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August 2, 2002

James A. Selmer
3012 Hammel Avenue NE
Salem, Oregon 97303

Re: *Petition for Public Records Disclosure Order*:
Department of Human Services Records

Dear Mr. Selmer:

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 July 26, 2002, asks the Attorney General to direct the State Office for Services to Children and Families (DHS)[1] to make available its records regarding "Crystal Clair Selmer, DOB July 27, 1996[,] SCF case #BV52750." For the reasons that follow, we respectfully deny your petition as premature.

Your petition explained that you asked DHS for copies of the records on September 3, 2001, and that Sylvia Mullenaux and Jennifer Gallick denied your request. Ms. Mullenaux, however, told us that DHS did not deny your records request.

Ms. Mullenaux sent us a copy of your September 3, 2001, written request to DHS, which DHS received on September 4, 2001. In that request, you stated that you wanted the records before a September 6, 2001, Citizens Review Board hearing. Ms. Mullenaux told us that she explained to you that it would not be possible to make copies of the records before September 6, 2001, and that DHS would need at least 2 weeks to respond to your records request. She told you that there would be a charge for copying the records, and suggested that you confer with your juvenile court attorney, who had already *received* copies of DHS's records. Ms. Mullenaux also stated that you could obtain copies of the police reports directly from the police, and that she could not release information about your ex-partner, Brandi Bornbusch. Ms. Mullenaux told us that she subsequently concluded, for several reasons, that you had withdrawn or abandoned your records request: (1) you had asked to receive the records before the September 6, 2001, Citizens

[1] The legislature recently changed SCF's name to the "Department of Human Services."

Review Board hearing and she had explained that DHS needed at least 2 weeks to respond to your request; (2) your attorney informed her that you had reviewed your file with him; and (3) she did not hear from you again regarding your records request after she suggested that you confer with your attorney. Thus, it was not DHS's intent to deny your records request. Instead, it appears that DHS and you misunderstood each other's intent with regard to the posture of your request.

This misunderstanding was compounded by the October 4, 2001, letter you received from Ms. Gallick. In that letter, she stated: "Enclosed is the information that you requested. This is a copy of the 307 [child protective service] report. Medical information can not be disclosed under statute and confidentiality rules. You must go directly through the medical provider to get that information." Ms. Mullenaux told us that providing you with the child protective service report was intended to be helpful so that you would understand why your child had been removed by the state. She does not know why you were directed to go directly to medical providers to obtain medical information.

In any event, your attorney *has* been provided the records – including medical information, information regarding Brandi Bornbusch, and police reports – that you sought. But if you prefer to have DHS make a copy of its records for you rather than obtain the records from your attorney, Ms. Mullenaux advises us that she will provide them to you. The agency may charge you a fee to reimburse it for its actual cost in making the records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. *See* ORS 192.440(3). Ms. Mullenaux estimates that the copying costs alone (*i.e.*, not including the costs for the agency personnel time) will be $25 to $30. If you wish to pay the necessary fee and obtain the records from DHS, please contact Ms. Mullenaux.

In short, because the agency did not deny your request for records, and in fact has provided them to your attorney, the Attorney General lacks authority to order disclosure. *See* ORS 192.450(1). Therefore, we respectfully deny your petition as premature.

Sincerely,

Philip Schradle for

PETER D. SHEPHERD
Deputy Attorney General

AGS10708
c: Sylvia Mullenaux, Marion DHS