JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

February 3, 2009

SENT VIA ELECTRONIC MAIL & REGULAR MAIL

Michelle Cole, Reporter
The Oregonian/ Politics and Education
1320 SW Broadway
Portland, OR 97201-3499
(michellecole@news.oregonian.com)

Re: Petition for a Public Records Order:
Department of Human Services Records

Dear Ms. Cole:

On July 18, 2004, three-year-old Adrianna Romero-Cram was placed with her aunt and uncle for purposes of adoption. This placement had been recommended by the Oregon Department of Human Services, Child & Family Services Division (DHS) and was approved by the court in December of 2003. Adrianna was murdered by her aunt less than a year after the placement, dying on June 13, 2005.

For purposes related to your reporting on this tragic event and the surrounding circumstances, you have requested a number of records from DHS. On November 21, 2008 and January 26, 2009, Caroline Burnell of DHS provided you with a significant volume of records related to Adrianna, having obtained a release from Adrianna's mother that allowed DHS to disclose records that it otherwise would have treated as confidential.[1] We understand that you have also conducted a number of interviews with DHS staff, and that more interviews are likely.

In providing you with some records on January 26, 2009, Ms. Burnell also denied your request for two specific records: (1) "a completed home study on a child placed in Mexico after Adrianna Cram Romero," and (2) the "judge's order approving Adrianna's placement for purposes of adoption." After the close of business on that same day,[2] the Attorney General

[1] We understand that those records were redacted by DHS, and your petition does not indicate that you disagree with any of those redactions.

[2] Because your petition was received after the close of business, we treat it as received on January 27, 2009.

received your email seeking review of the decision by DHS to withhold those records. Under the authority of ORS 192.450(1), a person who is denied the opportunity to inspect the records of a state agency may petition the Attorney General to issue an order compelling disclosure of the documents withheld.

In support of your petition, you point out that it is important for Oregonians to understand the events that led to Adrianna's placement with her aunt and uncle, and to know whether appropriate safeguards have been implemented to protect other Oregon children from Adrianna's fate. We agree with both of these propositions, and we also agree that the records you seek would serve the public's interest by shedding some light on those subjects.

Nevertheless, the law compels us to deny your petition, because Oregon's Public Records Law does not entitle you to inspect the records that you are seeking. Although our analysis of these issues does not require us to balance the competing public interests,[3] the public interest you identified is not being neglected. As noted above, DHS has provided you with a number of documents and information pertaining to Adrianna's placement. Of the two withheld documents that form the basis of your petition, one is not directly related to DHS actions in Adrianna's case, and the other is a court order in a juvenile court proceeding. For each of these documents, the governing statutes demonstrate the legislature's determination that countervailing interests in the confidentiality of children's familial relationships outweigh the public interest in disclosure. We have no authority to reverse the legislature's judgment regarding the proper balance between these important considerations.

The analysis that leads us to this conclusion begins with ORS 192.420(1), which states that "Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." This statute, and the limited nature and scope of exemptions from disclosure, together embody the general policy of Oregon law in favor of public access to government records. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) (MANUAL) at 23, citing ***Jordan v. Motor Vehicles Division***, 308 Or 433, 438, 781 P2d 1203 (1989). Thus, public records are subject to disclosure unless the conditions for an enumerated exemption are met. For purposes of our analysis, the only relevant exception in the Public Records Law is ORS 192.502(9)(a), which applies to "Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." We must examine whether Oregon law brings the withheld documents within the reach of this exemption.

I. Court Order

We begin with your request for a "copy of the judge's order approving Adrianna's placement for the purposes of adoption." Denying this aspect of your request, Ms. Burnell's letter stated that ORS 419A.255 prohibits disclosure of such juvenile court records in the absence of consent by the juvenile court. We agree with DHS. Specifically, ORS 419A.255(3) provides that "no information appearing in the record of the case or in reports or other material relating to

[3] While all of the exemptions of ORS 192.501 are subject to a balancing test that examines the relative weight of the public interest, ORS 192.502(9)(a) does not universally impose such a requirement. The exemption relevant to our analysis, ORS 192.502(9) does not impose a balancing test. And, although some of the statutes incorporated by ORS 192.502(9) themselves require us to balance competing interests, the statutes relevant to your petition do not.

the child, ward, youth or youth offender's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court," with exceptions that are not relevant. Because you are not within any class of persons to whom ORS 419A.255(2) authorizes disclosure, disclosure is prohibited unless the juvenile court consents. *See* Public Records Order, September 2, 2005, Matteo-Boehm at 7.

In your petition, and in correspondence with DHS, you express your belief that the court order is nevertheless subject to disclosure by operation of "ORS 419.035(h)." ORS 419B.035(1)(h) makes certain records subject to disclosure "if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury." That provision, however, is addressed to the content of "reports and records compiled under the provisions of ORS 419B.010 to 419B.050." ORS 419B.035(1). It does not extend to a court order placing a child in a home; such an order is issued by a juvenile court under the authority of ORS 419B.100 and ORS 419B.476.

Nor is the court's order is subject to disclosure under ORS 409.225(6), which permits DHS to disclose certain records:

> Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose information related to the department's activities and responsibilities in a case where child abuse or neglect has resulted in a child fatality or near fatality or where an adult has been charged with a crime related to child abuse or neglect.

Subsection (6), which is discussed in more detail below, expressly retains other exemptions to disclosure under ORS chapter 192. Consequently, subsection (6) does not override ORS 419A.255, which precludes DHS from providing you with a copy of the court order placing Adrianna with her aunt and uncle unless you obtain the court's consent to the disclosure.

