

October 8, 2003

John Sowell
The News-Review
345 N.E. Winchester
P.O. Box 1248
Roseburg, OR 97470

Re: *Petition for Public Records Disclosure Order:*
Department of State Police, State Medical Examiner

Dear Mr. Sowell:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 1, 2003, asks the Attorney General to direct the Department of State Police, State Medical Examiner, to make available the toxicology reports of the eight Roseburg-based employees of First Strike Environmental who were killed August 24 on U.S. Highway 20. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1).

You requested these records from Dr. Karen Gunson, the State Medical Examiner. In your petition, you state that Dr. Gunson told you the records were "protected medical information." We contacted Dr. Gunson regarding your petition. She confirmed that she denied your request.

The Public Records Law, specifically ORS 192.502(9), exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 146.035(5) is a law restricting disclosure of public records. The first sentence of that statute states:

Any parent, spouse, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

ORS 146.117 authorizes a medical examiner to order an autopsy in any death requiring investigation. That statute authorized the State Medical Examiner to perform the autopsies in this case. Your request to the Medical Examiner was for toxicology reports, which are a laboratory test report and also constitute part of an autopsy report.

The first sentence of ORS 146.035(5) was enacted in 1973, the same year in which the Public Records Law was enacted. We have four times since concluded that the first sentence of ORS 146.035(5) restricts public access to autopsy reports only to those persons described in the statute. Public Records Orders January 13, 1988, Woodall; May 10, 1988, Larson; July 22, 1988, Goffredi; and July 24, 1990, Westberg [all enclosed]. For the reasons described in our prior opinions, we adhere to our prior interpretations of the first sentence of ORS 146.035(5). ORS 146.035(5) provides an exclusive list of all of the persons who may compel disclosure of the public records described therein. A person who is not listed in ORS 146.035(5) cannot use the public records law to compel disclosure of an autopsy report.

Our prior analysis is buttressed by the addition in 1995 of the second sentence to ORS 146.035(5). *See*, 1995 Oregon Laws Chapter 504, Section 3. The second sentence in ORS 146.035(5) states:

The system designated to protect and advocate the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act . . . and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act . . . shall have access to reports described in this subsection pursuant to ORS 192.517.

It would not have been necessary in 1995 to create an express right of access unless the previously existing text of ORS 146.035(5) limited access to the persons listed in the original provision. The "system" referred to in the 1995 amendments was not among the persons then entitled to obtain autopsy or other reports ordered by a medical examiner. Therefore, to give the "system" access to the records, the Assembly amended ORS 146.035(5).

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Your petition indicates that you requested the toxicology reports in your capacity as a reporter, and provides no evidence that you come within a class of persons authorized by ORS 146.035(5) to examine and obtain a copy of an autopsy report or a laboratory test report. Therefore, we deny your petition under ORS 192.502(9).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS13054
c: Dr. Karen Gunson, Oregon State Medical Examiner
Sgt. David Scholten, OSP
Enclosure

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bc: District Attorney Dan Norris