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September 17, 1992

Etta M. Chandler
848 E. Willis Creek Road
Winston, Oregon 97470

Marian Howe
787 Buckhorn Road
Roseburg, Oregon 97470

Re: Petition for Public Records Disclosure Order:
Children's Services Division Records
DOJ File No. 412-100-0093-GA

Dear Ms. Chandler and Ms. Howe:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on September 10, 1992, asks the Attorney General to direct the Children's Services Division (CSD) to make available the report of a meeting which Etta Chandler attended in November 1990, and "any other reports, investigation results, documents, writings, minutes, or tape recordings which resulted in a transport restriction on Etta Chandler at her job with Volunteer Services." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions 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 for examination 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).

1. Report of November 1990 meeting

The CSD file does not contain a report of a meeting in November 1990, although there is a report dated November 14, 1989, of a meeting attended by Etta Chandler and the other persons named in the petition.[1] Strictly speaking, the report requested in the petition does not exist in the CSD file. Because we assume that you intended to request the November 1989 report, we treat your petition as seeking disclosure of that document.

The November 1989 report describes a treatment team meeting for a patient in the Douglas County Sex Offender Treatment Program in which certain family-related issues were discussed. The patient whose treatment was discussed at that meeting was not either of the petitioners.

a. Specific Exemption Established By Oregon Law

ORS 192.502(8) exempts from disclosure:

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

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[1] Kathleen Davis is mentioned in the petition, but is not listed as a participant in the 1989 meeting report.

This exemption incorporates into the Public Records Law the provisions of other statutes that prohibits disclosure of records or make such records confidential.

ORS 179.505 prohibits the public inspection of patient records maintained by certain "providers." The Douglas County Sex Offender Treatment Program is a community mental health provider, and its patient records come within the scope of this statute. ORS 179.505(1).

ORS 179.505(2) provides that, except as authorized by that statute,

> case histories, clinical records, X-rays, treatment charts, progress reports and similar written accounts of the patients of any provider maintained in or by the provider * * * shall not be subject to inspection.

The content of any such written account shall be released if the patient gives voluntary and informed written consent. ORS 179.505(3). The contents of any such account may also be released to any person to the extent necessary to meet a medical emergency, ORS 179.505(4), to cooperating providers to assist in diagnosing or treating the patient, ORS 179.505(6), and to specified individuals in other limited situations. ORS 179.505(7)-(9), (11)-(12), (14)-(16).

The November 1989 report is a patient record protected from inspection or disclosure by ORS 179.505. No consent for release of the report has been received from the patient involved in the November 1989 treatment team meeting. Absent such consent, ORS 179.505 prohibits release of any portion of the November 1989 report to Etta Chandler or to Marian Howe. ORS 179.505 does not permit release of the report to Ms. Chandler merely because she was a participant at the November meeting, unless she has the patient's written consent to obtain that record.

b. Transferred Record Exemption

CSD has a copy of the November 1989 report in its file. That fact does not alter the confidentiality of this patient record. ORS 192.502(9) provides that:

> Public records * * * furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with the performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

State and local public agencies regularly exchange records in connection with their mutual functions and duties. Under ORS 192.502(9), where the records are exempt in the hands of the "furnishing" agency, those records remain exempt in the hands of the "receiving agency" if the reasons for confidentiality remain applicable. Here, the November 1989 patient record is confidential in the hands of the Sex Offender Treatment Program. That record is similarly confidential in the hands of CSD as the recipient of the document. See also ORS 179.505(14) (unauthorized re-disclosure of patient records prohibited).

We conclude that CSD is prohibited from providing a copy of the November 1989 report or any other patient records to petitioners without the patient's written consent. ORS 179.505(2), (14). Because disclosure of the November 1989 report is prohibited by ORS 179.505, the record is exempt from disclosure under the Oregon Public Records Law. ORS 192.502(8), (9).

2. Reports, documents, etc. resulting in a transport restriction on Etta Chandler at Volunteer Services.

CSD has no written records that describe or discuss any transport restriction on Etta Chandler as a volunteer driver with the Department of Human Resources Volunteer Services. In Ms. Chandler's correspondence dated July 27, 1992 to Bob Kerns, she states that the restriction was imposed "verbally." CSD is not required by the Public Records Law to create a record that does not exist. Thus, we can identify no specific records in the CSD file that resulted in any transport restriction on Ms. Chandler.

Ms. Chandler suggests in her letter dated June 30, 1992, to Kathleen Davis, Brenda Cable and Bob Kerns that any transport restriction by CSD must be based on certain allegations of sexual abuse of Kelly Kersch. Accordingly, we assume that the petition seeks the disclosure of any documentation in CSD's records that would form the basis for such allegations. The CSD file does have a child abuse investigation report, but that report is confidential for the reasons described below.

ORS 192.502(8) exempts from disclosure any records the disclosure of which is prohibited or otherwise made confidential under Oregon law. ORS 418.770(1) provides that child abuse investigation reports are confidential and may be released only to law enforcement agencies, a child's physician, attorneys of record for children and parents in juvenile court proceedings, citizen review boards and court appointed special advocates in juvenile court proceedings. Petitioners are not within any of these categories of authorized recipients of child abuse investigation reports.

ORS 418.770(2) authorizes CSD to make such reports available to other persons "when the division determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that disclosure is necessary to investigate, prevent

or treat child abuse or neglect, to protect children from abuse and neglect." None of these reasons are applicable to petitioners' request for the records.

Disclosure to petitioners of the records in CSD's possession concerning child abuse allegations reported under the child abuse reporting laws is prohibited by ORS 418.770. Such records are, therefore, exempt from disclosure under the Public Records Law. ORS 192.502(8).

For the reasons stated above, we respectfully deny your petition to compel disclosure.

Sincerely,

Amy Veranth
Opinions Coordinator
General Counsel Division

ALV:cm
c: Bob Kerns, Children's Services Division