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

December 5, 2023

VIA E-MAIL ONLY: jackandlewisparenting@gmail.com

Ashley Conger
126 Franklin St
Manistee, MI 49660

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA0174-23

Dear Ms. Conger:

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 all records pertaining to a particular 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 furnished you with a modestly redacted copy of the child welfare assessment prepared in the CPS case, which was the only record that DHS was able to locate that was responsive to your initial request.[1] Although it is not clear from your petition whether you specifically intended to appeal the redactions to that assessment, we conclude that DHS was permitted to withhold the redacted material for the reasons discussed below.

[1] Ms. Burnell also informed that in response to your petition, DHS has now located a police report relating to the CPS case that DHS will be disclosing to you shortly.

According to Ms. Burnell, the child welfare assessment was compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050, and is therefore confidential under ORS 419B.035(1).[2] And, she 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 assessments in limited circumstances, she explained DHS' position that none of those exceptions apply to your request.[3]

Ms. Burnell also explained that under ORS 419B.035(3), DHS has limited discretion to release confidential assessments when necessary to promote certain specified purposes.[4] In this instance, DHS determined that it was permitted to exercise that discretion and therefore disclosed the confidential assessment to you. However, she explained, in exercising its discretion to disclose otherwise confidential material, DHS asserts that it may redact other confidential material if it determines that disclosure is not necessary to promote the limited purposes listed in ORS 419B.035(3). According to Ms. Burnell, DHS declined to exercise its discretion to release the redacted material because the department determined that providing it to you in this instance was not necessary to promote the limited purposes specified in ORS 419B.035(3). She also noted that as part of its discretionary disclosure, DHS was required to redact all identifying information about the person who made the underlying report. *See* ORS 419B.035(3).

After discussing the child welfare assessment with Ms. Burnell, we find that it was compiled under Oregon's Child Abuse Reporting Statutes. It is therefore confidential under ORS 419B.035 and expressly exempt from disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) appear to apply to you. In this instance, however, DHS did exercise its discretionary authority and disclosed the confidential assessment to you, subject to the required redaction of the reporter's identifying information. *See* ORS 419B.035(3). That disclosure did not affect the confidential nature of the assessment itself or of the material that DHS redacted from it. *See* ORS 419B.035(6)(a) (confidential records disclosed by DHS to persons pursuant to ORS 419B.035(3) shall be kept confidential); *see also* Public Records Order,

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[2] 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 * * * .

[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 "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 * * *. "

June 28, 2022, Kinney. DHS also determined that disclosing the remaining redacted material to you would not promote the limited purposes of ORS 419B.035(3). Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination and therefore conclude that it was permitted to redact the remaining material from the assessment. And because DHS did not otherwise deny your request, we respectfully deny your petition.[5] *See* ORS 192.411 (the Attorney General's authority is generally limited to instances in which a state agency has withheld records).

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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

[5] We understand that you seek these records for purposes of private litigation. This order only addresses your right to access the requested information under the Public Records Law. It does not address what rights you or other parties may have to obtain these records under the rules of civil discovery insofar as they may be relevant to private litigation.