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June 26, 2019

VIA EMAIL ONLY: erin@mcgladreyclan.com

Erin Chapman
6340 SW Cherryhill Drive
Beaverton, OR 97008

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100001-GA00050-19

Dear Ms. Chapman:

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, which we received June 13, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose a particular report of child abuse. For the reasons that follow, 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. 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 its actions. ORS 192.411(1).

Your petition explains that you originally requested this report from the Beaverton Police Department and the Washington County Sherriff's Office. Both offices referred you to DHS. DHS denied your request under ORS 419B.035 and the associated rule at OAR 413-010-0035. The relevant statutory provision states that reports of child abuse "compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section." ORS 419B.035(1).

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

We contacted John Mosser, DHS Social Service Assistant Supervisor for Washington County, regarding your petition. He explained that the report you seek was compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, and is therefore confidential under ORS 419B.035(1). And records made confidential under state law are expressly exempt from disclosure under the Public Records Law. *See* ORS 192.355(9)(a). Although ORS 419B.035(1) contains exceptions that permit DHS to disclose otherwise confidential child abuse records in limited circumstances, Mr. Mosser explained DHS' position that none of those exceptions apply to your request.[2] He also explained that, although DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes,[3] DHS determined that it is unable to exercise that discretion in this instance because disclosing the report to you will not serve those purposes.

After discussing the report with Mr. Mosser, we find that it was compiled under Oregon's Child Abuse Reporting Statutes. It is therefore confidential under ORS 419B.035 and exempt from disclosure under ORS 192.355(9)(a). And none of the exceptions listed in ORS 419B.035(1) expressly permit DHS to disclose the report to you. We also observe that to exercise its discretionary authority under ORS 419B.035(3), DHS must determine that disclosure is *necessary* to promote the limited purposes listed in that subsection. On the record before us, we cannot see how disclosure to you is necessary to advance those purposes. We therefore conclude that DHS does not have the discretion to disclose the report to you in this instance.

Your petition asserts that you are entitled to the report under ORS 409.225(2)(a), which requires DHS to disclose child welfare records to a recipient of child welfare services once the recipient reaches the age of majority. We conclude that ORS 409.225(2) does not apply to child abuse records, even when they may be regarded as a subset of child welfare records. Unlike ORS 409.225, ORS 419B.035 specifically regulates the disclosure of records compiled under Oregon's Child Abuse Reporting Statutes. And ORS 419B.035(1) states that such records "are confidential and may not be disclosed *except as provided in this section*" (emphasis added). Thus, the only exceptions permitting DHS to disclose otherwise confidential child abuse records are those contained in ORS 419B.035. And as discussed above, none of those exceptions apply in this instance.

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[2] Regarding the exceptions to the general rule of confidentiality, ORS 419B.035(1) generally requires DHS to disclose child abuse records – in limited circumstances and for limited purposes – to: law enforcement agencies; certain medical providers; attorneys or other parties in juvenile court proceedings; certain citizen review boards; court appointed special advocates in certain proceedings; the Office of Child Care; the Office of Children's Advocate; the Teacher Standards and Practices Commission for certain investigations; Disability Rights Oregon, and to any person in cases where a child, as the result of abuse, died or suffered serious physical injury.

[3] ORS 419B.035(3) permits DHS to make records compiled under Oregon's Child Abuse Reporting Statutes available to any person "when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, [and] to protect children from abuse ***"

For the reasons discussed above, we conclude the report you seek is confidential under ORS 419B.035 and thereby exempt from disclosure under ORS 192.355(9)(a). We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:nog/DM9687320
c via email only: John Mosser (DHS)