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February 11, 2021

VIA E-MAIL ONLY: mturkdfeldt91@gmail.com

Daniel Feldt
1283 31st Court NW
Salem, OR 97304

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0012-21

Dear Mr. Feldt:

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 copies of all child welfare and abuse 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).

We contacted Kimberly Colkitt-Hallman, DHS Records Officer, regarding your petition. She informed us that you initially requested these records in September 2020 and that DHS disclosed to you all of the non-exempt records that it located at that time. In light of your petition, she explained that DHS has located additional non-exempt records that it will disclose to you soon. With respect to those records, we dismiss your petition as moot.

As for the records that DHS withheld, Ms. Colkitt-Hallman explained DHS' position that they are confidential child welfare assessments that are 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 DHS withheld 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] She also explained that, although DHS has limited discretion to release confidential child welfare records when necessary to promote certain specified purposes, DHS determined that disclosing these assessments to you would not serve those limited purposes.[2]

After discussing the assessments that DHS withheld 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 assessments to you is not necessary to advance those limited purposes. We therefore respectfully deny your petition.[3]

Sincerely,

Frederick M. Boss
Deputy Attorney General

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

[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 ***."

[3] 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.