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May 21, 2018

VIA EMAIL ONLY: BStraka@freedomfoundation.com

Ben Straka (Freedom Foundation)
P.O. Box 18146
Salem, OR 97305

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No. 100012-GA0033-18

Dear Mr. Straka,

This letter is the Attorney General's order responding to your petition, on behalf of the Freedom Foundation, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478.[1] The petition, which we received May 7, 2018, asks the Attorney General to order the Oregon Department of Human Services (DHS) to disclose the dates of birth of certain home care and child care providers. For the reasons discussed below, we affirm the decision of DHS and respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain any such denial. *Id.*

[1] Thank you for granting an extension on the deadline to issue this order.

You initially requested the full names, dates of birth, and type of union payroll deduction for persons employed as home care workers, personal support workers, license-exempt family child care providers, and certified and registered family child care providers ("providers"). You subsequently withdrew your request for union payroll deduction information. DHS disclosed the requested names, but withheld dates of birth under the personal privacy exemption because it believes disclosure would be an unreasonable invasion of privacy. ORS 192.355(2).

DHS has explained its concern that disclosing dates of birth in this case would enable the Freedom Foundation to determine the providers' residential address – contact information that is expressly protected under ORS 192.365(1)(a).[2] We are persuaded that the disclosure of dates of birth in this case will readily lead to the disclosure of protected contact information. Accordingly, we evaluate your petition as we would a request for the providers' addresses.

The residential addresses of providers are conditionally exempt and disclosure is subject to compliance with other statutory provisions. ORS 192.365(1). One of those requirements is that the requester demonstrate by clear and convincing evidence that the public interest requires disclosure in the particular instance. ORS 192.363(1)(c) and (2). On this record, we cannot find by clear and convincing interest that disclosure to you serves the public interest. As a result, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM8963023
c via email only: Jose Espinoza, DHS

[2] DHS' belief is supported by the Freedom Foundation's previous request for the providers' residential addresses, which DHS denied under ORS 192.365.