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July 8, 2019

VIA EMAIL ONLY: cwish66@gmail.com

Chris Wishnia
6836 SE Division
Portland, OR 97206

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA00063-19

Dear Mr. Wishnia:

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 28, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose certain child abuse records. 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 stems from a records request made by you to DHS on June 3, 2019 for (1) any records relating to the death of one of your minor children; (2) reports by you to the DHS abuse hotline between 2012-2015; and (3) any other records compiled by DHS relating to your deceased child. DHS denied your request on June 20, 2019, stating that the records you seek are confidential and exempt from disclosure under ORS 409.225(1), 419B.035, and 192.355(2).

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

We contacted Tami Kane-Suleiman, DHS Child Safety Program Manager, regarding your petition. She indicated that DHS is the custodian of some records responsive to your request. However, she explained DHS' position that ORS 419B.035(1) makes all of those records confidential and not subject to disclosure because they were compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050. With respect to the information you provided to the abuse hotline, Ms. Kane-Suleiman explained that DHS does not have transcripts of those calls because they were not recorded. Rather, those calls were summarized as part of the intake process and the resulting summaries were comingled with the observations and impressions of the call screeners. DHS believes those summaries are part of the records made confidential by ORS 419B.035.

Although ORS 419B.035(1) contains exceptions that permit DHS to disclose otherwise confidential child abuse records in limited circumstances, DHS asserts that none of those exceptions apply to your request. This includes ORS 419B.035(1)(i), which requires DHS to disclose child abuse records to any person in a case in which a child, as the result of abuse, died or suffered serious physical injury. According to Ms. Kane-Suleiman, that exception does not apply in this instance because DHS determined that your child's death was not the result of abuse. Finally, Ms. Kane-Suleiman explained that, although DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes,[2] DHS determined that it is unable to exercise that discretion in this instance because disclosing the abuse reports to you will not serve those purposes.

After discussing the records with Ms. Kane-Suleiman, we find that they were compiled under Oregon's Child Abuse Reporting Statutes and are therefore made confidential by ORS 419B.035(1). Records made confidential under state law are expressly exempt from disclosure under the Public Records Law. *See* ORS 192.355(9)(a). And it does not appear to us that any of the available exceptions expressly permit DHS to disclose the records to you. *See* ORS 419B.035(1)(a)-(k). 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. Accordingly, we conclude that DHS does not have the discretion to disclose the records to you in this instance.

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[2] ORS 419B.035(3) gives DHS discretion to disclose records compiled under Oregon's Child Abuse Reporting Statutes 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 records you seek are 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:bw1/DM9712813
c via email only: Tami Kane-Suleiman (DHS)