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The Oregonian
1320 SW Broadway
Portland, Oregon 97201

Jess Armas, Acting Administrator
Children's Services Division
198 Commercial Street SE
Salem, Oregon 97310

Re: Public Records Disclosure Order - Children's Services Division Records Concerning Avery Charles Family

Dear Mr. Zaitz and Mr. Armas:

This letter responds to Mr. Zaitz' July 22, 1987 petition for a public records disclosure order. Mr. Zaitz courteously allowed us an extension of time to act upon the petition. For reasons stated below, the petition is denied in significant part, but allowed with respect to certain types of materials.

The petition seeks an Attorney General's order directing the Children's Services Division (CSD) to allow Mr. Zaitz to inspect CSD records, MacLaren School records and local CSD office records, pertaining to members of the Avery Charles family. CSD has delivered to this office records pertaining to Adam Charles, Calvin Charles, Anthony Charles, Levi Charles and Lindsen Charles. Based on our review of the records provided, we conclude that few records in the files are subject to disclosure and most records are exempt from disclosure.

There are three bases for exempting parts of the files from disclosure. First, under the Oregon Juvenile Code, in ORS 419.567, reports and other material relating to the history and

prognosis of a child within the court's jurisdiction are privileged. Second, under the Public Records Law, in ORS 192.496(4) and 192.500(2)(h), and the Education Law, in ORS 336.185 and 336.195, all student records maintained by a school are confidential. Finally, under the personal privacy exemption of the Public Records Law, in ORS 192.500(2)(b), some of the records are exempt from disclosure. We discuss each basis below.

Juvenile Code Exemption

The legislature expressly has addressed the confidentiality of certain juvenile court records and reports. With a limited number of specific exceptions, the records and reports relating to a child's history and prognosis all must be kept confidential.

ORS 419.567(1) provides that "[t]he record of the case shall be withheld from public inspection. . . ." Under the next subsection, ORS 419.567(2):

> "[r]eports and other material relating to the child's history and prognosis are privileged and, except at the request of the child, shall not be disclosed directly or indirectly to anyone other than the judge of the juvenile court . . . [and certain specific individuals involved in the child's case]. . . ." (Emphasis supplied.)

Through these provisions, the legislature spoke clearly about protecting the confidentiality of juveniles that are involved with the juvenile court system.

By prohibiting direct and indirect disclosure of a child's history and prognosis information, the legislature established broad protections for the child. We interpret the prohibition against indirect disclosures to include a prohibition against disclosing not only the reports, but also the information contained in the reports, and other information not contained in the reports, but related to the child's history or prognosis. Otherwise, the protection conferred by the statute would be meaningless. It is illogical to contend that ORS 419.567 applies only to the records and reports filed with the court, and not to the information contained therein and other information of the same type. See State ex rel KOIN-TV v. Olsen, 300 Or 392, 400 n.5, 711 P2d 966 (1985).

There are certain specific exceptions to the confidentiality of juvenile court records. These arose from the case in which the Oregon Supreme Court addressed the question whether juvenile court proceedings are open to the public. In State ex rel Oregonian v. Deiz, 289 Or 277, 613 P2d 23 (1980), the court held that Art. I, section 10, of the Oregon Constitution prohibits secret court proceedings, and that all court proceedings therefore are open to the public. The 1981 Legislative Assembly, in response to State ex rel Oregonian v. Deiz, amended ORS 419.567 by adding subsection (5), which states:

> "(5) Notwithstanding any other provision of law, the name of the juvenile, the basis for the juvenile court's jurisdiction over the juvenile, the date, time and place of any juvenile court proceeding in which the juvenile is involved and that portion of the juvenile court order providing for the legal disposition of the juvenile where jurisdiction is based on ORS 419.476(1)(a) or (g) shall not be confidential."

1981 Or Laws, ch 524, sec 1. This statute makes it clear that the enumerated types of information which appear in juvenile court records are not confidential. The types of information listed are generally items that could be obtained by attending a court session, and they clearly relate to the administration of justice. The amendment does not address reports and other material relating to the child's history and prognosis which are found in the juvenile court file and the CSD files.

