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September 24, 2001

Bruce R. Nielson
P.O. Box 70113
Vancouver, WA 98665

Re: Petition for Public Records Disclosure Order:
State Office for Services to Children and Families Records

Dear Mr. Nielson:

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 September 10, 2001,[1] asks the Attorney General to direct the Washington Branch Office of the State Office of Services to Children and Families (DHS)[2] to make available:

1. DV50679 – Stacey C. Moore, Chancey J. Nielson – 10/07/97
2. DV50679 – Stacey C. Moore, Chancey J. Nielson – 09/01/98
3. DV50679 – Stacey C. Moore, Chancey J. Nielson – 10/15/98
4. DV50679 – Stacey C. Moore, Chancey J. Nielson – 11/23/98
5. DV50679 – Stacey C. Moore, Chancey J. Nielson – 03/04/99
6. DV50679 – Stacey C. Moore, Chancey J. Nielson – 10/1999
7. All case records in file for child Abuse Reporting and Evaluation Services aka: CARES Northwest.

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[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond. In you letter granting an extension, you stated that you wanted "all the records regarding, Stacey D. Moore, Chancey J. Nielson, my child from October 1, 1997 to date of request." This order relates only to the records listed in your petition for disclosure of records dated September 17, 2001. If you wish to obtain additional documents not identified in your petition, you should make that request to the Washington County Branch of the Department of Human Services.

[2] The legislature recently abolished the State Office for Services to Children and Families and transferred all duties of the office to the Department of Human Services (DHS). Or Laws 2001, ch 900 (HB 2294).

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt materials available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

This office has reviewed a copy of the records you requested that, according to Guy Edmonds, DHS Supervisor, Washington Branch, were previously delivered to the Attorney General after you subpoenaed them in Washington County Circuit Court Case No. C96-1759DR. Based on our review of those records and discussions with DHS employees, including Mr. Edmonds and Scott Wickline, DHS Licensing Coordinator, we assume the following:

1. Items 1-6 in your petition refer to child abuse reports filed with DHS and the investigation of those reports; and

2. Item 7 refers to evaluations completed by CARES Northwest during the course of a child abuse investigation conducted by DHS as a result of one of the child abuse reports listed in items 1-6.

We have been informed by Mr. Wickline that, in response to your earlier request for the documents listed in your petition, he copied and mailed to you the requested material, with the exception of material that he redacted as confidential and exempt from disclosure. The Attorney General does not have authority to order an agency to disclose records unless there has been a denial of a request for those records. *See* ORS 192.450(1). Consequently, as to the material already provided to you by DHS, we deny your petition as moot. The remainder of this order addresses only the material that we understand was redacted and not released to you.

ORS 192.502(9) exempts from disclosure "records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." This exemption incorporates into the Public Records Law other state statutes that make records confidential, such as ORS 419B.035.

ORS 419B.035 makes "confidential" the reports and investigations of child abuse made pursuant to ORS 419B.010 to 419B.030. ORS 419B.035 provides in relevant part:

> (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection. However, the State Office for Services to Children and Families shall make records available to:

(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

(b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect; and

(f) The Child Care Division for certifying, registering or otherwise regulating child care facilities.

(2) The State Office for Services to Children and Families may make reports and records available to any person, administrative hearings officer, court, agency, organization or other entity when the office determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the assistant director gives prior written approval. The office shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection and subsection (1) of this section. The names, addresses or other identifying information about the person who made the report shall not be disclosed pursuant to this subsection and subsection (1) of this section.

* * * * *

(4) No officer or employee of the State Office for Services to Children and Families or any person or entity to whom disclosure is made pursuant to subsections (1) and (2) of this section shall release any information not authorized by subsections (1) and (2) of this section.

ORS 419B.035(1) and (2) make child abuse reports and investigations confidential and place strict limits on their disclosure. ORS 419B.035(5) provides criminal penalties for unauthorized disclosure of such records. Although ORS 419B.035(1) requires disclosure of records to certain persons, with respect to any child abuse reports or investigations concerning Stacey D. Moore and Chancey J. Nielson, you are not a person to whom DHS is required to disclose such information. Thus, any disclosure of such records to you could be only as permitted by ORS 419B.035(2).

ORS 419B.035(2) permits, but does not require, DHS to disclose child abuse reports and records when DHS determines that disclosure is necessary to its administration of child welfare services and in the best interests of the child, or when DHS determines that disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research. The statute places the decision to disclose the records in the discretion of DHS and, absent a decision by DHS to disclose the records, their disclosure is prohibited by ORS 419B.035(1). Nevertheless, because the records are public records, the denial of a request for those records is subject to this office's review.

When a statute prohibits disclosure of records except in the discretion of a state agency, this office reviews a decision to deny a request for those records to determine if that decision was an abuse of discretion. *See* Public Records Order, March 2, 1993 (McMinimee). To find an abuse of discretion under ORS 419B.035(2), we would need to find that DHS determined that disclosure was "necessary" to its administration of child welfare services *and* in the best interests of the child, or that disclosure was "necessary" to investigate, prevent or treat child abuse and neglect, or to protect children from abuse and neglect,[3] but that DHS intentionally chose not to make this necessary disclosure. We have no basis to conclude in this instance that DHS has abused its discretion in refusing to disclose the records you seek and we are not prepared to assume that DHS would ignore its statutory mandates to protect children from abuse and neglect. *See* ORS 409.190, 418.749, 419B.005 to 419B.020, 419B.150.

[3] Although ORS 419B.035(2) also permits disclosure when "necessary" for "research," we have no information to suggest that your request was predicated on any legitimate research within the purview of this statute.

Accordingly, we conclude that the redacted information you seek is confidential under ORS 419.035 and therefore exempt from disclosure under ORS 192.502(9).[4] Accordingly, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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[4] To the extent the records you seek contain information other than child abuse reports and investigations, other statutes in addition to ORS 419B.035 may make those records confidential. For example, ORS 409.225 provides that any DHS records, files, papers or communications that contain any information about an individual child, family or other recipient of services "are confidential and are not available for public inspection." ORS 409.225 is also incorporated into the exemption from disclosure in ORS 192.502(9), as is ORS 192.525 relating to the confidentiality of medical records. The records you seek may also be exempt from disclosure under other provisions of the Public Records Law, including but not limited to ORS 192.502(2) (personal privacy exemption).