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VIA EMAIL ONLY: ashlepenn.ap3@gmail.com

AshLe' Penn
2850 SW Cedar Hills Blvd #234
Beaverton, OR 97005

Re: Petition for Public Records Disclosure Order
Department of Human Services, Oregon Judicial Department
DOJ File Nos.: 100101-GA0123-22; 198040 GA0122-22

Dear Ms. Penn:

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), the State Court Clerk's Office at the Juvenile Justice Center, the Governor's Advocacy Office, and the Citizen Review Board to disclose "complete case records/files related to juvenile dependency cases: 20JU00765, 20JU00868, 20JU00860," explaining that this includes the supplemental confidential for these cases, "as well as emails, text messages and electronic messaging intra-agency and inter-agency" related to these cases.[1] For the following reasons, 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 previously issued a public records order denying your appeal for these DHS records. Public Records Order, Aug 30, 2022, Penn. DHS had agreed to withdraw its denial of your

[1] You submitted your petition on Saturday, December 24, 2022. After working with you to clarify the petition, we treated the petition as being received on December 29 and as including your follow-up e-mails.

records request and produce additional records. DHS also noted that while it did not possess any records in the supplemental confidential file, you should be able to access those records through the juvenile court or through your attorney in the open dependency case.

Your petition asserts that you have remained unable to obtain these records from DHS, and that DHS did not produce any additional records to you after our previous order. You indicate that you have also attempted to obtain these records from the courts. You state that you visited the State Court Clerk's Office at the Juvenile Justice Center to obtain these records, but that an injunction was sought to prevent your access to the records. You note that because the court did not disclose the contents of the supplemental confidential file to you, you are "making an additional request for specific communications by and from the agency be shared as a matter of public interest in regard to texts, emails and any other writings * * * related to the case numbers listed in the request."

We spoke with Tim Lewis, Assistant General Counsel at the Oregon Judicial Department (OJD). He explained that Judge Long of the Multnomah County Circuit Court granted you access to the supplemental confidential files you seek, but did not permit you to obtain copies of those records. Mr. Lewis noted that ORS 419A.255(1), which grants access to otherwise confidential supplemental confidential files to various individuals and entities, provides only that those files are "open to inspection." He added that because Judge Long, an elected official, has denied your request to obtain copies of these records, review of that denial is out of our jurisdiction.

With respect to the request for Citizen Review Board records[2] and other records besides the supplemental confidential file, Mr. Lewis stated that OJD understood your records request to be for the supplemental confidential file in the court's file, not for additional records or records of the Citizen Review Board. He noted that you can submit a new public records request if you desire additional records.

We deny the portion of your petition that seeks OJD records. ORS 192.427 does not allow us to consider petitions, "in any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure." Here a Multnomah County Circuit Court judge, which is an elected position, denied your request for copies of the supplemental confidential file. That portion of your petition is therefore outside of our jurisdiction.

With respect to the rest of the records requested from OJD, it is not clear that you initially requested these records. OJD understood the request to include the court's supplemental file, not any additional records or records from the Citizen Review Board. This is consistent with your petition, which implies that you are only now making an additional request for all records related to these cases. We also note that it does not appear a written records request was submitted to

[2] The Citizen Review Board is a program within Oregon's state court system that reviews the cases of children in foster care.

OJD, which constrains our review of the scope of your initial records request. We can only consider a petition for records that were first requested from the relevant agency; the petition process allows the state agency to first consider the records request before we review any denials.

Turning to the DHS portion of your petition, we spoke with Jennifer Bell in DHS's Public Records Unit. She told us that DHS has provided all the records in its Child Welfare file that were responsive to your records request, which was for the "[s]upplemental confidential file and any and all other records related to [the] juvenile case." She added that the Child Welfare program does not maintain the court's supplemental confidential file, and does possess any of that file. She also noted that additional records were produced to you on September 16, after our previous order. With respect to your request for Governor's Advocacy Office records, she stated that based on your request's focus on the juvenile case, DHS searched for records within its Child Welfare program, and had no reason to believe the Governor's Advocacy Office possessed any responsive records.[3]

We deny the portion of your petition that seeks DHS records. DHS represents that it has produced its responsive records to you, and we have no reason to second-guess that representation. We are also unable to find that DHS is the custodian of any portion of the supplemental confidential file. A public body must only produce records that it is the custodian of. *See* ORS 192.324(1). The supplemental confidential is a file maintain by the court. ORS 419A.255(1)(a). While DHS might be the custodian of any portion of the file it obtains from the court, here DHS does not possess or own any of that file. We also conclude that DHS did not improperly deny your records request by limiting its search to the Child Welfare program. That search was reasonable based on the context of your records request. And as mentioned above, your petition suggests that your initial records request did not seek records from the Governor's Advocacy Office, but that you now seek to expand your request because of the difficulty in obtaining the supplemental confidential file. If you wish to request records from the Governor's Advocacy Office, or other additional records from DHS, you may submit a new records request.

Sincerely,

Lisa M. Udland

Lisa Udland
Deputy Attorney General

NE2:pjn
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[3] The Governor's Advocacy Office helps affected parties work through questions, concerns, or complaints related to DHS programs or services.