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May 25, 2012

Minny Frank
1803 Buttermilk Lane
Arcata, CA 95521

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

Dear Ms. Frank,

This letter is the Attorney General's order in response to your petition of April 20, 2012.[1] In your petition, you ask the Attorney General to direct the Office of Investigations and Training of the Department of Human Services (OIT) to disclose to you an unredacted copy of an investigative report detailing OIT's conclusions following its investigation of a report you may have suffered abuse. We understand that you have filed suit regarding the allegations underlying the report. For the reasons that follow, we respectfully deny your petition.

Oregon's Public Records Law, ORS 192.410 to 192.505, confers on "every person" "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. If a record contains some information that is exempt from disclosure under the law, and other information that is subject to mandatory disclosure, a public body is required to make the nonexempt information available for inspection, but may redact or otherwise segregate the exempt material. ORS 192.505. A person who believes that a state agency has incorrectly denied a request for records may file a petition with the Attorney General.

In this case, OIT redacted numerous names from the report it provided you. OIT justifies its redactions by citing ORS 430.763:

[1] We thank Ms. Frank for allowing us until May 25 to issue our order.

> Notwithstanding the provisions of ORS 192.410 to 192.505, the names of persons who made reports of abuse, witnesses of alleged abuse and the affected adults * * * are confidential and are not accessible for public inspection.

The Public Records Law incorporates confidentiality statutes such as ORS 430.763 through ORS 192.502(9)(a), which provides that "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law" is exempt from mandatory disclosure. OIT also redacted details of various events that occurred in a manner designed to protect your privacy. *See* ORS 192.502(2) (exempting personal information from disclosure under the public records law, if disclosure would constitute an unreasonable invasion of privacy).

We have determined that OIT's redactions of your own name, and other redactions made to protect your privacy, are not justified. Although you are clearly the "affected adult" for purposes of this report, the confidentiality accorded to the identity of an affected adult by ORS 430.763 is designed to protect the privacy of that adult. As we have long held in the context of ORS 192.502(2) "personal privacy" exemption, such protections are not properly asserted against the person whose privacy is being guarded. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) (MANUAL) at 64 ("there is no ground under this section of the law to deny an individual access to his or her own file"). http://www.doj.state.or.us/pdf/public_records_and_meetings_manual.pdf#page=84. That reasoning applies even more directly to other redactions made to protect your privacy, such as redactions that mask mention in the report of particular body parts. We decline to order OIT to disclose this information, however, because OIT informs us that it is willing to provide a copy without these redactions, provided that you confirm that you would like OIT to do so. If you want your name, and other details that were redacted to protect your privacy, to appear in the report provided to you, you should inform OIT.

With regard to the names of other individuals redacted from the report, we conclude that they are "witnesses" whose names are expressly made confidential by ORS 430.763. They are the individuals to whom OIT spoke in order to assess whether the complaint of abuse should be substantiated or not. The statute requires disclosure of witness names to "any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein and to any public agency providing protective services for the adult, if appropriate." The statute also requires that the information available to "any private agency providing protective services for the adult and to the system [designated to protect and advocate for the rights of individuals]." But there is no provision for disclosure of witness names to the affected adult. We therefore uphold OIT's redactions of other names in the report.

For the foregoing reasons, your petition is respectfully denied. With respect to your own name and other information redacted to protect your privacy, OIT is willing to provide that information to you if you so request. With respect to the other names redacted from the report, those names are made confidential by ORS 430.763, and are exempt from disclosure pursuant to ORS 192.502(9)(a).

If you wish to pursue further review of OIT's decision, our MANUAL explains the process at pp. 111-113. http://www.doj.state.or.us/pdf/public_records_and_meetings_manual.pdf#page=131. We are also informed, however, that OIT is willing to disclose an unredacted version of the report to you if you obtain appropriate orders from the court in which you are pursuing your legal remedies. We would recommend that you consult with counsel regarding your rights under either of these avenues.

Sincerely,

Mary H. Williams
Deputy Attorney General

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C: Margaret Semple, DHS