



**ROD UNDERHILL**, District Attorney for Multnomah County

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July 24, 2018

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

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

Re: Petition of Jeff Merrick seeking a determination of denial due to undue delay by the Multnomah County Medical Examiner

Dear Mr. Merrick and Ms. Nunley:

In his petition dated July 16, 2018, petitioner Jeff Merrick requests that this office order the Multnomah County Medical Examiner to respond to his public records request as required by ORS 192.324 and 192.329. The nature of a timeliness appeal is procedural and, as such, we do not set out the details of underlying public records request in any depth.

On June 28, 2018 Mr. Merrick submitted a public records request to the medical examiner's office requesting data pertaining to drug-related deaths in northwest Portland from June 1, 2011 to present. On July 10, 2018, having received no response from the medical examiner, Mr. Merrick sent a follow-up email requesting a response as required by ORS 192.324(2). On July 16, still having received no response, Mr. Merrick submitted a petition to this office pursuant to ORS 192.407.

For the reasons discussed below, we deny the petition because the medical examiner has not, as of today, denied petitioner's request.

### DISCUSSION

A public body must acknowledge a properly presented public records request within five business days of its receipt. ORS 192.324(2). In this case, the fifth business day was July 6, 2018.<sup>1</sup> The public body must then complete its response, or provide a written estimate as to when it will do so, within ten additional business days. ORS 192.329(5). Here, this would have been July 20, 2018.

July 16, 2018, the date petitioner filed this appeal, was the eleventh business day after making his request. On that date, the medical examiner was not in violation of ORS 192.329. Subsequent to the initiation of this appeal, the medical examiner's office, via counsel, has been in communication with petitioner seeking to clarify the scope of his request. A request for

<sup>1</sup> When counting days for purposes of determine a deadline, the first day is not counted, but the last day is counted, unless that day falls on a weekend or a holiday, in which case the next business day is the last day. ORS 174.120.

clarification is a permissible response to a records request, and tolls the fifteen day timeline. ORS 192.329(4)(a).

We recognize that the response of the medical examiner in this case was likely prompted by the initiation of this appeal, but reviewing the communications between the parties it does appear that there is a legitimate and good-faith conversation seeking clarity as to the scope and parameters of the request. This conversation was initiated by the medical examiner on July 19, 2018, which was the fourteenth business day after submission of the records request.

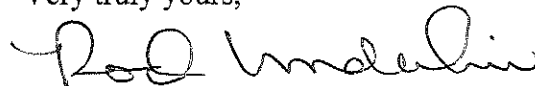
ORS 192.407 provides that a failure to comply with the timelines set out in ORS 192.329 shall be deemed a denial of a public records request for purposes of the district attorney's jurisdiction to hear a petition and order a remedy. Here, the medical examiner has unquestionably failed to comply with the five day acknowledgment deadline in ORS 192.324, but the legislature has provided no remedy for such a violation. The medical examiner has not violated the response timeline in ORS 192.329 and, as such, cannot be deemed to have denied petitioner's request at this time.

We decline petitioner's invitation to prospectively determine the applicability of ORS 192.345(36) to any records that might be responsive to his request. Our order today is procedural, and does not address the validity of any exemption that may or may not ultimately be asserted.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon