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August 28, 2020

VIA EMAIL ONLY: clintonpaulreedyoyo@gmail.com

Clinton Paul Reed
2162 Vine Street Apts
Roseburg, OR 97470

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA00082-20

Dear Mr. Reed:

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 all child welfare records relating 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, DHS provided responsive records and did not otherwise deny your request. However, you believe DHS must have additional records that it did not disclose. In support of your belief, you note that you are aware of an investigation that was not closed until 2002 but DHS did not disclose any records relating to that investigation. We also understand that you are appealing the redaction of certain information from two child welfare assessments that DHS disclosed to you.

We contacted Kimberly Colkitt-Hallman, DHS Records Officer, regarding your petition. She explained that your original request was for all child welfare records relating to you and dated between July 16, 1978 to December 1, 1998. She indicated that DHS conducted a comprehensive search for responsive records, using both your current legal name and your prior name. She explained DHS' position that it disclosed to you all of the responsive records that it located. She also explained that any responsive records that might have been created before 1990 were likely destroyed because the DHS records retention policy for such records is generally 30 years (for founded abuse allegations) or 7 years (for unfounded abuse allegations). *See* Oregon State Archives Records Retention Schedule Number 2007-0023. Regarding your reference to a 2002 investigation, she advised that such records are outside of the timeframe of your original request.

Under the circumstances, we respectfully deny your petition insofar as you believe DHS has failed to disclose responsive records. DHS represents that it disclosed all of the responsive records that it located and explained why older records may no longer exist. We have no reason to second-guess DHS' representation and we cannot order DHS to disclose records that do not exist. We must also deny that aspect of your petition that asks us to order DHS to disclose records that were not within the scope of your initial request. *See* ORS 192.411(1) (the Attorney General's authority is generally limited to evaluating whether a state agency properly withheld requested records). You are of course free to submit a new request to DHS for any additional records you seek.

With respect to the information DHS redacted from the assessments, Ms. Colkitt-Hallman explained DHS' position that the assessments themselves are confidential and exempt from disclosure under ORS 419B.035(1). That provision provides in relevant part that records compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, "are confidential and may not be disclosed except as provided in this section." ORS 419B.035(1). She explained that the assessments were compiled pursuant to those statutes and are therefore confidential under ORS 419B.035(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 exceptions that permit DHS to disclose otherwise confidential child abuse records to certain persons in limited circumstances, Ms. Colkitt-Hallman explained DHS' position that none of those exceptions apply to your request.[1]

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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.

Ms. Colkitt-Hallman also explained that DHS has limited discretion to disclose confidential child abuse records when necessary to promote certain specified purposes. *See* ORS 419B.035(3).[2] In this instance, DHS determined that it was permitted to exercise that discretion and therefore disclosed the otherwise confidential assessments to you. However, she explained, in exercising its discretion to disclose confidential records, DHS asserts that it may redact confidential information from those records if disclosure is not necessary to promote the purposes listed in ORS 419B.035(3). According to Ms. Colkitt-Hallman, DHS determined that disclosing the redacted information to you in this instance was not necessary to promote those limited purposes.

After discussing the assessments 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). In this instance, however, DHS exercised its discretionary authority under ORS 419B.035(3) and disclosed the confidential assessments to you, with redactions. Such a disclosure does not affect the confidential nature of the assessments themselves or of the information that DHS decided to redact from the assessments. *See* ORS 419B.035(6)(a) (confidential records disclosed by DHS to persons pursuant to ORS 419B.035(3) shall be kept confidential). In this instance, DHS redacted confidential third-party information from the assessments after determining that disclosing that information to you would not promote the limited purposes of ORS 419B.035(3). Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination and therefore conclude that DHS was permitted to redact the information from the assessments.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:nog/DM10413503
c via email only: Kimberly Colkitt-Hallman (DHS)

[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 ***"