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January 21, 2022

VIA E-MAIL ONLY: bridget@boisematthews.com

Bridget M. Donegan
1050 S.W. Sixth Ave, Ste 1414
Portland, OR 97204

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0010-22

Dear Ms. Donegan:

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 all documents supporting its founded child abuse determination against your client. Although DHS has disclosed a redacted copy of its child welfare assessment to you and your client, you explain that you seek an unredacted copy as well as all other documentation relating to your client's case. You also assert that notwithstanding any statutes that might make these records exempt from disclosure under the Public Records Law, your client's due process rights require their production in this instance. You also indicate that you are amenable to any conditions necessary to protect the confidentiality of the records. 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 Kimberly Colkitt-Hallman in DHS' Public Records Unit regarding your petition. She explained DHS' position that the records you seek were compiled under Oregon's Child Abuse Reporting Statutes, 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, she explained DHS' position that none of those exceptions apply to your request.[2]

Ms. Colkitt-Hallman also explained that under ORS 419B.035(3), DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes.[3] In this instance, DHS determined that it was permitted to exercise that discretion and therefore disclosed the otherwise confidential assessment to you and your client. However, she explained, in exercising its discretion to disclose otherwise confidential records, DHS asserts that it may redact confidential information from the records if disclosure is not necessary to promote the limited purposes detailed in ORS 419B.035(3). According to Ms. Colkitt-Hallman, DHS determined that disclosing the information redacted from the confidential assessment was not necessary to promote those limited purposes in this instance. She also explained that DHS declined to exercise its discretion to release any additional confidential records because DHS determined that their disclosure to you or your client in this instance was not necessary to promote the limited purposes specified in ORS 419B.035(3).

After discussing the requested records with Ms. Colkitt-Hallman, we find that they were compiled under Oregon's Child Abuse Reporting Statutes. They are therefore confidential under ORS 419B.035 and expressly exempt from disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) appear to apply to you or your client. In this instance, however, DHS did exercise its discretionary authority under ORS 419B.035(3) and disclosed a redacted copy of the confidential child welfare assessment. That disclosure did 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); *see also* Public Records Order, May 27, 2021, Lo. DHS redacted confidential information from the assessment after determining that disclosing that material to you or your client would not promote the limited

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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 ***."

purposes of ORS 419B.035(3). Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination and therefore conclude that DHS was permitted to redact that material.[4]

With respect to your due process claims, we note that this is not the appropriate forum for addressing your client's discovery, due process, or other constitutional rights. We are not a court and there is no provision in the Public Records Law giving us the authority to adjudicate such matters or to issue protective orders. *See* 192.411(1) (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); *see also* Public Records Order, January 16, 2020, Gormley.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

LMU:pjn
c via e-mail only: Ms. Colkitt-Hallman (DHS)

[4] Your petition notes that there were some differences in the material redacted from the assessment disclosed to you compared to the assessment disclosed to your client. According to Ms. Colkitt-Hallman, this occurred because different employees redacted each assessment. Because ORS 419B.035 makes the entire assessment confidential, these differences do not affect our analysis or conclusions.