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November 3, 2022

VIA E-MAIL ONLY: katiewithachair@gmail.com

Katie Marie Barr
300 West Holley Apt 5G
Sweet Home, OR 97386

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0095-22

Dear Ms. Barr:

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 your children's medical records without redactions. 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' Public Records Unit. She explained that the records you requested are child welfare records compiled by DHS under Oregon's Child Abuse Reporting Statutes. She also indicated that DHS has already disclosed all of the requested records to you with only a modest number of redactions. She explained DHS' position that the material redacted from the records is exempt from disclosure under ORS 418.642 and ORS 419B.035.

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ORS 418.642 prohibits the disclosure of the name, address and other identifying information about a person who maintains a foster home.[1] According to Ms. Colkitt-Hallman, most of the material DHS redacted from the records consists of such identifying information. We have reviewed the redacted material and confirmed that most of the redactions relate to the identifying information of foster parents. Because ORS 418.642 prohibits the disclosure of such information, we conclude that DHS was required to redact that material from the medical records it disclosed to you.

ORS 419B.035 makes confidential all records compiled under Oregon's Child Abuse Reporting Statutes,[2] subject to certain exceptions.[3] Ms. Colkitt-Hallman explained DHS' position that because the records you requested were compiled under Oregon's Child Abuse Reporting Statutes, they are confidential and exempt from public disclosure in their entirety. *See* ORS 192.355(9)(a) (records made confidential under state law are expressly exempt from disclosure under the Public Records Law). She also explained that DHS has determined that none of the exceptions to ORS 419B.035 apply to your request. However, she noted, DHS has limited discretion under ORS 419B.035(3) to release child abuse records when necessary to promote certain specified purposes.[4] In this instance, DHS determined that it was permitted to exercise that discretion and therefore disclosed all of the otherwise confidential medical records to you. However, she explained, in exercising its discretion to disclose otherwise confidential records, DHS asserts that it may redact confidential material from the records if disclosure is not necessary to promote the limited purposes listed in ORS 419B.035(3). In this instance, DHS redacted some material from the confidential medical records because DHS determined that disclosing that material to you was not necessary to promote the limited purposes specified in ORS 419B.035(3).

After reviewing the records and discussing them 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(1) and exempt from disclosure under ORS 192.355(9)(a).

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[1] ORS 418.642(1) provides that notwithstanding the Public Record Law, "the name, address and other identifying information about a person who maintains a foster home are confidential and not accessible for public inspection."

[2] ORS 419B.035(1) provides, in relevant part, that notwithstanding the Public Record Law, "reports and records compiled under the provisions of [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 * * *."

[3] 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.

[4] 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 * * *." However, when exercising its discretion to release records under this provision, DHS is prohibited from disclosing any identifying information about the person who made the report of abuse. *Id.*

None of the exceptions listed in ORS 419B.035(1) appear to apply to your request. In this instance, however, DHS determined that it could exercise its discretionary authority under ORS 419B.035(3) and therefore disclosed all of the medical records to you. That discretionary disclosure did not affect the confidential nature of those records themselves or of the information that DHS decided to redact from them. *See* ORS 419B.035(6)(a) (confidential records disclosed by DHS to persons pursuant to ORS 419B.035(3) shall be kept confidential). Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination and therefore conclude that DHS was permitted to withhold the material it redacted from the confidential medical records it disclosed to you.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa Udland
Deputy Attorney General

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