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February 14, 2006

Alvin Esau
Professor of Law, University of Manitoba
2336 Hollyhill Place
Victoria, B.C. V8N 1T9

Jacqueline Weber
Assistant County Attorney
Office of County Attorney
502 SE Hawthorne, Suite 500
Portland, OR 97214

Re: Petition of Alvin Esau received February 7, 2006 to disclose certain records of the Multnomah County Records Department

Dear Mr. Esau and Ms. Weber:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Alvin Esau requests the District Attorney to order Multnomah County Records to make available for inspection or produce copies of the following records:

Coroner's reports and inquests of four women in 1926.

On January 30, 2006, University of Manitoba Law Professor Alvin Esau submitted a written request by email to Dwight Wallis, Multnomah County Records Administrator, to have access to coroner records relating to the death of four women in 1926. On February 6, 2006, Mr. Wallis denied the request by email. He advised Professor Esau that the "Coroner's Examination Index and records...are exempt from disclosure under Oregon Revised Statutes (ORS 146.035)."

In a February 8, 2006 email to this office, Professor Esau first argues that most jurisdictions have some provision for access after a period of time. He then notes that in 1926 there was extensive discussion from the coroner's office in press reports in the Oregonian. Thus, much of the information is already in the public domain. He also contends that he is primarily using the reports as confirmatory documents, that his research might advance the reputations of the victims, and that any privacy interests have already been invaded by the intrusive reporting in the 1926 Oregonian articles.

In a February 9, 2006 letter response to this office, Assistant County Attorney Jacqueline Weber continues to claim the documents are exempt:

ORS 146.035(5) and ORS 146.075(7) limit the inspection of autopsies and death investigations by the medical examiner to the following: 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.

Ms. Weber argues that since Professor Esau does not fit into any of the statutorily authorized categories, the restrictions require exemption from disclosure. The microfilm reports were not provided but were available for our review if needed.

DISCUSSION

It is significant that the records sought by petitioner are 80 years old. Medical records and death investigations are ordinarily subject to various exemptions under the Public Records Law. Criminal Investigatory material is conditionally exempt under ORS 192.501(3). The Personal Privacy Exemption of ORS 192.502(2) prevents the disclosure of certain medical files. These exemptions are not, however, applicable to records over 25 years old. Records containing information about the physical or mental health of a living individual are protected under ORS 192.496. Again, this exemption applies only to records less than 75 years old.

ORS 192.502(9) exempts "Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon Law." This catchall provision would incorporate ORS 146.035 urged by the County if that statute in fact restricts public access to death investigation records. We conclude that it does not. The exemption does not apply.

In the Attorney General's Public Records Manual, 2005, page 80, the Attorney General has noted:

The Public Record Law is distinguishable from statutes that give particular persons special access to government records. Even when a statute grants specified persons special access to certain records, unless otherwise provided those records remain "public records" subject to other compatible provisions of the Public Records Law, including the exemptions from disclosure.

ORS 146.035 describes the office of the State Medical Examiner and its duty to file and maintain reports. There is nothing in that statute that speaks of confidentiality or privilege from disclosure. Subsection (5), relied upon by the County, is best seen as a provision granting access to autopsy records and death investigations to family members and their representatives as well as

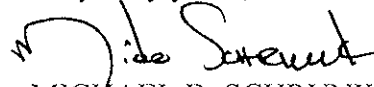
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those persons who may be civilly or criminally liable for the death. ORS 146.035 does not prevent disclosure of the 1926 Coroner's Examination Index and Records.

ORDER

Accordingly, it is ordered that the Multnomah County Records Department promptly make available the records sought in the above petition. Disclosure of the documents ordered is subject to payment of the County Record's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440 and this order.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney 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 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within 7 additional days thereafter.

Cc: Dwight Wallis

06-03