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April 26, 2019

VIA EMAIL ONLY: katherine@heekinlawoffice.com

Katherine Heckin
7327 SW Barnes Rd #824
Portland, OR 97225

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0034-19

Dear Ms. Heekin:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, received by this office on April 11, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to clarify and supplement several aspects of its response to a June 11, 2018 public records request. For the reasons discussed below, we 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). The law is a disclosure law, and exemptions from disclosure must be express. An agency's response to a public records request is complete when the agency (a) provides the requested records, (b) asserts any exemptions from disclosure, (c) complies with ORS 192.338 (duty to separate exempt and nonexempt information), and (d) to the extent the agency is not the custodian of requested records, provides a written statement to that effect. ORS 192.329(2). 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). A requester may also petition the Attorney General if they believe an agency has failed to comply with other provisions contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

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

We understand that your initial records request was prompted by articles published in The Seattle Times ("The Times") in 2017 regarding allegations that your client, then-Seattle Mayor Edward Murray, sexually abused his foster son in the early 1980s. A primary source of the information in those reports was documentation DHS provided to The Times in response to a 2017 public records request. Your request to DHS sought 20 different categories of records relating to DHS' response to The Times' public records request. In response, DHS disclosed more than 240 pages of documentation to you on July 13, 2018. In a cover letter accompanying the records, DHS generally explained that the only records it withheld were lawyer-client privileged communications, which are exempt from disclosure under ORS 192.355(9)(a) (incorporating ORS 40.225).

Your petition raises three major issues. First, you assert that DHS' response was incomplete and you cite examples of additional records that DHS should have disclosed. Second, you explain your belief that DHS did not produce any documents in response to parts 5-13 and 15-19 of your request. But because DHS did not identify which records were responsive to each part of your request, you are unable to determine whether DHS' response to those parts was incomplete, whether DHS withheld responsive records because they were privileged, or whether DHS simply has no records responsive to those parts of your request. Third, you claim DHS failed to adequately describe the records withheld under the lawyer-client privilege or to identify the part(s) of your request for which the withheld records are responsive. Accordingly, you ask the Attorney General to order DHS to (a) disclose any additional non-exempt records responsive to your request, (b) identify those parts of your request for which DHS does not have responsive records, and (c) describe in better detail the records withheld under the lawyer-client privilege.

We contacted Deena Loughary, DHS Child Welfare Safety Program Manager, who informed us that DHS has agreed to address the concerns raised in your petition. DHS has identified additional records responsive to parts 1-5, 8-11, and 13 of your request and will disclose the non-exempt portions of those records once it completes its review for exempt material. Regarding your belief that DHS did not provide records in response to parts 5-13 and 15-19 of your request, DHS indicated it did disclose records responsive to parts 5, 8, 16 and 18, to include Mr. Murray's 1984 foster parent case file and its correspondence with The Times. DHS acknowledged that it did not previously disclose records responsive to parts 9-11, but as noted above, it has identified responsive records and will disclose them to you soon. DHS also confirmed it does not have records responsive to parts 6, 7, 12, 15, 17, and 19, and that it has disclosed all of the non-exempt records in its custody relating to parts 14, 16 and 18 of your request. Finally, DHS reported that the records it withheld consist of approximately 40 privileged email exchanges with Department of Justice attorneys. DHS provided the following breakdown of how these privileged communications relate to the various parts of your request: all of the emails relate to parts 1 and 8; approximately 15 emails relate to parts 5 and 18; and three relate to parts 9-11.

Under the circumstances, we conclude the additional information DHS provided adequately addresses your second and third concerns. And because DHS has identified and agreed to disclose additional records in response to your first concern, we respectfully deny your petition as moot.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/DM9551660
c via email only: Deena Loughary (DHS)