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January 30, 2020

VIA EMAIL ONLY: chelseabarclay01@gmail.com

Chelsea Barclay
3992 SE 174th Ave
Portland, OR 97236

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0010-20

Dear Ms. Barclay:

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 asks the Attorney General to order the Department of Human Services (DHS) to disclose all Child Protective Services (CPS) records regarding you. 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 these records on December 30, 2019. DHS responded on January 2, 2020, indicating that it did not have any records responsive to your request. Your petition followed. You assert that DHS must have responsive records because you have obtained documentation from two CPS cases in which you were named as a minor. You believe you have a right to these records because you have been told that some of them have been introduced in legal proceedings involving your stepson.

We contacted Kimberly Colkitt-Hallman, DHS Public Records Officer, regarding your petition. She explained that DHS understood your request to be for CPS records filed under your name while you were a minor. She informed us that DHS does not have such records.

Ms. Colkitt-Hallman acknowledged that DHS does have CPS records that refer to you, both as a minor and as an adult, that are maintained under the names of other persons. However, to the extent you seek those records, she explained DHS' position that it is not permitted to disclose them to you. Specifically, she indicated that the records were compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, which DHS asserts are 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, Ms. Colkitt-Hallman explained DHS' position that none of those exceptions apply to your request.[1] She also 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 records to you will not serve those purposes.

After discussing the records with Ms. Colkitt-Hallman, we conclude that DHS may withhold those records from you in this instance. We find that they were compiled under Oregon's Child Abuse Reporting Statutes, which make them confidential under ORS 419B.035 and therefore exempt from disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) appear to expressly authorize 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 have no reason to second-guess the determination, statutorily entrusted to DHS, that disclosure to you 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:nog/pjn/DM10071205
c via email only: Kimberly Colkitt-Hallman (DHS)

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[1] Regarding the exceptions to the general rule of coufidentiality, 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.

[2] 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 ***"