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June 24, 2019

VIA EMAIL ONLY: ldake@gmail.com

Lauren Dake
Oregon Public Broadcasting
7140 SW Macadam Ave
Portland, OR 97212

Christy Sinatra
Department of Human Services
500 Summer St NE
Salem, OR 97301

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA00047-19

Dear Ms. Dake and Ms. Sinatra:

This letter is the Attorney General's response to Ms. Dake's petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. The petition, which we received June 12, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose an extensive set of reports, complaints and correspondence relating to out-of-state treatment facilities for Oregon foster children. For the reasons that follow, we grant Ms. Dake's 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 agencies are obligated to respond to records requests "as soon as practicable and without unreasonable delay." ORS 192.329(1). An agency that is unable to complete its response within fifteen business days of receiving a written request is required to provide the requester with a reasonable estimated completion date. ORS 192.329(5). The fifteen business day timeline does not apply if an agency determines that compliance is impracticable because it lacks sufficient staff, compliance would demonstrably impede the agency's ability to perform other necessary services, or because it is unable to comply due to the volume of public records requests being simultaneously processed by the agency. ORS 192.329(6). However, an agency that cannot comply with the timeline for one of those reasons is still required to acknowledge the request and complete its response "as soon as practicable and without unreasonable delay." ORS 192.329(8). A requester may petition the Attorney General if they

[1] Thank you for granting an extension to the deadline for responding to your petition.

believe an agency has failed to comply with the processing timelines and other provisions contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Ms. Dake's petition explains that she requested these records from DHS on February 11, 2019. DHS acknowledged the request on February 18, 2019, stating in relevant part:

> [A] search is underway through the DHS computer system for responsive records. We are asking that you clarify the time frame for this search, since an extensive amount of material and research will be required. If you are willing to narrow the search to those records since 2015 … it is anticipated that responsive records could be identified later this week.

Ms. Dake's petition explains that she agreed to narrow her search consistent with DHS' recommendation, but that she has not received a response, estimated completion date or other correspondence from DHS in nearly four months.

We contacted Christy Sinatra, DHS Interim Communications Director, regarding the petition. She identified a number of personnel and resource constraints that have contributed to the delayed processing of Ms. Dake's request. She also indicated that DHS' initial search for responsive records was too narrow and that, in light of Ms. Dake's petition, DHS is now conducting a broader search. Ms. Sinatra estimates that DHS will be able to complete its response within 30 days. This estimate is based upon the broad scope of the request and the need to review the records for information that may be exempt from disclosure.

Under the circumstances, we cannot conclude that DHS has responded to Ms. Dake's request "as soon as practicable and without unreasonable delay." Several of the constraints Ms. Sinatra identified may reasonably account for some of the delay. However, DHS has not adequately explained why four months passed without providing a response or status update to Ms. Dake, as required by ORS 192.329(5). Nor has DHS accounted for the delay in initiating a full search for responsive records until it received Ms. Dake's petition. Under the circumstances – including the fact that DHS now believes that it can complete an expanded search and respond to Ms. Dake within 30 days – we conclude that the four month delay was not reasonable.

Accordingly, we grant the petition and order DHS to disclose all nonexempt records responsive to the request. Considering the scope of Ms. Dake's request, DHS has 30 days to comply with this order or announce its intention to seek judicial review. ORS 192.407(3).

Sincerely,

Frederick M. Boss
Deputy Attorney General

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