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March 20, 2024

VIA E-MAIL ONLY: emma@fintanfirm.com

Emma Decker
Fintan Firm
610 SW Alder St, Ste 415
Portland, OR 97205

Re: Petition for Public Records Disclosure Order
Department of Human Services Office of Training, Investigation and Safety
DOJ File No.: 100101-GA0032-24

Dear Ms. Decker:

This letter is the Attorney General's response to your petition, on behalf of a client, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Office of Training, Investigation and Safety (OTIS) of the Department of Human Services (DHS) to disclose all records relating to your client. We understand that DHS denied your request for these records claiming they are exempt from public disclosure as confidential child welfare and abuse records. Your petition explains that your client needs these records for a contested case hearing in order to challenge a finding of child abuse against her. 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 Seantel Heisel, OTIS Operations Manager, regarding your petition. She explained that the only records OTIS maintains relating to you client were 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 noted, records made confidential by 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 confidential child abuse records in limited circumstances, she explained DHS' position that none of those exceptions apply to your request.[2] Ms. Heisel also explained that under ORS 419B.035(3), DHS has limited discretion to release child abuse records when necessary to promote certain prescribed purposes.[3] In this instance, however, DHS determined that disclosing the requested records to you or your client was not necessary to promote those limited purposes.

After discussing the requested records with Ms. Heisel, we find that they were compiled under Oregon's Child Abuse Reporting Statutes. They are therefore confidential under ORS 419B.035 and expressly exempt from public disclosure under ORS 192.355(9)(a). None of the exceptions listed in ORS 419B.035(1) appear to apply to you or your client. Although DHS has limited discretion to disclose the records, it has determined that disclosing them to you or your client in this instance would not promote the limited purposes detailed in ORS 419B.035(3). Under the circumstances, we have no reason to second-guess DHS' statutorily entrusted determination and therefore conclude that the department was permitted to withhold the records in this instance. We therefore respectfully deny your petition.[4]

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via e-mail only: Seantel Heisel (DHS OTIS)

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[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 * * * .

[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 such 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 * * * ."

[4] We emphasize that this order only addresses your rights to these records under the Public Records Law. It does not address what rights you or your client may have to access these records under the rules governing discovery in contested case proceedings.