



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

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November 8, 2019

Jayati Ramakrishnan  
The Oregonian  
1500 S.W. First Avenue, Suite 400  
Portland, Oregon 97201

Robert Sinnott  
Multnomah County Attorney's Office  
501 S.E. Hawthorne Blvd., Suite 500  
Portland, Oregon 97214

Re: Petition of Jayati Ramakrishnan seeking preliminary drafts of Medical Examiner documents relating to the death of Owen Klinger

Dear Ms. Ramakrishnan and Mr. Sinnott:

In her public records petition Jayati Ramakrishnan, on behalf of The Oregonian, asks this office to order the Multnomah County Medical Examiner's office to release records concerning its investigation of the death of Owen Klinger.

Mr. Klinger was a University of Portland<sup>1</sup> student who disappeared from campus on October 6, 2019. After much publicity and community support for the search, on October 21, 2019, Mr. Klinger's parents released a written statement indicating that they had been notified that his body had been recovered near the St. Johns Bridge. The medical examiner's office took custody of Mr. Klinger's body to perform an investigation into the cause and manner of death.

Petitioner subsequently inquired of the medical examiner's office as to the cause of death and received a response that her request was denied pursuant to ORS 192.345(36), which exempts from disclosure certain records of the medical examiner's office. This appeal ensued.<sup>2</sup>

The medical examiner's office has elaborated in its response to this appeal that it objects to release because it has not completed its investigative process, and the public interest, however high it may have been in locating Mr. Klinger, does not demand a premature release of their investigative materials. To be clear, the medical examiner does not concede that there will be a

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<sup>1</sup> The initially distributed version of this order mistakenly stated that Mr. Klinger was a student at Portland State University. We regret the error.

<sup>2</sup> Although the initial request for information was not, precisely, a public records request, the issues on appeal are clear and counsel for the medical examiner's office has waived any procedural issues to permit the petition to be addressed on the merits.

public interest in release once its investigation is concluded, but rather takes the position that this analysis is premature prior to its findings being finalized.

One of the items requested, a death certificate, is not a record maintained by the Multnomah County Medical Examiner. That record may, or may not, be subject to disclosure at this time, but it is beyond the scope of the present appeal.

The medical examiner has provided this office with a copy of the preliminary medical examiner investigator's report and related notes. At this point there is not a written draft of the autopsy report and toxicology is pending. The medical examiner's office has contacted Mr. Klinger's family and they are opposed to any release of preliminary materials at this time as they wish to be the first to see them and discuss the final conclusions directly with the medical examiner's staff.

For the reasons discussed below, we agree with the medical examiner's office and deny the petition.

## 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.

The initial draft of the medical examiner's investigatory narrative clearly falls within the scope of this exemption. The question then is whether the public interest nonetheless requires disclosure. Both this office and the Attorney General's office have recently concluded that draft reports from the medical examiner's office were exempt from disclosure. *Petition of McCurdy*, MCDA PRO 19-25 (2019) ("It therefore follows that the release of this initial draft would be premature, as the cause of death is still an open question"); *Petition of Bial*, Att'y Gen. PRO (Aug. 15, 2019) ("As we have previously recognized, there is a strong public interest in the nondisclosure of ME reports generally.")

Petitioner points to the intense and sustained interest in locating Mr. Klinger and outpouring of support for that search in the weeks following his disappearance. Petitioner further argues that this case is of greater public interest, and therefore distinguishable from, the death of Otis Gulley, which was the subject of both the *McCurdy* and *Bial* orders cited above.

For purposes of balancing the competing interests in release of preliminary medical examiner's records, the Gulley and Klinger cases are more similar than they are different. And, in both cases, the family of the deceased, who has a statutory right to access the final medical examiner reports, requested that they be permitted to review the final reports themselves without having them disclosed to the media earlier. This is a reasonable request, and one that is consistent with the provisions of Oregon law in this case.

We need not reach today the question of whether there is or is not an overriding public interest in the details of the manner and cause of Mr. Klinger's death. Consistent with *McCurdy* and *Bial* we find that there is not sufficient interest in the release of the preliminary draft of the medical examiner's work to overcome the facial applicability of ORS 192.345(36) while the matter remains under investigation.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,



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ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon