



ROD UNDERHILL, District Attorney for Multnomah County

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June 14, 2019

Christen McCurdy
News Editor
The Skanner News
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Robert E. Sinnott
Multnomah County Attorney's Office
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Re: Petition of Christen McCurdy, for The Skanner News, requesting Medical Examiner records in the death of Otis Gulley.

Dear Ms. McCurdy and Mr. Sinnott:

In her public records petition, dated June 3, 2019, petitioner Christen McCurdy requests this office to order the Multnomah County Medical Examiner's Office (MCME) to disclose:

The cause of death and the forensic rationale for the medical examiner's ruling in the death of Otis Gulley.

On June 3, 2019, Kimberley R. DiLeo, the Chief Deputy Medical Examiner, denied the request of Ms. McCurdy for the medical examiner's report concerning the death of Otis Gulley. Medical Examiner's reports are conditionally exempt under ORS 192.345(36).

Ms. McCurdy contends that the decedent's family and friends believe that Mr. Gulley was the victim of a homicide and that it is in the public's interest to know the cause of death.

On June 5, 2019, Robert E. Sinnott, Senior Assistant County Counsel, informed the Multnomah County District Attorney's Office and Ms. McCurdy that the Medical Examiner's Report is not yet complete, as toxicology results are still pending. Those results typically return in twelve to fourteen weeks.

After a request for clarification, Mr. Sinnott confirmed with the Medical Examiner's Office that they have started a draft of the investigatory narrative, but there are no initial drafts of either the toxicology report or the autopsy report. The toxicology results could alter the investigatory narrative. There is currently an investigation¹ by the Portland Police Bureau as to the circumstances of Otis Gulley's death.

¹ <https://www.opb.org/news/article/portland-police-investigation-otis-michael-gulley-jr-black-trans-woman/>;
<https://www.portlandoregon.gov/police/news/read.cfm?id=240010>

DISCUSSION

A. Medical Examiner Records – 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.

ORS 192.314 provides that, "Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.338, 192.345 and 192.355." ORS 192.311(5)(a) defines public record as "any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics." The initial draft of the Medical Examiner's investigatory narrative is a responsive document to petitioner's request. This initial draft also falls under the public records exemption.

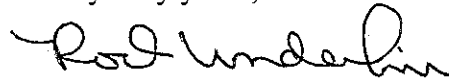
The question at this time is whether the public interest requires disclosure. The Medical Examiner contends that the initial draft of the investigatory narrative could be altered by further information that may be revealed by the return of the toxicology results or the investigation currently underway by the Portland Police Bureau. It therefore follows that the release of this initial draft would be premature, as the cause of death is still an open question.

We agree that petitioner has not demonstrated, at this time, that the public interest in the release of the initial investigative report outweighs the need for a complete report with a conclusive cause of death.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon