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February 11, 2020

VIA EMAIL ONLY: chelsyfischer00@gmail.com

Chelsy Fischer
1695 NE Gardiner Drive
Estacada, OR 97023

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0018-20

Dear Ms. Fischer:

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 certain child welfare records to 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).

According to your petition, you originally requested these records on February 2, 2020. DHS denied your request on February 4, 2020, indicating that state law prohibits DHS from disclosing the records to you.

In response to your petition, we contacted Toni Zimmerman in DHS' Public Records Unit. She acknowledged that DHS does have child welfare records responsive to your request, including child protective services (CPS) reports and assessments. However, she explained that these 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).[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 CPS records in limited circumstances, Ms. Zimmerman explained DHS' position that none of those exceptions apply to your request.[2] She also explained that although DHS has limited discretion to release CPS 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 records to you will not serve those purposes.

After discussing the CPS records with Ms. Zimmerman, we conclude that DHS may withhold them 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) 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 have no reason to second-guess DHS' statutorily entrusted determination 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:pjn/DM10088251
c via email only: Toni Zimmerman (DHS)

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[1] 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 ***.

[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 ***"