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June 28, 2022

VIA E-MAIL ONLY: amber@amberkinneylaw.com

Amber Kinney
P.O. Box 19194
Portland, OR 97280

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0053-22

Dear Ms. Kinney:

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 certain records relating to an allegation of child sexual abuse by a third party against one of your clients. Your petition indicates that DHS did provide you with several records, including the underlying child welfare assessment in which the allegation of sexual abuse was initially founded but later changed after a subsequent review to indicate that there was not enough information to uphold the founded determination. According to your petition, DHS did not disclose any records relating to the change in its final determination and you now ask the Attorney General to order DHS to disclose those 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 Chere LeFore 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

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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. LeFore 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 several otherwise confidential records to you, including a redacted copy of the child welfare assessment. However, she explained, in exercising its discretion to disclose otherwise confidential material, DHS asserts that it may withhold other confidential records if disclosure is not necessary to promote the limited purposes listed in ORS 419B.035(3). According to Ms. LeFore, DHS declined to exercise its discretion to release any additional confidential records, including records relating to the change in DHS' final assessment, because DHS determined that disclosing them 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. LeFore, 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 several confidential records to you. That disclosure did not affect the confidential nature of those records themselves or of the information that DHS decided to redact from those records. *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, January 21, 2022, Donegan; and Public Records Order, May 27, 2021, Lo. DHS withheld the remaining confidential records after determining that disclosing them to you or your client would not promote the limited purposes of ORS 419B.035(3). Under the circumstances, we have no reason

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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 ***."

to second-guess DHS' statutorily entrusted determination and therefore conclude that DHS was permitted to withhold the remaining confidential records.[4]

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

LISA M. UDLAND
Deputy Attorney General

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

[4] We understand that you seek these records for use in pending litigation. We emphasize that this order only addresses your rights to these records under the Public Records Law. It does not address what rights you or your client may have to access these records under the rules of civil discovery.