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May 4, 2020

VIA EMAIL ONLY: RLussier211@gmail.com

Robert Lussier
483 Willow Ave
Portland, OR 97071

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0045-20

Dear Mr. Lussier:

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 child welfare records relating to you, your wife and your children. DHS denied your request claiming the records are exempt from disclosure under ORS 419B.035. For the reasons that follow, we respectfully dismiss your petition in part and deny your petition in part.

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 Toni Zimmerman, DHS Public Records Unit, regarding your petition. She acknowledged that DHS has several child welfare assessments responsive to your request. However, she explained DHS's position that those assessments were compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, and are therefore confidential

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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 several enumerated exceptions that permit DHS to disclose otherwise confidential child welfare records in limited circumstances, Ms. Zimmerman explained DHS' position that none of those exceptions apply to your request.[2]

Ms. Zimmerman also explained that DHS has limited discretionary authority under ORS 419B.035(3) to release child welfare records when necessary to promote certain specified purposes.[3] In light of your petition, she informed us that DHS has determined that it may exercise that discretion with respect to three assessments that involve you. She indicated that DHS will be disclosing those assessments to you once it has redacted otherwise confidential third-party information. Ms. Zimmerman explained DHS' position that it is unable to exercise its discretionary authority with respect to the remaining assessments because DHS has determined that disclosing them to you in this instance will not serve the limited purposes detailed in ORS 419B.035(3).

Regarding the child welfare assessments that DHS has agreed to disclose to you, we respectfully dismiss your petition as moot. After discussing the remaining assessments 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 public disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) expressly permit DHS to disclose the assessments 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

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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 ***."

subsection. Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination that disclosing the remaining assessments to you is not necessary to advance those limited purposes. We therefore respectfully deny your petition with respect to those assessments.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10219091
c via email only: Toni Zimmerman (DHS)