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November 22, 2021

VIA E-MAIL ONLY: hissmallvoice@gmail.com

Kimberly Schoene
1750 SW 88th Ave
Portland, OR 97225

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0157-21

Dear Ms. Schoene:

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 that you requested in June 2021. 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 Chere LeFore in DHS' Public Records Unit. She provided us with a copy of your original records request, which was for all child welfare records relating to four named individuals, including yourself. According to Ms. LeFore, the records you requested are child protective services welfare assessments. She explained DHS' position that these records were compiled under Oregon's Child Abuse Reporting Statutes,

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ORS 419B.010 to 419B.050, and are therefore confidential under ORS 419B.035(1).[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 exceptions that permit DHS to disclose otherwise confidential child abuse records in limited circumstances, Ms. LeFore explained DHS' position that none of those exceptions apply to your request.[2] She also explained that although DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes,[3] at the time of your June request DHS determined that it was unable to exercise that discretion because disclosing the records to you would not have served those purposes at that time.

After discussing the child welfare assessments with Ms. LeFore, we conclude that DHS was permitted to withhold them from you. We find that they were compiled under Oregon's Child Abuse Reporting Statutes, which makes them confidential under ORS 419B.035(1) and therefore exempt from disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) expressly permitted DHS to disclose them to you. And DHS could not exercise its discretionary authority under ORS 419B.035(3) unless disclosure was 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, at the time of your request, disclosing the confidential assessments to you was not necessary to advance those limited purposes.

Your petition explains that on September 8, 2021, several months after DHS denied your records requests, you requested DHS conduct a Central Office Review of one assessment. In light of this new information, Ms. LeFore informed us that DHS has determined that it can now exercise its limited discretion to disclose that assessment and DHS is preparing to produce it to you. DHS may redact information from the confidential assessment that it determines to be exempt from disclosure under ORS 419B.035. *See* Public Records Order, May 27, 2021, Lo (discretionary disclosure does not affect the confidential nature of the assessment itself or of the information DHS decides to redact from the assessment). If you disagree with any of those determinations, you may submit a new petition to our office.

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[1] ORS 419B.035(1) states, in relevant part:

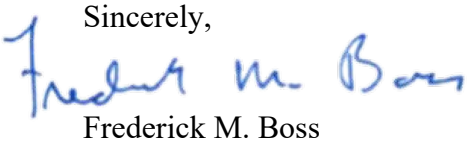
> Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478, and 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section * * * .

[2] 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.

[3] 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 ***."

For the foregoing reasons, we respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Chere LeFore (DHS)