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February 3, 2020

VIA EMAIL ONLY: mccoy@warrenallen.com

George McCoy
850 NE 122nd Ave
Portland, OR 97230

Rc Petition for Public Records Disclosure Order:
Department of Human Services
DOJ File No.: 100001-GA0015-20

Dear Mr. McCoy:

This letter is the Attorney General's response to your January 27, 2020 petition, filed by you on behalf of your clients. Your petition asks the Attorney General to direct of the Department of Human Services (DHS) to disclose an unredacted copy of an investigative report prepared by the Office of Training, Investigations and Safety (OTIS). According to your petition, OTIS substantiated an allegation that an adult day care facility neglected your clients' son and you seek the report to support a wrongful death claim against the facility. You requested the report on January 14, 2020, but DHS denied your request on January 22, 2020 indicating that the investigation was not finished. 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. If a record contains both exempt and nonexempt information, a public body is required to make the nonexempt information available for inspection, but may redact the exempt material. ORS 192.338. 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).

We contacted Chelsey Herrmann, DHS Lead Public Records Coordinator, regarding your petition. She informed us that DHS disclosed a redacted copy of the report to you on January 29, 2020. She explained that the redacted information consists of various names and other information that would reveal the identities of persons named in the report. DHS justifies its redactions by citing ORS 430.763, which states in relevant part:

> Notwithstanding the provisions of ORS 192.311 to 192.478, the names of persons who made reports of abuse, witnesses of alleged abuse and the affected adults * * * are confidential and are not accessible for public inspection.

The Public Records Law incorporates confidentiality statutes such as ORS 430.763 through ORS 192.355(9)(a), which provides that "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law" is expressly exempt from disclosure.

After reviewing the report, we find that the redacted information consists of the names and other identifying information (such as job titles and dates of birth) of witnesses. Although ORS 430.763 only makes the "names" of witnesses confidential, we believe that in giving effect to the rule, DHS was permitted to redact information that would readily reveal the otherwise protected names of witnesses. *Cf.* Public Records Order, May 21, 2018, Straka (we evaluate a request for information that will readily lead to the disclosure of protected information as a request for the protected information). Finally, although the statute requires DHS to disclose investigative reports to certain enumerated public and private agencies, it does not expressly permit DHS to disclose otherwise confidential information contained in such reports to private parties such as your clients. We therefore conclude DHS' redactions were appropriate.

Your petition explains your belief that your clients are entitled to an unredacted copy of the report under ORS 192.517(1).[1] We conclude that this provision does not apply to your request because it only governs access to such information by "*[t]he system* designated to protect

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[1] ORS 192.517(1) states, in relevant part:

> (1) The system designated to protect and advocate for the rights of individuals shall have access to all records of:
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> (a) Any individual who is a client of the system if the individual or the legal guardian or other legal representative of the individual has authorized the system to have such access;
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> ***
>
> (c) Any individual who has a legal guardian or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal representative:
>
> (A) Has been contacted by the system upon receipt of the name and address of the legal guardian or other legal representative;
>
> (B) Has been offered assistance by the system to resolve the situation; and
>
> (C) Has failed or refused to act on behalf of the individual.

and advocate for the rights of individuals ***" (emphasis added). For purposes of ORS 192.517, the system designated for such advocacy is Disability Rights Oregon (formerly the Oregon Advocacy Center).[2]

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10077996
c via email only: Chelsey Herrmann (DHS)

[2] *See, e.g.,* OAR 411-020-0030(4); and the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 USC §§ 15001 to 15115. For additional information about Disability Rights Oregon, *see* http://droregon.org/wp-content/uploads/What-is-Disability-Rights-Oregon1.pdf (accessed Jan 31, 2020).