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via email only

Paul and Katrina Armatís
pdarmatis@gmail.com

D. Raghav Shan
Legal Counsel – OHSU
shanmuga@ohsu.edu

Re: Petition of Paul and Katrina Armatís seeking unredacted security video from Oregon Health & Science University

Dear Mr. and Mrs. Armatís and Mr. Shan:

In a public records petition, dated February 10, 2025, petitioners seek access to security footage from the Oregon Health & Science University (OHSU) emergency department lobby. The procedural history of this request is long, and ultimately not relevant to the legal issue presented here. In sum, petitioners had a negative interaction with OHSU staff while attempting to seek medical care at OHSU. A lawsuit is currently pending relating to that episode.¹ Petitioners sought a copy of two camera angles that captured the actions of OHSU staff and themselves during the incident. OHSU produced a substantially redacted video to petitioners with oval blurs covering the entire body, and immediate background, of every person who appears in the video other than OHSU staff and petitioners.

Petitioners challenge these redactions on two grounds: 1) the oval redactions are overbroad and obscure portions of the interaction between petitioners and OHSU staff, as well as non-identifiable portions of the individuals to whom they have been applied; and 2) OHSU's cited basis for the redactions, HIPAA, only applies to patients and OHSU has applied undifferentiated redactions to all individuals (other than petitioners and OHSU staff) appearing in the video without any determination that they are patients.

For the reasons discussed below I conclude that OHSU has not met its burden of establishing the applicability of the cited exemption and grant the petition.

DISCUSSION

A. Federal Law – ORS 192.355(8)

ORS 192.355(8) unconditionally exempts from disclosure,

¹ *Armatís v. OHSU*, Multnomah County Circuit Court, 24CV54468

Any public records or information the disclosure of which is prohibited by federal law or regulations.

The relevant federal law cited by OHSU is the Health Insurance Portability and Accountability Act (HIPAA) and the “Privacy Rule” enacted under its authority. 45 CFR § 160.103. The Oregon Supreme Court describes the confidentiality of patient information as follows:

Under HIPAA and the Privacy Rule, “protected health information” is “individually identifiable health information” that is transmitted or maintained in any form or medium. 45 CFR § 160.103. “Individually identifiable health *82 information” is health information, including demographic information, that:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.”

Oregon Health & Sci. Univ. v. Oregonian Publ'g Co., LLC, 362 Or 68, 81–82 (2017). As relevant here, information that could reasonably be used to identify an individual and that relates to the past, present, or future condition of that individual or the provision of health care to them is confidential under the Privacy Rule and exempt from disclosure under the Oregon Public Records Law.

Having surveyed published caselaw from Oregon and across the country, I have not been able to locate any published court decision opining on the applicability of HIPAA in the specific context of hospital security video. Nor has counsel for OHSU identified any such cases for my review. Rather, OHSU argues that

“[T]he quality and zoom of the video allows the viewer to readily perceive individual facial features of most patients in the video.”

And that, “for all patients in the video, even when facial features are not readily discernible in the video, demographic qualities, clothing, unique accessories, dates of admission and/or treatment are characteristics that distinguishes each individual, and/or is otherwise explicitly protected health information, and when taken together with the timestamps and date in the videos in question such information could reasonably be used to identify who each of those patients are and the fact that they sought treatment at OHSU if the video was left unredacted.”

I agree that security video from a public area of a hospital could be subject to the Privacy Rule to the extent it depicts a patient, or person seeking to become a patient, and that depiction is reasonably identifiable. OHSU has taken the position that any non-staff person in the lobby might

be a patient and that any portion of their body might be identifiable. It then elected to redact it all to comply with the requirement to segregate exempt from non-exempt material and provide the later. ORS 192.338 (“If any public record contains material which is not exempt under ORS 192.345 and 192.355, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.”) This is overbroad.



The frame above, taken from timestamp 46:25 of the “ED_Lobby_W3” video file, entirely obscures Mrs. Armatis and partially obscures Mr. Armatis. The unredacted version of this frame reveals that every individual blurred is either facing away from the camera or is both at substantial distance *and* wearing a face covering sufficient to defeat any reasonable attempt at identification.² Viewing the same timestamp from the opposite camera angle does change this analysis. Having reviewed a substantial portion of the videos, this issue is ubiquitous. OHSU has redacted the entire body of individuals who are not even arguably identifiable, and, for those who might be identifiable on a more developed record, more limited redactions to just the faces of the individuals would have the same anonymizing effect while also releasing more non-exempt material.

Oregon law requires an individualized basis for asserting exemptions to the public records law. *Guard Publishing Co. v. Lane County School Dist.*, 310 Or. 32, 39 (1990) (“Exemptions are to be narrowly construed, *i.e.*, they are to be made on an individualized basis and are to be based on a sufficient showing of justification.”) The public body has the burden to sustain its determination that a public records exemption applies to a record or a portion of a record in any proceeding challenging its decision to withhold or redact material. ORS 192.411(1).

² As OHSU is permitted to seek further judicial review of this order, including the unredacted still frame in this order for comparison would not be appropriate.

OHSU has not provided any individualized factual basis to suggest that any particular individual in either video is an identifiable patient of OHSU. It is certainly reasonable to believe that many of the people in an emergency department lobby are there to seek medical care. And I agree that under HIPAA OHSU could permissibly redact any “full face” depictions of patients (or people seeking to be patients) contained in this video. However, it has substantially exceeded this permission in the version of the video released to petitioners and, critically, has not provided a factual record sufficient for me to conclude that the few people whose full faces are visible in the video are actual or prospective patients.

OHSU has also failed to make a showing that any of the video is actually personally identifiable. OHSU is correct that removal of “[f]ull-face photographs and any comparable images” (along with other identifiers not relevant to video) is one way of de-identifying protected medical information under 45 CFR § 164.514(b)(2)(i), and would place OHSU within a safe harbor for release of information, but OHSU has applied vastly broader redactions even this safe harbor permits, as illustrated above. For both of these independently sufficient reasons (lack of a record as to whether any individual is a patient and redactions in excess of what is minimally needed to anonymize any individual) I find that OHSU has not met its burden under ORS 192.411(1).

While determining which individuals in the two hours of video at issue here are patients and then applying limited redaction to just portions of the video depicting their identifiable faces would undoubtedly be time-consuming and, potentially, prohibitively expensive, the public records law accounts for that by permitting a public body to pass those costs on to a records requestor. ORS 192.324(4). In this case OHSU did provide petitioners with a fee estimate, which they paid.

ORDER

Accordingly, the petition is granted. OHSU shall provide an unredacted version of the two videos at issue to petitioners or provide notice of intent to seek judicial review under ORS 192.411(2) and ORS 192.415(1)(b) within seven days.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
General Counsel

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.