Individual incidents in the child's history and prognosis may be discussed in open court such that any interpretation that would hold that they are privileged under ORS 419.567(2) is arguably in direct conflict with the open court guarantee of the Oregon Constitution. The legislature was aware of the State ex rel Oregonian v. Deiz decision when it enacted subsection (5). The lack of amendment to the statute with respect to the history and prognosis issues evidences a legislative intent that such information remain confidential under ORS 419.567(2).

We therefore perceive a clear legislative intent to protect from disclosure information that deals with the child's history and prognosis. Those items do not directly involve the

administration of justice in the juvenile court system. Accordingly, those portions of documents that mention items that also are included in the juvenile court file are also to be deemed privileged under ORS 419.567(2), except to the extent that they involve the administration of justice. See ORS 419.567(5).

Student Records Exemption

Under both the Public Records Law and the Education Law, school records are confidential. The Education Law provides that

> "(1) [a]ll student records maintained by a school, educational institution or education service district shall be confidential. . . ." ORS 336.195(1).

Student behavioral records may not even be released for use in court proceedings, unless the student, parent or guardian consent. ORS 336.195(3).

The Public Records Law in ORS 192.500(2)(h), incorporates the student records confidentiality provision both by specific reference to ORS 336.195 and through ORS 192.496(4), which exempts from disclosure student records required by state or federal law to be exempt from disclosure. "Student records" are "all records relating to students maintained by any elementary, secondary school or education service district." ORS 336.185(1) (Emphasis supplied.)

MacLaren School for Boys is a "school." Established under ORS 420.120 et seq, MacLaren has as its chief objectives education and reform. ORS 420.120(3). Although the statute expressly permits confinement and discipline of juveniles at MacLaren, the legislature has stated that MacLaren is not a penal institution.

Accordingly, all records relating to MacLaren residents are student records. These records are confidential, subject only to the limited exceptions stated in ORS 336.195(3).

Personal Privacy Exemption

ORS 192.500(2)(b) provides an exemption from disclosure

for public records which contain:

> "Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy." ORS 192.500(2)(b). (Emphasis supplied.)

Information contained in a CSD file deals with all aspects of a child's life. The state is acting in a parens patriae function and is the legal and physical custodian of the child. The records that are compiled in the CSD files are in essence the details of a child's life. The information compiled is of a personal nature because it normally would not be shared with strangers. ORS 192.500(2)(b); see Morrison v. School District No. 48, 53 Or App 148, 631 P2d 784 (1981).

Given that the CSD case file information is personal information, it is then necessary to determine whether such disclosure constitutes an unreasonable invasion of privacy. The burden, by clear and convincing evidence, is on the party seeking disclosure to show that it is not. ORS 192.500(2)(b). The burden is particularly heavy when a person seeks records pertaining to a child within the jurisdiction of the juvenile court. Both the legislature and the Oregon Supreme Court already have spoken to the public interest in disclosure of this type of information and determined that the public interest outweighs the juvenile's privacy interest only when the information relates to a court's administration of justice and the Oregon Constitution's guarantee of public court proceedings. ORS 419.567(5); State ex rel Oregonian v. Deiz, supra; 49 Op Atty Gen 17 (1981).

We are not persuaded that Mr. Zaitz' petition presents clear and convincing evidence that the public interest in disclosing the information not related to the the juvenile court's administration of justice outweights the privacy interest of the Charles children. The petition asserts three reasons why disclosure beyond that allowed by ORS 419.567(5) is

justified by the public interest: (1) public safety; (2) discrimination; and (3) the division's performance.

First, Mr. Zaitz states the information is necessary to alert the public to this "dangerous family" by publication of an article in The Oregonian. The many criminal prosecutions and convictions of members of the Charles family have not escaped public attention. Very extensive articles on the criminal acts and prosecutions of the family recently were published in the Register-Guard, a newspaper of major circulation. Information regarding such acts and prosecutions has to some extent already been released to Mr. Zaitz by CSD. Mr. Zaitz' information request, however, goes beyond a recitation of the criminal acts and prosecutions of the family. It has not been clearly demonstrated that the additional information is necessary to alert the public to any additional danger.

