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April 28, 2015

SENT VIA EMAIL ONLY

Anne Marie Gurney
4027 NE 74th Avenue
Portland OR 97213

Re: Petition for Public Records Disclosure Order
Oregon Department of Human Services
DOJ File No. 443400-GA0079-15

Dear Ms. Gurney,

This letter is the Attorney General's order in response to your petition asking that we order the Oregon Department of Human Services (DHS) to provide you with certain information you requested under the Oregon Public Records Law, ORS 192.410 through 192.505. Specifically, you are seeking the names and addresses of home health care providers in Oregon. You requested this information on December 22 of last year. Following an initial response from DHS, you clarified your request on January 12 of this year. DHS informed you that it was working on responding to your request. On April 10, DHS denied the request. Your petition followed. For the reasons that follow, we respectfully deny your petition.

The Oregon Public Records Law provides that "[e]very 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." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). A public body that asserts a statutory exemption from disclosure has the burden of demonstrating that the law permits the material in question to be withheld from public disclosure. ORS 192.450(1). A person whose request for a public record has been denied by a state agency may petition this office for review of that decision. *Id.*

In support of its denial of your request, DHS relies on 2015 House Bill 3037. That bill was signed into law by Governor Brown on April 9 of this year, and effective on passage. Section 3 of the bill provides as follows:

> (1) A public body that is the custodian of or is otherwise in possession of the following information pertaining to a home care worker as defined in ORS 410.600, an operator of a child care facility as defined in ORS 329A.250, an exempt family child care provider as defined in ORS 329A.430 or an operator of an adult foster home as defined in ORS 443.705 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.
> (2) Subsection (1) of this section does not apply to the Judicial Department or the Department of Transportation or to any records in the custody of the Judicial Department or the Department of Transportation.

Pursuant to this law, the addresses of home health care providers are generally exempt from disclosure; indeed, the statute prohibits their disclosure by most public bodies. But HB 3037 does not exempt from disclosure the names you requested. DHS has now informed us that it will provide you with those names. We consequently deny your petition with respect to the names because your petition is moot in that respect. We deny your petition with respect to addresses because HB 3037 prohibits the disclosure of that information.

You note that the addresses you request were not exempt when you requested them. You therefore argue that DHS should be required to disclose the information to you. As noted above, the exemption DHS relies on did not become law until April 9. Prior to that time, you are likely correct that the information was subject to public disclosure. See ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2014) at 78 (stating that addresses generally are not exempt from public disclosure). Regardless, the law currently prohibits the disclosure of the addresses you are seeking. We do not have authority to order DHS to disclose information to you in violation of current law. We must respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Gene Evans, DHS