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December 21, 2023

VIA E-MAIL ONLY: mknakajima1@gmail.com

Michael Nakajima
1315 SW Reeher Place
Forest Grove, OR 97116

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0193-23

Dear Mr. Nakajima:

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 records relating to a specific child protective services (CPS) case. 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 Caroline Burnell in DHS' Public Records Unit regarding your petition. She explained that DHS has received two requests from you in recent months and that DHS furnished you with modestly redacted copies of all of the records you have requested, with the exception of records related to an open child welfare assessment. She explained that the records in that open case are being compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, and are therefore confidential under ORS 419B.035(1).[1] And, she

[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 * * * .

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 CPS records in limited circumstances, she explained DHS' position that none of those exceptions apply to your request.[2] She also explained that although DHS has limited discretion to release child abuse records when necessary to promote certain specified purposes,[3] DHS is unable to exercise that discretion at this time because it is not able to determine whether disclosing the records to you will serve those purposes until the assessment is completed. *See* OAR 413-010-0035(10)(c) ("A report, record, or findings of an assessment of child abuse may not be disclosed until the assessment is completed * * * ."). She indicated that DHS will reconsider its determination if you resubmit your request after the assessment is completed.

After discussing the responsive CPS records with Ms. Burnell, we conclude that DHS is permitted to withhold them from you at this time. We find that they are being compiled under Oregon's Child Abuse Reporting Statutes, which makes them confidential under ORS 419B.035(1) and therefore exempt from disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) expressly permit DHS to disclose them to you at this time. And DHS may not exercise its discretionary authority under ORS 419B.035(3) unless disclosure is necessary to promote the limited purposes listed in that subsection. Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination that disclosure to you at this time is not necessary to advance those limited purposes. We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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

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[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 "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 * * *. The name, address and other identifying information about the person who made the report may not be disclosed pursuant to this subsection * * *. "