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May 29, 2020

VIA EMAIL ONLY: deannagekas@hotmail.com

Deanna Thompson
2735 SE 130th Ave
Portland, OR 97236

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100001-GA0051-20

Dear Ms. Thompson:

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).

We contacted Kimberly Colkitt-Hallman, DHS Records Officer, regarding your petition. She explained that the only records DHS possesses that might be responsive to your request relate to an ongoing child welfare assessment. She explained that those records were compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, and are therefore confidential under ORS 419B.035(1).[1] And records made confidential under state law are

[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 ***.

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 welfare records in limited circumstances, Ms. Colkitt-Hallman explained DHS' position that none of those exceptions apply to your request.[2] She also explained that, although DHS has limited discretion to release confidential child welfare records when necessary to promote certain specified purposes,[3] DHS determined that it is unable to exercise that discretion at this time because the assessment has not been completed. She advised, however, that you may resubmit your request once the assessment is complete and DHS will reconsider whether it may exercise its discretion to release the records to you at that time.

After discussing the records with Ms. Colkitt-Hallman, 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). 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 disclosing the records to you before the assessment is completed is not necessary to advance those limited purposes. We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10256244
c via email only: Kimberly Colkitt-Hallman (DHS)

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[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 ***."