II. Home Study

We turn to your request for "a completed home study on a child placed in Mexico after Adrianna Cram Romero." With respect to this request, you state

> DHS has said it has changed and expanded the home study process in response to the tragedy. I would argue that a redacted home study of a child placed in Mexico subsequent to Adrianna's death would confirm to the public that such safeguards have been put into place.

DHS confirms that it had undertaken the process of developing new home study templates and international placement procedures prior to Adrianna's murder, which informed the results of the process. You seek a copy of a placement study undertaken after the implementation of those changes, with redactions to eliminate any information that could identify the child or any other person affected. We must determine whether the Public Records Law requires DHS to provide you with such a document.

We see two arguable theories under which DHS could be required to fulfill your request. First, if a "completed home study" report is generally subject to the ORS 192.505 requirement that public agencies "separate the exempt and nonexempt material and make the nonexempt

material available for examination," then any responsive, non-exempt material would be subject to disclosure regardless of the interplay between ORS 409.225(1) and (6). Second, if a "home study report" for a child placed in Mexico after Adrianna's death contains "information related to the department's activities and responsibilities in a case where child abuse or neglect has resulted in a child fatality or near fatality or where an adult has been charged with a crime related to child abuse or neglect," then ORS 409.225(6) would seemingly compel DHS to disclose that information.[4] We address these possibilities in the order just presented.

A. Separation under ORS 192.505

According to ORS 192.505, the separation requirement of that statute applies to "any public record" that "contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure." DHS does not dispute that a completed home study is a public record, and we agree that such a report seems to meet the broad definition of "public record" in ORS 192.410(4). Also, there is no dispute that such a report contains exempt information; you acknowledge that redaction would be appropriate. Therefore, the separation requirement of ORS 192.505 generally applies to home study reports if such reports "contain[] material which is not exempt." We conclude that such reports generally contain only exempt information. We reach that conclusion because ORS 409.225(1) provides in part that

> In the interest of family privacy and for the protection of children, families and other recipients of services, the Department of Human Services shall not disclose or use the contents of any ***child welfare records, files, papers or communications that contain any information about an individual child***, family or other recipient of services for purposes other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or 419B.035. The ***records, files, papers and communications are confidential*** and are not available for public inspection.

(Emphasis added.) The structure of this confidentiality rule makes "child welfare ***records***" confidential and * * * not available for public inspection" when they "***contain*** any information about an individual child, family or other recipient of services" (emphasis added). That is, the confidentiality rule explicitly applies to the entire document, and the document therefore contains only exempt information. Our understanding is confirmed by the nature of the exception in ORS 409.225(6), which has the effect of making "***information***" about DHS activities and duties subject to disclosure ***in limited circumstances***; that exception will be further discussed below. This type of confidentiality rule is different from many of the exemptions enumerated within the Public Records Law, which apply to certain kinds of ***information***. *See, for example*, ORS 192.501(3), (4), (5), (6), (7), (8), (9), etc.

B. Disclosure under ORS 409.225(6)

Our next inquiry is whether a document responsive to your request would contain "information related to the department's activities and responsibilities in a case where child

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[4] We again reject your suggestion that disclosure is compelled by ORS 419B.035(1)(h), because that statute applies to the content of "reports and records compiled under the provisions of ORS 419B.010 to 419B.050." ORS 419B.035(1). A home study report concerning a prospective child placement is not such a record; instead it is compelled by ORS chapter 109 and ORS 419B.529.

abuse or neglect has resulted in a child fatality or near fatality or where an adult has been charged with a crime related to child abuse or neglect." If so, then such "information related to the department's activities and responsibilities" may fall within the disclosure requirement if ORS 409.225(6).

This could be the case if, as a factual matter, DHS were in possession of any reports from completed home studies that (a) were undertaken after DHS implemented changes following Adrianna's murder (b) resulted in a child being placed in Mexico, *and* (c) were undertaken on behalf of a child in "a case where child abuse or neglect has resulted in a child fatality or near fatality or where an adult has been charged with a crime related to child abuse or neglect." However, DHS states that it does not have any documents that meet all three of these criteria.

DHS does, however, have completed home study documents that meet only the first two criteria, i.e., the studies were undertaken after DHS implemented changes following Adrianna's murder, and resulted in a child being placed in Mexico. Do such studies, conducted for other children, contain information "related to the department's activities and responsibilities in" Adrianna's case?

As noted above, certain procedures and home review templates now used by DHS were informed by Adrianna's murder, which happened as DHS was in the process of implementing its current practices. We do not believe, however, that home studies in which those methods were applied therefore contain "information related to the department's activities and responsibilities in" Adrianna's case. Although the statutory phrase "related to" is susceptible of a very broad understanding, we do not believe that the legislature meant to encompass so tenuous a relationship. The context provided by the confidentiality rule itself suggests that the information subject to the exception in (6) is only information that bears on DHS activities directly on behalf of children who then die or nearly die as the result of abuse or neglect, or suffer abuse or neglect for which an adult is charged with a crime. Interpreting the exception to apply in otherwise-unrelated cases where DHS applied practices developed in response to Adrianna's murder – presumably all cases going forward – would cause the exception to swallow the rule. Confidentiality protections for "information related to the department's activities and responsibilities" would effectively cease to exist for home studies and international placements. We do not believe that ORS 409.225 (6) can plausibly be understood to reach so broadly.

For the reasons described above, we are compelled to deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1268187
Caroline Burnell, DHS Child Adults and Families Division