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January 16, 2020

VIA EMAIL ONLY: cathy@cgormleylaw.com

Cathy Gormley
600 1st Ave, Ste 304
Seattle, WA 98104

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0154-19

Dear Ms. Gormley:

This letter is the Attorney General's response to your petition, on behalf of a client, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received December 27, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose certain records relating to your client. 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).

The record indicates that on December 16, 2019, you submitted a request to DHS for your client's "dependency, foster care, and other protected records." You enclosed a form signed by your client authorizing DHS to disclose his health care, dependency, foster care, psychological, and academic records to you. On December 24, 2019, DHS disclosed various medical and educational records to you, but generally denied your request for your client's dependency and foster care records. You now ask the Attorney General to order DHS to disclose

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

all dependency records, including reports detailing the reasons your client was removed from the custody of his mother, reports of any "founded" allegations of abuse or neglect, and any other records relating to his time in foster care. Your petition explains that you need this information to effectively represent your client's due process and liberty interests in a pending criminal matter.

We contacted Toni Zimmerman, DHS Public Records Officer, regarding your petition. She explained that the records you seek fall within two general categories of information that DHS believes are exempt from disclosure. The first category consists of juvenile court records that DHS claims are exempt from public disclosure under ORS 419A.255.[2] In light of your petition, however, DHS has acknowledged that your client is entitled to a copy of these records under ORS 419A.255(18).[3] DHS has therefore agreed to disclose the juvenile court records to you insofar as you have requested them on behalf of your client. Because DHS has agreed to disclose these records to you, we deny this aspect of your petition as moot.

Ms. Zimmerman indicated that the second category consists of Child Protective Service (CPS) records compiled under Oregon's Child Abuse Reporting statutes, which DHS asserts are confidential under ORS 419B.035(1).[4] 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,[5] Ms. Zimmerman explained DHS'

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[2] ORS 419A.255(2)(a) states in relevant part:

> Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the record of the case or the supplemental confidential file are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection except that inspection is permitted as set forth in subsection (1)(b) of this section and paragraph (b) of this subsection. ***

[3] ORS 419A.255(18)(a) states:

> A child, ward, youth or youth offender, or the parent or guardian of a child, ward, youth or youth offender who is a party to the juvenile court proceeding, who is entitled to inspect or copy the record of the case under subsection (1)(b) and (c) of this section maintains the right to inspect or copy the record of the case after jurisdiction of the court over the child, ward, youth or youth offender terminates and after the child, ward, youth or youth offender has reached the age of majority.

[4] ORS 419B.035(1) states in relevant part:

> Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section. ***

[5] 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.

position that none of those exceptions apply to your request. She also explained that, although DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes,[6] DHS has determined that it is unable to exercise that discretion in this instance because disclosing the report to you will not serve those purposes.

In response to DHS' arguments, you acknowledged that Oregon law prohibits the *public* disclosure of the CPS records but explained that you do not intend to further disclose these records to the public. Rather, you argue that your client has compelling liberty interests in these records and that a protective order limiting their use to his criminal proceedings should adequately protect the privacy interests encompassed by ORS 419B.035. Notwithstanding these concerns, however, we conclude that this is not the appropriate forum for addressing your client's discovery, due process, or other constitutional rights. We are not a court and do not have the authority to adjudicate such matters or to issue protective orders.

Our role is limited to determining whether the public records you requested are or are not exempt from disclosure under the public records law. *See* ORS 192.411(1). On the record before us, it appears you have conceded that the CPS records are exempt from public disclosure in this instance. Likewise, we separately conclude that DHS does not have the discretion to disclose the CPS records to you. After discussing the records with Ms. Zimmerman, we find that they were compiled under Oregon's Child Abuse Reporting Statutes. They are therefore confidential under ORS 419B.035 and exempt from disclosure under ORS 192.355(9)(a); as noted above, you appear to agree. None of the exceptions listed in ORS 419B.035(1) expressly permit DHS to disclose the records to you. And DHS may not exercise its discretionary authority under ORS 419B.035(3) unless disclosure is necessary to promote the limited purposes listed in that subsection. Under the circumstances, we see no basis to second-guess the determination, statutorily entrusted to DHS, that disclosure to you or your client is not necessary to advance those limited purposes.

For the reasons discussed above, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10042537
c via email only: Toni Zimmerman (DHS)

[6] ORS 419B.035*(3) gives DHS discretion 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 ***"*