ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

January 19, 2021

VIA E-MAIL ONLY: brandonkentp@gmail.com

Brandon Kent
P.O. Box 230043
Portland, OR 97281

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0007-21

Dear Mr. Kent:

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 unredacted copies of all child welfare and abuse records relating to you and your daughter up to her 18th birthday. 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 informed us that your initial request did not seek *all* DHS records relating to you and your daughter up to her 18th birthday. Rather, your request was for all child welfare and abuse records relating only to your daughter and dated between June 1, 2020 and December 7, 2020. She also explained that DHS disclosed to you redacted copies of the records responsive to your request. Regarding the information redacted from those records, Ms. Colkitt-Hallman explained DHS' position that the records 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 records at issue were compiled pursuant to those statutes and are therefore confidential under ORS 419B.035(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 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]

Ms. Colkitt-Hallman also explained that under ORS 419B.035(3), DHS has limited discretion to disclose confidential child abuse records when necessary to promote certain specified purposes.[2] In this instance, DHS determined that it was permitted to exercise that discretion and therefore disclosed the otherwise confidential records 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. She also explained that in light of some of the issues you identified in your petition, DHS sent you revised versions of the records on January 15, 2021 that contained far fewer redactions.

After reviewing the records and discussing them 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 redacted copies of the confidential records to you. Such a disclosure does not affect the confidential nature of the records themselves or of the information that DHS decided to redact from the records. *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 records 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 records. We therefore deny that aspect of your request that asks us to order DHS to furnish you with unredacted versions of those records.

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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 * * *"

We must also deny that part 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.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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