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VIA EMAIL ONLY

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Re: Petitions of Aaron Mesh (Willamette Week), Tim Cunningham (KGW),
Samantha Sondag (The Oregonian), and Nick Budnick (Portland Tribune),
seeking Medical Examiner records

Dear Mr. Mesh, Mr. Cunningham, Ms. Sondag, Mr. Budnick, and Mr. Sinnott:

Petitioners, representing four different media outlets, each requested information from the Multnomah County Medical Examiner (ME) that would allow them to identify, in varying levels of detail, the individuals who died as a result of the record-breaking heat wave in late June. The ME denied each of these requests, citing ORS 192.345(36), which conditionally exempts medical examiner records from disclosure under the public records law.

Contemporaneous with the petitions to this office, two of the petitioners in this case also sought an order from the Oregon Attorney General's office seeking to require the *state* medical examiner to provide substantially the same information for the whole state. On Friday, July 30, 2021, the Attorney General granted that petition and ordered the state medical examiner to release the names, addresses, races/ethnicities, and dates of death for each confirmed hyperthermia death from the heat wave. *Petitions of Sondag and Budnick, Att'y Gen PRO (7/30/21)*.¹

The petitioners provided thorough and compelling briefings on the unique public interest in these particular deaths. The Attorney General's decision in *Sondag/Budnick* was detailed and well-reasoned. Although decisions of the Attorney General are not binding precedent on this

¹ The Attorney General's order to release records does not make the petitions in this case moot for two reasons: 1) not all petitioners in this case joined the petition to the Attorney General, and 2) the state medical examiner could choose to appeal the Attorney General's decision.

office, we frequently rely on them as persuasive authority. As briefly discussed below, we agree with, and fully adopt, the reasoning of the Attorney General in concluding that the public interest requires disclosure in this instance and grant the petitions.²

DISCUSSION

A. ORS 192.345(36) – Medical Examiner Records

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

Petitioners do not contest that the requested information fits within scope of this exemption.³ The only dispute is whether the public interest nonetheless requires disclosure. Petitioners argue that ORS 192.345(36) is a conditional exemption, meaning that the legislature allowed that there would be circumstances under which release was necessary due to the public’s interest despite a generally recognized interest in confidentiality of death investigations. They argue that if over a hundred deaths resulting from an unprecedented heatwave do not justify a public interest in disclosure, then what facts possibly would?

The ME, in response, argues that the county has recognized this interest and provided detailed, but de-identified, data on those who died to better inform the public. Petitioners rejoin that, on matters of such serious public import, the public records law permits the public to check the government’s work and that reporters need not settle for “trust us.”

We think petitioners have the better argument. As the Attorney General concluded in *Sondag/Budnick*:

The heat wave and associated hyperthermia deaths are unquestionably high-profile matters that implicate a number of important governmental policies and activities. Conversely, we have not been able to identify any public interests in nondisclosure in this instance that are not also present in every death investigation. [...] Moreover, given the unprecedented nature of the heatwave, we do not believe that disclosure in this instance will substantially interfere with the general interests in nondisclosure.

² KGW’s petition is broader than the other petitioners in that it seeks the full medical examiner’s report, not just demographic information about the decedents. However, as of the date of the petitions in this case no medical examiner reports had been finalized. As of today, two out of 78 are final. As such, there were no responsive records to KGW’s broad, primary, request at the time the ME completed its response to it. As such, we will address KGW’s secondary request for demographic information on the same terms as the other petitioners. We do not intend this order to express any opinion on the release of the medical examiner’s reports when they are completed.

³ As we and the Attorney General have previously recognized, the information in this case is all contained within the ME’s database program that is used to prepare medical examiner reports and, although the term “information” is used throughout the briefing in this case, strictly speaking this is a request for records (i.e. data within the database).

Id. at 6. We agree.

ORDER

Accordingly, the petitions are granted on the same terms set out by the Attorney General. Specifically, the medical examiner shall promptly disclose to petitioners the requested demographic data for individuals whose cause of death has been confirmed to be hyperthermia.⁴ If next-of-kin notification processes are still ongoing for any decedents, information relating to them may be withheld at this time.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

21-44, 21-45, 21-47, 21-48

⁴ The Tribune requested "names, dates of the death or death report, addresses and ethnicity;" Willamette Week requested names and addresses; KGW requested (in its secondary request) names and location of death. The Oregonian joined in KGW's appeal.