particular decedent was homeless at the time of his or her death. A similar, if perhaps slightly less arduous, analysis would be required to determine

if a death was “associated with” the Bud Clark Commons. The public records law does not require public bodies to answer questions about their records or conduct analysis of those records. ATTORNEY GENERAL’S PUBLIC RECORDS MANUAL (2014) at 7.

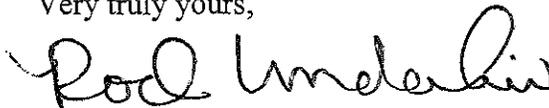
Although we deny the petition today, two issues of dispute are likely to arise on consideration of any subsequent request, so we briefly address them here. We reject the medical examiner’s premise that it lacks the capacity to filter exempt data from non-exempt data as to any particular death. In *Brosseau* the Attorney General ordered it to do exactly that by releasing only a limited subset of data from each responsive death.

Second, the medical examiner should not so quickly dismiss petitioner’s interest as “purely personal” given the issues involved. After balancing all competing concerns, a fee waiver may or may not be appropriate as to whatever more precise request is eventually made, but issues of homelessness in our community are of paramount interest at present to policymakers and the public alike.

ORDER

Accordingly, the petition is denied at this time.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon