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June 14, 2021

VIA E-MAIL ONLY: smo@shawnoneil.com

Shawn M. O'Neil
8755 SW Citizens Drive, Suite 202
Wilsonville, OR 97070

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100301-GA0099-21

Dear Mr. O'Neil:

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 the complete investigative file, including investigator notes, recordings, evidence, and related correspondence, for a particular Adult Protective Services (APS) investigation. 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 light of your petition we contacted Kimberly Colkitt-Hallman in the DHS Public Records Unit. She explained DHS' position that ORS 124.090 generally makes the APS records you seek confidential and exempt from disclosure because they were compiled under Oregon's Elder Abuse Reporting Statutes, ORS 124.050 to 124.095. Specifically, ORS 124.090(1) states:

> Notwithstanding the provisions of ORS 192.311 to 192.478, the names of the public or private official or any other person who made the complaint, the

> witnesses and the elderly persons, and the reports and records compiled under the provisions of ORS 124.050 to 124.095, are confidential and are not accessible for public inspection.

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 124.090 contains several exceptions that permit DHS to disclose otherwise confidential APS records in limited circumstances, Ms. Colkitt-Hallman explained DHS' position that none of those exceptions apply to your request.[1]

After reviewing the investigative records and discussing them with Ms. Colkitt-Hallman, we find that they were compiled under Oregon's Elder Abuse Reporting Statutes. They are therefore confidential under ORS 124.090 and expressly exempt from disclosure under the Public Records Law. *See* ORS 192.355(9)(a). And because it does not appear to us that any of the exceptions to ORS 124.090 expressly permit DHS to disclose them to you, we respectfully deny your petition.[2]

Sincerely,

Frederick M. Boss
Deputy Attorney General

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

[1] The exceptions to the general rule of confidentiality, ORS 124.090(2)(a)-(g), permit DHS to disclose elder abuse records only to: law enforcement agencies; agencies that license or certify residential facilities or their employees; public and private nonprofit agencies providing protective services to the elderly person; the Long Term Care Ombudsman; the agency that licensed or certified the person alleged to have abused an elderly person; a court pursuant to a court order; and to an administrative law judge in proceedings relating to protective services or when necessary to investigate, prevent or treat elder abuse. Confidential information made available to any of these agencies or individuals remains subject to the confidentiality provisions of ORS 124.090(1). ORS 124.090(3).

[2] Your petition asserts that DHS' denial was a violation of your client's due process rights because the records she seeks relate to elder abuse allegations that were substantiated against her. This is not the appropriate forum for addressing your client's due process claims. The Attorney General's authority in the public records petition context is generally limited to evaluating whether a state agency's denial was permitted under the Public Records Law, whether a denial of a request for a fee waiver or reduction was reasonable, or whether an agency failed to comply with the processing timeframes provided in ORS 192.329. *See* ORS 192.407(1) and 192.411(1).