THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

September 7, 1994

Lars Larson
Northwest Reports/KPTV News
735 S.W. 20th Place
P.O. Box 3401
Portland, Oregon 97208

Re: Petition for Review of Denial of
Children's Services Division Records
DOJ File No. 410-010-HS033-94

Dear Mr. Larson:

This letter is the Attorney General's order on your petition for disclosure of documents under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on August 19, 1994,[1/] asks the Attorney General to order Children's Services Division (CSD) to produce copies of documents showing the criminal offenses by prospective or current foster parents for which CSD has made an exception to its administrative rules, thus allowing the person to be or to continue to be certified as a foster parent. For the reasons stated below, we respectfully deny your petition.

The CSD Exception Process

Under no circumstances will CSD issue or renew a foster home certificate if a member of the household has been convicted of, or adjudicated delinquent on, a

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[1/]In a telephone conversation with Assistant Attorney General Nancy Simmons on August 24, 1994, you graciously agreed to a two-week extension of the time within which the Attorney General could respond to this request.

sexual offense, a criminal offense against a child or family such as incest, bigamy or abandonment of a child, sale of a child, murder or aggravated murder, or three alcohol- or drug-related offenses or three felony convictions in the five years preceding application. OAR 412-22-100(6)(c).

CSD will not issue or renew a foster parent certificate if a member of the household has been convicted of, or adjudicated delinquent on, a misdemeanor without approval of the branch manager. OAR 412-22-100(7)(b). The agency will not issue or renew a certificate if a member of the household has been convicted of, or adjudicated delinquent on, a felony other than one listed in OAR 412-22-100(6)(c) without approval of the regional administrator. Id. The regional administrator shall base his or her decision on the recommendation of a standing regional committee comprised of at least three persons, at least one of whom must be a foster parent or other community volunteer. Id.

Criminal History

CSD requires prospective and current foster parents to consent in writing to a criminal records check. On the consent form, prospective and current foster parents are asked to list all arrests, convictions or dismissals of any criminal charges made against any adult living in the household.[2/] That information, self-reported, is not confidential.[3/] However, it is not the information that CSD uses to determine whether a person has been convicted of a crime requiring an exception. CSD uses information obtained through a criminal record check performed by the Oregon State

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[2/]OAR 412-22-100(6)(a) provides that CSD:

> will not issue or renew a certificate if prospective applicants or foster parents falsify (including by act of omission) the application or supporting documents. The agency will revoke a certificate if falsification is discovered after certification, or if foster parents fail to inform the agency of a disqualifying condition that arises after certification.

[3/]CSD could provide this information to you. However, we understand from CSD that the costs of gathering the individual forms and redacting exempt information would be substantial. We also understand, based on your telephone conversation with Nancy Simmons, that you are not presently asking CSD to provide this information.

Police (OSP) pursuant to ORS 181.537, OAR 257-10-025, and the Oregon Criminal Offender Information System Computerized Criminal History (CCH) File Agency Agreement entered into between OSP and CSD.

A. State Law

ORS 181.537(1)(c) provides for release of criminal offender information[4/] by OSP to the Department of Human Resources for "the purposes of Department of Human Resources * * * licensing, certifying or regulating programs or persons that provide care or treatment to children[.]" The legislature mandated that OSP:

> adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information. Any public or private agency receiving information pursuant to this section is bound by the rules of disclosure adopted by the department.

ORS 181.537(6). The statutes do not distinguish between information that could identify an individual with a criminal history and aggregate or general information.

B. OSP Administrative Rule

OSP has promulgated rules regulating the dissemination of computerized criminal history information. OAR 257-10-025 limits access by any means to OSP criminal offender information to criminal justice agencies and "[d]esignated agencies upon Executive Order of the Governor[5/], where the information is required to implement a federal or state statute, Executive Order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly

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[4/]ORS 181.010 defines "criminal offender information" as including:

> records and related data as to physical description and vital statistics, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

[5/]EO-90-05.

based on such conduct or for agency employment purposes, or licensing purposes or other demonstrated and legitimate needs[.]" OAR 257-10-025(1)(b).

A designated agency that obtains criminal offender information "shall maintain those records in secure files, available only to authorized agency employees, until they are destroyed by burning or shredding, and shall treat those records in a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law." OAR 257-10-025(8).

OSP administrative rules do not distinguish between information that identifies an individual and aggregate or general information.

C. Agency Agreement

CSD and OSP have entered into the Oregon Criminal Offender information System Computerized Criminal History (CCH) File Agency Agreement (agreement). The agreement provides that OSP will disseminate to CSD "all significant criminal offender information, contributed by criminal justice agencies, as available in the OSP CCH files." Agreement, p. 1.

CSD agrees, in part, that "criminal offender information received from OSP will not be used for any purpose other than that for which it was obtained, will not be disseminated to unauthorized persons or agencies, and will be maintained in secure files until destroyed by burning or shredding." Agreement, p. 1, ¶4.

Violation of the agreement may cause immediate suspension of CSD's authorization to access criminal offender information from OSP. Agreement, p. 3, ¶A. See also OAR 257-10-045.

The agreement does not distinguish between information that could identify an individual and general or aggregate information.

The Public Records Law

ORS 192.502(8) exempts from disclosure under the Public Records Law:

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

The confidentiality of any record covered by a statute outside the Public Records Law is incorporated into the Public Records Law by ORS 192.502(8). Records and reports of criminal offender information compiled by the Oregon State Police are "confidential and exempt from public inspection" pursuant to ORS 181.540.

The Public Records Law also provides that records that are confidential or exempt from disclosure in the hands of the "furnishing" agency (in this case OSP) remain exempt in the hands of the "receiving" agency (in this case CSD) if the reasons for confidentiality remain applicable. ORS 192. 502(9). Additionally, ORS 181.537(6) prohibits CSD from disclosing such information in violation of OSP rule OAR 257-10-025.

Accordingly, we conclude that CSD is prohibited from disclosing to you any of the criminal history information it obtained from OSP. Because disclosure is prohibited by ORS 181.540 and ORS 181.537(6), the information you seek is exempt from disclosure under the Public Records Law. ORS 192.502(8), 192.502(9).

Conclusion

We deny your petition for criminal history information because that information is exempt from disclosure under the Public Records Law.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

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c: Kay D. Toran, CSD Administrator