ELLEN F. ROSENBLUM
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

June 9, 2023

Michel A. Deforge
SID #8381215
82911 Beach Access Road
Umatilla, OR 97882

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0097-23

Dear Mr. Deforge:

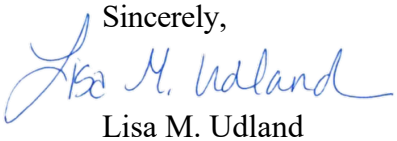
This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks us to order the Department of Human Services (DHS) to disclose its records retention schedule and redacted copies of certain child abuse investigation records. For the following reasons, we respectfully deny your petition.

According to your petition, in November 2022 and May 2023, you asked the DHS Office of Imaging and Records Management to confirm whether DHS possesses these records, but that office has not responded to either request. We understand your petition to be appealing that office's failure to respond to your questions. Your petition also indicates that you sent identical requests to the DHS Public Records Unit in September and November 2022. We understand from your petition that DHS responded to those requests and that you are not appealing those responses.

In response to your petition, we contacted Caroline Burnell, DHS' Interim Public Records Unit Manager. She confirmed that her unit responded to your first request in October 2022 by providing you a copy of DHS' record retention schedule. She also explained that DHS' initial response did not confirm whether DHS was the custodian of responsive investigative records, but DHS did inform you that any such records would be exempt from public disclosure under ORS 419B.035 (confidential records compiled under Oregon's Child Abuse Reporting statutes). Finally, she informed us that DHS has now confirmed that it is not the custodian of the investigative records you seek.

The record demonstrates that DHS responded to your initial request in October 2022 by furnishing you with a copy of its records retention policy. Because DHS did not deny that aspect of your request, we lack the authority to order disclosure in this instance. *See* ORS 192.411(1) (the Attorney General's authority is generally limited to instances in which an agency has denied a request for a public record). We also have no reason to second-guess Ms. Burnell's representation that DHS is not the custodian of the investigative records you seek. We therefore respectfully deny the remainder of your petition because we cannot order DHS to disclose records for which it is not the custodian.[1] *See* ORS 192.311(2), and 192.324(1).

Sincerely,



Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Caroline Burnell (DHS)

[1] Your claim that the DHS Office of Imaging and Records Management failed to independently respond to your questions does not change our analysis or conclusion in this instance. We understand that that office oversees the retention and disposition of DHS records, but that it does not have a formal role in responding to public records requests received by DHS. Such requests are processed by DHS' Public Records Unit and, as your petition notes, the Public Records Unit responded to your initial request in October 2022. *See* ORS 192.324(1)(a) and (7); and 192.329(2).