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

June 15, 2021

VIA E-MAIL ONLY: tgomez@uoregon.edu

Taiz B. Gomez
1677 Mill Alley #4
Eugene, OR 97401

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0097-21

Dear Ms. Gomez:

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 a particular police report and associated DHS records relating to an 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).

In response to your petition, we contacted Kimberly Colkitt-Hallman in DHS's Records Unit. She informed us that DHS does not possess a copy of the police report you requested. Accordingly, we must deny this aspect of your petition as we cannot order DHS to disclose records that it does not possess.

Ms. Colkitt-Hallman informed us that DHS does possess a child welfare assessment responsive to your request. However, she explained, DHS believes the assessment is confidential and exempt from public 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 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 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 the assessment to you will not serve those limited purposes.[2]

After discussing the assessment with Ms. Colkitt-Hallman, we conclude 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). None of the exceptions listed in ORS 419B.035(1) expressly permit DHS to disclose the assessment 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 assessment to you is not necessary to advance those limited purposes. We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail 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 ***."