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May 19, 2021

VIA E-MAIL ONLY: vanessamiller8469@gmail.com

Vanessa Miller
16764 W. Lincoln
Goodyear, AZ 85338

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0055-21

Dear Ms. Miller:

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 certain child welfare records to you. For the reasons that follow, we respectfully deny your petition.

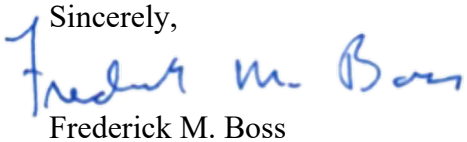
The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy 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).

In response to your petition, we contacted Jennifer Bell in DHS' Public Records Unit. She informed us that although DHS possesses responsive records, DHS determined that they are confidential child welfare and abuse records that are exempt from disclosure under ORS 409.225(1) and 419B.035(1). Specifically, ORS 409.225(1) makes all "child welfare records, files, papers or communications" confidential and not available for public inspection. ORS 419B.035(1) 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." 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 both statutes contain exceptions that require DHS to disclose otherwise confidential child welfare and abuse records to certain persons in limited circumstances, Ms. Bell explained DHS' position that none of those exceptions apply to your request.[1] She also explained that although DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes,[2] DHS has determined that it is unable to exercise that discretion because disclosing the records to you will not serve those purposes.

After discussing the responsive records with Ms. Bell, we conclude that DHS was permitted to withhold them from you in this instance. We find that they are confidential child welfare and abuse records that are exempt from disclosure under ORS 409.225(1) and 419B.035(1). None of the exceptions listed in ORS 409.225(2) or ORS 419B.035(1) expressly permit DHS to disclose the records to you. With respect to the abuse records, DHS may not exercise its discretionary authority under ORS 419B.035(3) unless disclosing them to you 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 disclosure to you is not necessary to advance those limited purposes.[3] We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Jennifer Bell (DHS)

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[1] Regarding the exceptions to the general rule making child welfare records confidential, ORS 409.225(2) requires DHS to disclose such records: to a recipient of services if the recipient is 18 years of age or older or is legally emancipated, unless prohibited by court order; regarding a specific individual if the individual gives written authorization to release; to the parent or guardian of a child receiving services on a voluntary basis; to the juvenile court in proceedings regarding the child; and to the parent or guardian of a child who is or has been in the custody of the department, except when the child objects or if disclosure would be contrary to the best interests of any child or could be harmful to the person caring for the child. Regarding the exceptions to the general rule of confidentiality of child abuse records, ORS 419B.035(1) generally requires DHS to disclose them 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] Your petition explains that you need these records for a legal matter in Arizona. In that regard, we note that this order only addresses access to these records under the Oregon Public Records Law. It does not address what rights you or other parties may have to access them under rules of discovery insofar as they may be relevant to other legal proceedings.