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August 2, 1994

Joseph D. Robertson
Garrett, Hemann, Robertson et al.
PO Box 749
Salem, OR 97308-0749

Re: *Petition for Public Records Disclosure Order: Children's Services Division Records*

Dear Mr. Robertson:

This letter is the Attorney General's order on your petition on behalf of Salem-Keizer School District for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on July 26, 1994, asks the Attorney General to direct the Children's Services Division (CSD) to make available its entire file regarding Jeremy W. Goin and Ryan Goin. For the reasons that follow, we respectfully deny your petition.

In March 1992, CSD and law enforcement investigated and substantiated physical abuse by a male companion of the children's mother. The perpetrator of the abuse was a school teacher employed by the Salem-Keizer School District. The School District requested CSD's files and also obtained a consent to release CSD records from the children's father. CSD released most of the file to the School District. The School District petitions for the rest of the CSD file that has not already been released, which consists of:

1. Miscellaneous correspondence and case management records. CSD Branch Manager Linda Sunday informs us that CSD will provide you with all of the miscellaneous correspondence and case management records (narratives and other records about the children) in the file. These records come within the scope of the parental consent.

2. Protective service investigation reports. Ms. Sunday also informs us that CSD now has determined that disclosure of the protective service investigation reports to the School District is necessary to protect children from abuse, pursuant to ORS 419B.035(2). Under these circumstances, CSD has agreed to provide the protective service investigation

reports to the School District, although identifying information about persons who made child abuse reports has been redacted from the protective service investigations records pursuant to ORS 419B.035(2).

3. A memorandum between CSD and its attorney. In your telephone conversation with Assistant Attorney General Linda Grimms on July 29, 1994, you agreed to exclude from the scope of your petition this two page memorandum, which is subject to attorney-client privilege.

4. Mental health counseling reports related to the mother and criminal record check information. CSD continues to deny the request for the release of these records.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exceptions and limitations. See ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

Exemption for Records Made Confidential Under Oregon Law

ORS 192.502(8) exempts:

> 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).

A. Identifying Information about Persons Making Child Abuse Reports

Under ORS 419B.035(1), the reports and records compiled by CSD under ORS 419B.010 to 419B.030 relating to child abuse are confidential, notwithstanding the provisions of the Oregon Public Records Law. Pursuant to ORS 419B.035(2), CSD has exercised its discretion to make the protective service investigation reports available to the School District because CSD has determined that doing so is necessary "to protect children from abuse." However, CSD is redacting from those reports any identifying information about the persons who made child abuse reports. The redaction of this information is mandated by ORS 419B.035(2). Accordingly, that information is exempt from disclosure under the Public Records Law. ORS 192.502(8).

B. Mother's Mental Health Records

Mental health treatment records are confidential under ORS 179.505 and may only be released pursuant to the patient's consent, ORS 179.505(3), or pursuant to specified conditions not applicable here. ORS 179.505(4). In this case, the father's consent to the release of records is ineffective. ORS 179.505(3) requires the consent of the patient.

It is not "reasonably possible" to segregate exempt material about the mother from material about the children in the treatment records because any discussion about the children in these records is made in the context of the mother's treatment. Accordingly, we conclude that CSD is prohibited from disclosing to you any of the mother's mental health treatment records. Because disclosure is prohibited by ORS 179.505, these records are exempt from disclosure under the Public Records Law. ORS 192.502(8).

C. Criminal History Records

Records and reports of criminal offender information about individuals compiled by the Oregon State Police are "confidential and exempt from public inspection" pursuant to ORS 181.540. Each individual about whom criminal offender information has been compiled has the right to inspect and challenge the criminal offender information. ORS 181.555(3). The statutory authority for CSD to obtain such records prohibits CSD from unauthorized re-disclosure of those records. ORS 181.537(6) and OAR 257-10-025(8).[1/] Neither the School District nor the father are authorized to consent to the release of the criminal history record information in the CSD file. We conclude that CSD is prohibited from disclosing to you any of the criminal history record information it obtained from the Oregon State Police. Because disclosure is prohibited by ORS 181.540 and 181.537(6), these records are exempt from disclosure under the Public Records Law. ORS 192.502(8).

Conclusion

CSD has agreed to provide you with the miscellaneous correspondence, case management records and protective service investigation reports, as described above, in addition to the records CSD has already provided to you pursuant to the father's consent. You have limited your petition to exclude the memorandum covered by attorney-client

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[1/] 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, Oregon State Police) remain exempt in the hands of the "receiving" agency (in this case CSD) if the reasons for confidentiality remain applicable. ORS 192.502(9).

privilege. Therefore, as to these records, your petition is denied as moot. With respect to the identifying information concerning persons who made child abuse reports, the mother's mental health records and the criminal history information in the file, we deny your petition because they are exempt from disclosure under the Public Records Law.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA012CD.W51

c: Linda Sunday, CSD Branch Manager