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December 23, 2020

VIA E-MAIL ONLY: gretchenfridell7@gmail.com

Michael Woodland
c/o Gretchen Webb
2295 South Beaver Creek Rd
Seal Rock, OR 97376

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0121-20

Dear Mr. Woodland:

This letter is the Attorney General's response to your petition, submitted on your behalf by your ex-wife Gretchen Webb, 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 to you all child welfare reports relating to your children that were created between 2016 and 2020. Your petition explains that you need these records for a custody hearing scheduled to take place in January 2021. 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).

In response to your petition, we contacted Kimberly Colkitt-Hallman in DHS' Public Records Unit. She indicated that DHS has not received a request for these records from you or from anyone else on your behalf. Rather, DHS received a request for these records from Ms. Webb on October 16, 2020, on behalf of your mother, Teresa Woodland, to assist your mother in a custody hearing that took place in November 2020. DHS denied Ms. Webb's request on October 19, 2020. A copy of DHS' denial letter was enclosed with your petition, indicating to us that you wish to appeal the denial of Ms. Webb's records request.

We have reviewed the October 16, 2020 records request and find no indication that it was submitted by you, on your behalf, or at your direction. Under the circumstances, we cannot order DHS to disclose the records to you because DHS has not denied a records request submitted by you. *See* ORS 192.411(1). We therefore deny this aspect of your petition as premature. You are free, of course, to submit your own request for these records.

We now turn to DHS' denial of Ms. Webb's request. Because Ms. Webb also submitted this petition on your behalf, we find that it is appropriate to consider this aspect of your appeal. According to Ms. Colkitt-Hallman, DHS denied Ms. Webb's request because the child welfare reports she requested 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, she noted, 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 would have permitted DHS to disclose the records to Ms. Webb or to your mother.[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 disclosing your children's records to Ms. Webb or your mother would not serve those limited purposes.

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 Ms. Webb or to your mother. 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

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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 ***."

disclosing the records to Ms. Webb or to your mother is not necessary to advance those limited purposes. We therefore respectfully deny this aspect of your petition.[4]

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Kimberly Colkitt-Hallman (DHS)

[4] This order only addresses access to these records under the Public Records Law. It does not address what rights you or other parties may have to access them under rules of civil discovery insofar as they may be relevant to private litigation.