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November 19, 2015

SENT VIA EMAIL ONLY
jill@gibsonlawfirm.org

Jill Gibson
GIBSON LAW FIRM LLC
1500 SW Taylor Street
Portland OR 97205

Re: Petition for Public Records Disclosure Order
Oregon Department of Human Services
DOJ File No. 100101-GA0148-15

Dear Ms. Gibson:

This letter is the Attorney General's order in response to your petition asking our office to order the Oregon Department of Human Services (DHS) to disclose information to your client, Anne Marie Gurney, under the Oregon Public Records Law, ORS 192.410 to 192.505. Specifically, Ms. Gurney is seeking two pieces of information:

1. All names of certified/registered childcare providers (represented by AFSCME)
2. All names of all licensed exempt childcare providers (represented by SEIU503)

Ms. Gurney requested this information from DHS on July 15, 2015. As you recount in a letter filed in support of your petition, subsequent correspondence between DHS, Ms. Gurney and various other parties suggested that DHS was considering the application of HB 3037 (2015) and HB 3557 (2015) to Ms. Gurney's request. In one letter to unions, for example, DHS stated that it was providing notice of the request in order to comply with the requirements of those bills. In your petition you argue that "DHS is hiding behind patently inapplicable laws and has delayed nearly four *** months, with no end in sight." You observe that this office issued an order to Ms. Gurney on April 28, 2015 noting that HB 3037 did not exempt from disclosure the names of individuals.

We agree with you that, as stated in our previous order, HB 3037 does not exempt the requested names from disclosure. Because our prior order gave only a cursory statement that the law does not exempt names, and because subsequent events indicate some confusion about the application of this law to the names of individuals, we take this opportunity to explain why we do not

interpret these laws to exempt names from disclosure. The specific portion of HB 3037 that is relevant to childcare providers reads as follows:

> A public body that is the custodian of or is otherwise in possession of the following information pertaining to * * * an operator of a child care facility as defined in ORS 329A.250 [or] an exempt family child care provider as defined in ORS 329A.430 * * * may not disclose that information in response to a request to inspect public records under ORS 192.410 to 192.505:
> (a) Residential address and telephone numbers;
> (b) Personal electronic mail addresses and personal cellular telephone numbers;
> (c) Social Security numbers and employer-issued identification card numbers; and
> (d) Emergency contact information.

HB 3037 (2015) § 3(1). Though HB 3037 was amended by HB 3557, those amendments did not change the scope of information that is made exempt. HB 3557 (2015) § 2. The name of a childcare provider simply is not exempted by this provision. And the provision does not include any language indicating intent to prohibit the disclosure of information that is not enumerated in the law. Even if such language were present, we have held in a similar context that when the legislature exempts these kinds of personal information but does not explicitly exempt names, that omission is conspicuous and the prohibition in ORS 174.010 against "insert[ing] what has been omitted" by the legislature would preclude interpreting such a list to include names. Public Records Order, Re and Cleary, October 20, 2009. We have reviewed the legislative history of HB 3037 and HB 3557 measure, and that history is consistent with our conclusion that the provisions of the bill (including the amendments to ORS 192.502(3) and the provisions that we have set forth above) do not exempt names from disclosure.

Though we agree with you that the information is not exempt from disclosure under HB 3037 as amended by HB 3557, or under ORS 192.502(3) as amended by those bills, we respectfully deny your petition because under all the circumstances, we cannot conclude that DHS has denied your request, inasmuch as DHS has informed us that it will provide the requested information to you on November 20, 2015, unless a court order prevents it from doing so. We deny your petition for that reason.

Sincerely,

FREDERICK M BOSS
Deputy Attorney General

6958324
cc via email only:
Gene Evans, DHS