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

October 20, 2023

VIA E-MAIL ONLY: heidikordosky@gmail.com

Heidi M. Kordosky
13978 SW Benchview Place
Tigard, OR 97223

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0154-23

Dear Ms. Kordosky:

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 unredacted copies of certain child abuse reports from 1982 to 1996. 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. And except as otherwise provided in ORS 192.398,[1] the law does not exempt from disclosure records that are more than 25 years old. *See* ORS 192.390. 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

[1] ORS 192.398 provides limited exceptions to the 25-year rule found in ORS 192.390. It states, in relevant part and subject to some conditions, that the following public records are exempt from disclosure:

> (1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual * * * .
>
> (2) Records less than 75 years old that were sealed in compliance with statute or by court order. * * *.
>
> (3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision * * * .
>
> (4) Student records required by state or federal law to be exempt from disclosure.

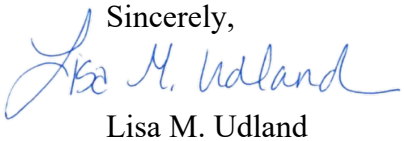
determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Your petition indicates that DHS provided you with several reports that date from 1994, but that DHS redacted significant information that it claimed was exempt from disclosure. According to your petition, you believe you are entitled to unredacted copies of DHS' reports. You also believe that DHS maintains reports relating to child abuse that occurred in 1982 and that DHS failed to disclose them to you.

We discussed your petition with Caroline Burnell in DHS' Public Records Unit. First, she explained that the earliest responsive records DHS maintains are from 1994, and that any records created prior to 1994 were destroyed under DHS' records retention and disposition policies. Accordingly, she explained, DHS is not the custodian of responsive records relating to any child abuse that may have occurred in 1982. Under the circumstances, we have no reason to second-guess Ms. Burnell's representation. And because we cannot order the disclosure of records that do not exist, we respectfully deny this aspect of your petition.

Next, Ms. Burnell acknowledged that because the redacted reports disclosed to you are more than 25 years old, DHS has agreed to reevaluate the reports and to limit any redactions to material that remains exempt under ORS 192.398. Because DHS has agreed to revisit its redactions in light of the age of the records, we respectfully deny the remainder of your petition. If DHS retains any redactions for material it determines is exempt under ORS 192.398, you may file a new appeal with this office if you wish to contest those redactions.

Sincerely,



Lisa M. Udland
Deputy Attorney General

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