In connection with this claim, Mr. Zaitz states that Mr. Avery Charles has waived his right to privacy by thrusting himself into the public eye and by discussing his family's hostility and criminal conduct. But Mr. Charles' personal privacy interest is not at issue here. Even if it were assumed that Mr. Charles could waive the privacy rights of his children, we have no information that Mr. Charles knew what rights his children have under the Juvenile Code, the Education Law, the state and federal constitutions, or common law. We have no information that he intended to relinquish their rights. We find no waiver.

Mr. Zaitz' second claim for disclosure is that review of the records may reveal discriminatory treatment of the family. Claims of discrimination merit serious consideration. Such claims, however, must be measured against the judicially and legislatively recognized privacy rights of juveniles. To our knowledge, the Charles children have not filed any formal discrimination claims. Mr. Zaitz raises only the possibility that they have been subjected to discriminatory treatment, but the Charles family members have not given him or other members of the public permission to review information in CSD records. The interest Mr. Zaitz asserts does not substantially outweigh the childrens' privacy interests.

Mr. Zaitz' third general reason for disclosure of the information in CSD files is that it is necessary to review the division's performance. Review of public agency performance certainly is in the public interest; however, CSD's placement

performance at the Hillcrest and MacLaren schools is reviewed regularly by the juvenile court, whose administration is open to the public. Given these safeguards, the need for public release of CSD records does not outweigh the privacy interests of the individual juveniles involved.

In summary, the information sought is of a personal nature. Public disclosure thereof would constitute an unreasonable invasion of privacy, except as noted above. The public interest does not by clear and convincing evidence require disclosure.

General Information Not Disclosed

Based on our analysis, we conclude that the following information will not be disclosed for any individual child in the Charles family:

1. Court summaries.
   Reports and recommendations to the juvenile court.

2. Police reports.
   Criminal and custody reports.

3. Termination requests.

4. CSD reports to the court.

5. MacLaren intake dispositions.
   Initial home and community evaluations.

6. Movement histories.
   Tracking the childs' movements within the MacLaren School.

7. Psychiatric and medical reports.
   Reports on medication, psychiatric evaluations, medical histories.

8. Incident reports of misbehavior.

9. Monthly reports.
   Progress and parole.

10. Interoffice memoranda.
    Plan updates, basic case information, case workers' notes.

11. Correspondence.

12. Personal letters.

13. Various reports, orders and recommendations from: Close Custody Review Board, Cottage/Camp Review Committee, Detention Hearing Officrs, Juvenile Parole and Community Services.

14. Dependency information

Records relating to foster care.

Information to be Disclosed

After reviewing the individual files, we conclude that the following information must be disclosed:

Adam Samuel Charles

1. Order of commitment, 12-15-85 (already released).
2. Picture

Anthony Arnold Charles

1. Order of commitment, 1-15-76 (already released).
2. Order releasing school and criminal records to parents, 2-2-77.
3. Order consenting to final discharge, 11-16-78 (already released).
4. Picture.

Calvin Howard Charles

1. Findings and order on original hearing, 12-13-78.
2. Summons, 5-4-79.
3. Order of commitment, 6-18-79 (already released).
4. Order to postpone fact finding hearing, 6-18-79.
5. Order of transport, 6-18-79 (already released).
6. Order of dismissal, 8-30-79.
7. Order for writ of habeas corpus, 9-13-79.
8. Writ of habeas corpus, 9-13-79.
9. Order relating to petition for habeas corpus, 9-21-79.
10. Order consenting to final discharge, 5-24-82, (already released).
11. Picture.

Levi Leonard Charles

1. Order of commitment, 6-7-85.
2. Motion and order to produce, 2-11-86.
3. Order continuing commitment, 4-4-86.
4. Picture.

Lindsen Lee Charles

1. Petition for jurisdiction, 6-15-87.
2. Order of commitment, 7-24-87.

We, therefore, deny Mr. Zaitz' petition in part, but allow the petition with regard to records listed above under the heading "Information to be Disclosed." We have made copies of the documents to be disclosed, and submitted the copies to CSD. We hereby direct CSD to make those copies available to Mr. Zaitz upon payment of our reasonable copying expenses.

Respectfully submitted,

James E. Mountain Jr

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
Enclosures
cc: Larry Young, Assistant Attorney General
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