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ATTORNEY GENERAL
SALEM, OREGON

October 16, 1992

David Delker
SID # 4356356
Oregon State Penitentiary
2605 State Street
Salem, Oregon 97310-0505

Re: Petition for Public Records Disclosure Order: Adult and Family Services Division Records

Dear Mr. Delker:

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 October 9, 1992, asks the Attorney General to direct the Adult and Family Services Division (AFSD) to make available the records of AFSD regarding Michelle Lee Delker, Ashly Ann Delker, and Nicole Rae Delker, including their addresses between April 4, 1989 and January 1, 1991, the dates those addresses were given to AFSD and the addresses where AFSD mailed checks or other material to them during that period. 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). With regard to the contents of AFSD records, the information you have requested is exempt from disclosure.

1. Federal Law Exemption

ORS 192.502(7) exempts from disclosure "[a]ny public records or information the disclosure of which is prohibited by federal law or regulations."

Federal law strictly prohibits the disclosure of records maintained by AFSD concerning recipients of public assistance without the consent of the public assistance recipient, unless the purpose for the release of the records is directly connected with the administration of the public assistance programs. *See* 42 USC § 602(a)(9); 42 USC § 1396(a)(7); 42 CFR § 205.50; 42 CFR § 431.300. The information to be protected includes but is not limited to the name and address of the recipient. 45 CFR § 205.50(a)(2) and 42 CFR § 431.305.

42 USC § 602 (a)(9) provides that the state may not disclose information regarding public assistance recipients except for purposes directly connected with

> (A) the administration of the plan of the State approved under this part [or other public assistance program], (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity[.]

Similarly, 42 USC § 1396a(a)(7) requires the state to restrict the disclosure of information concerning Medicaid applicants and recipients to purposes directly connected with the administration of the state Medicaid plan. 42 CFR § 431.302 implements the requirements of the federal Medicaid statute specifying that

> Purposes directly related to [Medicaid] plan administration include -
>
> (a) Establishing eligibility;
> (b) Determining the amount of medical assistance;
> (c) Providing services for recipients; and
> (d) Conducting or assisting an investigation, prosecution or civil or criminal proceedings related to the administration of the plan.

In your October 6, 1992 request for disclosure of AFSD files, you state that the purpose for the disclosure is to establish your right to claim family deductions for tax purposes during a particular time period and to prove Michelle Delker has received public assistance funds fraudulently. Establishing your right to claim family deductions as part of your underlying court case is not a purpose "directly connected with the administration of the [state] plan" for public assistance or Medicaid and therefore cannot serve as a basis to grant your request.

While the release of AFSD records for an investigation and prosecution of fraudulently receiving public assistance is a purpose directly related to the administration of the assistance plan, the exception applies to investigations performed by an appropriate state agency, not by a private person.

The disclosure of information contained in the AFSD records for the purposes you request is prohibited by federal law and regulations. That information is, therefore, exempt from disclosure under ORS 193.502(7).

2. Other State Laws Exemption

ORS 193.502(8) exempts "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."

ORS 411.320 prohibits AFSD from "disclos[ing] or us[ing] the contents of any records, files, papers or communications for purposes other than those directly connected with the administration of the public assistance laws of Oregon." The state statute is to be interpreted in a manner consistent with federal law. *Triplett v. Bd. of Social Protection*, 19 Or App 408, 528 P2d 563 (1974). Similarly, ORS 418.130 prohibits the disclosure of information in the AFSD files "except for purposes directly connected with the administration of aid to dependent children."

Neither your attempt to claim a family deduction for tax purposes nor your intent to investigate the allegedly fraudulent activities of Ms. Michelle Delker are purposes directly connected with the administration of Oregon's public assistance program. Accordingly, the disclosure of information contained in the AFSD records for the purposes you request is prohibited by Oregon law. That information is, therefore, exempt from disclosure under ORS 193.508(8).

For these reasons, we deny your petition to compel disclosure.

Sincerely,

Amy Veranth
Opinions Coordinator
General Counsel Division

AV:CO:cm
c: Molly Musa, Clackamas County AFSD
jaa00945