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May 27, 2021

VIA E-MAIL ONLY: viktoria@lmhlegal.com

Viktoria Lo
610 SW Alder St, Ste 415
Portland, OR 97205

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0059-21

Dear Ms. Lo:

This letter is the Attorney General's response to your petition, on behalf of a client, 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 an unredacted copy of a particular child welfare assessment. Your petition explains that DHS disclosed a redacted copy of the assessment to your client, but that your client seeks an unredacted copy in order to respond to a founded allegation of child abuse. 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 Chere LeFore in DHS' Public Records Unit regarding your petition. She explained DHS' position that the entire assessment is 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 assessment your client requested was compiled pursuant to those statutes and is 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 abuse records to certain persons in limited circumstances, Ms. LeFore explained DHS' position that none of those exceptions apply to your client's request.[1]

Ms. LeFore also explained that under ORS 419B.035(3), DHS has limited discretion to disclose confidential 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 assessment to your client. 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. LeFore, DHS determined that disclosing the redacted information to your client was not necessary to promote those limited purposes in this instance.[3] She also informed us that several of the redactions related to information that would reveal the identity of the person who made the initial report, which DHS believes it was required to redact under ORS 419B.035(3) (when exercising its discretion to disclose otherwise confidential abuse records, "[t]he name, address and other identifying information about the person who made the report may not be disclosed ***").

After reviewing the assessment and discussing it with Ms. LeFore, we find that it was compiled under Oregon's Child Abuse Reporting Statutes. It is 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 a redacted copy of the confidential assessment to your client. Such a disclosure does not affect the confidential nature of the assessment itself or of the information that DHS decided to redact from the assessment. *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 information from the assessment after determining that disclosing that material to your client would not promote the limited purposes of ORS 419B.035(3).[4] Under the

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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 * * *"

[3] DHS' initial response to you cited a number of additional exemptions as its authority for redacting various information from the assessment. However, in response to your petition, DHS is relying solely upon ORS 419B.035 as its authority for all of the redactions.

[4] Your petition explains your belief that information on page 12 of the assessment was improperly redacted because you believe that information was provided by your client. We have reviewed the material that was redacted and have confirmed that it was not provided by your client.

circumstances, we have no reason to second-guess DHS' statutorily entrusted determination and therefore conclude that DHS was permitted to redact that material. We also conclude that DHS appropriately redacted identifying information about the confidential reporter, which was it was compelled to do under ORS 419B.035(3).

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

for

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via email only: Chere LeFore (DHS)