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July 24, 2019

VIA EMAIL ONLY: dmfmfr@gmail.com

Barbara Miller
6991 Allen Road
Mt Hood-Parkdale, OR 97041

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100001-GA0107-19

Dear Mrs. Miller:

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 July 1, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose records relating to Adult Protective Services Case #DL-0394 ("APS case file"). 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 in November 2006, you filed a complaint with the Mid-Columbia Medical Center (MCMC) alleging elder abuse towards your father, who was then a patient. On January 24, 2019, you made a public records request to DHS for the related APS case file. DHS denied your request on February 6, 2019, explaining that the APS case file is confidential and exempt from disclosure under ORS 124.090.

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

In light of your petition we contacted Mike McCormick, Deputy Director of DHS' Aging and People with Disabilities Program. He acknowledged that DHS is the custodian of records responsive to your request. However, he explained DHS' position that ORS 124.090 makes all of the records in the APS case file confidential and not subject to disclosure because they were compiled under Oregon's Elder Abuse Reporting Statutes, ORS 124.050 to 124.095. That provision states, in relevant part:

> (1) Notwithstanding the provisions of ORS 192.311 to 192.478, the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the provisions of ORS 124.050 to 124.095, are confidential and are not accessible for public inspection.

Although there are several exceptions that permit DHS to disclose otherwise confidential elder abuse records in limited circumstances, Mr. McCormick explained DHS' position that none of those exceptions apply to your request. *See* ORS 124.090(2)(a)-(g).[2]

After discussing the particulars of the APS case file with Mr. McCormick, we find that it was compiled under Oregon's Elder Abuse Reporting Statutes and is therefore made confidential by ORS 124.090. 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 exceptions to ORS 124.090 expressly permit DHS to disclose the APS case file to you.[3] Because we conclude that DHS did not improperly withhold the APS case file in this instance, we must respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9715916
c via email only: Mike McCormick (DHS)

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[2] The exceptions to the general rule of confidentiality, ORS 124.090(2)(a)-(g), permit DHS to disclose elder abuse records only to: law enforcement agencies; agencies that license or certify residential facilities or their employees; public and private nonprofit agencies providing protective services to the elderly person; the Long Term Care Ombudsman; the agency that licensed or certified the person alleged to have abused an elderly person; a court pursuant to a court order; and to an administrative law judge in proceedings relating to protective services or when necessary to investigate, prevent or treat elder abuse. Confidential information made available to any of these agencies or individuals remains subject to the confidentiality provisions of ORS 124.090(1). ORS 124.090(3).

[3] We understand that you seek the APS case file because you believe your father was the victim of criminal neglect, exploitation and tortious conduct by various parties. And you have asked us to help you pursue related civil and criminal action, to include issuing a subpoena for the APS case file. Without addressing the merits of your claims, we are unable to assist you with those aspects of your petition. The Attorney General's authority in the context of a public records petition is limited to evaluating whether a state agency properly withheld requested public records. *See* ORS 192.411(1). That authority does not include issuing subpoenas on behalf of public records petitioners or otherwise assisting with private litigation. The Department of Justice's Criminal Justice Division has separately responded to your request for a criminal investigation.