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February 3, 2020

VIA EMAIL ONLY: demeaningspark@yahoo.com

Bryce Dill
4220 NE Mill Cr Rd
Prineville, OR 97754

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0007-20

Dear Mr. Dill:

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 a Crook County Sheriff's Office incident report. 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 the report on January 2, 2020. DHS denied your request on January 8. DHS asserted that OAR 413-010-0035(10)(c) prevented it from disclosing child welfare records until the assessment was complete.

We contacted Kimberly Colkitt-Hallman, DHS Public Records Officer, regarding your petition. She explained that after denying your request, DHS completed its assessment and re-considered your public records request. DHS asserts the incident report was compiled by DHS under its duty to investigate reports of child abuse, and is therefore exempt from disclosure under ORS 419B.035(1). That provision makes confidential the reports and records compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050. 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] However, DHS determined that it had discretion under ORS 419B.035(3) to disclose a portion of the incident report to you, and subsequently disclosed a redacted report.[2] Specifically, DHS redacted identifying information about the reporter of alleged child abuse. DHS also redacted identifying information about other persons named in the incident report after it concluded that disclosing this information to you was not necessary to promote the limited purposes specified in ORS 419B.035(3).

After discussing the record with Ms. Colkitt-Hallman, we conclude that DHS may withhold the redacted material from you in this instance. We find that the incident report was compiled under Oregon's Child Abuse Reporting Statutes, which make it 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. Although DHS exercised its discretion under ORS 419B.035(3) to disclose the report to you, that same provision required DHS to redact "[t]he name, address and other identifying information about the person who made the report." *Id.* We also note that DHS may not exercise its discretionary authority under ORS 419B.035(3) unless it determines that disclosure is necessary to promote the purposes listed in that subsection. In this instance, we have no reason to second-guess DHS' statutorily entrusted determination that disclosing identifying information about other persons referenced in the report was not necessary to advance those limited purposes. We therefore conclude that DHS' redactions were appropriate.

With respect to the portion of the report already disclosed to you, we deny your petition as moot. With respect to the information redacted from the report, we conclude that it is confidential under ORS 419B.035 and thereby exempt from disclosure under ORS 192.355(9)(a). We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10079551
c via email only: Kimberly Colkitt-Hallman (DHS)

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[1] 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.

[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 ***."