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SALEM, OREGON

November 12, 1992

Patrick Talarizadeh
1475 Bailey Hill Road #122
Eugene, Oregon 97402

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

Dear Mr. Talarizadeh:

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 28, 1992,[1/] asks the Attorney General to direct the Children's Services Division (CSD) to make available "any and all information and/or documentation resulting from and pertaining to the investigation of me performed by CSD." For the reasons that follow, we respectfully deny your petition, in part because it is moot and in part because the records are exempt from disclosure.

Background

On or about August 13, 1992, CSD received a child abuse report, which initiated CSD's investigation of the Hosanna House. Because Hosanna House is a certified foster home, the investigation was conducted by a team of CSD staff from both the child protective services unit and the foster home certification unit. The joint investigation resulted in documents that contain a combination of child abuse investigation materials and materials related to the licensure of the foster home. The information you seek is contained in those documents.

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

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 materials 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 (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 protection 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. Child Abuse Investigation Reports

Child abuse reports and investigation records compiled under the Child Abuse Reporting Law, ORS 418.750 et seq, are confidential. ORS 418.770(1). They may be disclosed only as authorized by subsection (1), which mandates disclosure to specified persons, and subsection (2), which permits disclosure under certain circumstances.

ORS 418.770(1) requires CSD to disclose child abuse reports and investigation records to law enforcement agencies, the child's physician, attorneys of record for the child or the child's parents in juvenile court proceedings, citizen review boards and a court appointed special advocate in a juvenile court proceeding. You are not within any of these categories of persons to whom CSD is required to disclose child abuse reports or investigation records.

ORS 418.770(2) authorizes CSD to make such reports and records 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 * * *.

This subsection permits child abuse reports and records to be disclosed, for example, to the CSD foster home certification unit if such disclosure is necessary to administer child welfare services, i.e. foster home supervision and licensing, and the disclosure is in the best interests of the affected child. Disclosure is also permitted under this subsection if necessary to investigate child abuse or to protect children from abuse. The disclosure of any child abuse reports and records to you is not authorized by this subsection, since disclosure to you is neither necessary to the administration of CSD's child welfare services nor necessary to investigate child abuse or to protect children from abuse.

Any child abuse reports or records that have been disclosed to the CSD foster home certification unit pursuant to ORS 418.770(2) remain confidential in the hands of that unit. ORS 418.770(4). A request for such records or reports from the foster home certification unit must satisfy the criteria of ORS 418.770(1) or 418.770(2) before the records may be disclosed.

Accordingly, we conclude that CSD is prohibited from disclosing to you any of the records in CSD's possession concerning child abuse allegations reported under the child abuse reporting law. ORS 418.770. Because disclosure is prohibited by ORS 418.770, these records are exempt from disclosure under the Public Records Law. ORS 192.502(8).

B. Foster Home Certification Records

Foster home certification records are generally open to the public. However, documents containing materials that are exempt from disclosure may be contained within a foster home certification file, triggering CSD's obligation to separate exempt from non-exempt materials.

Sorting out the exempt from the non-exempt materials is complicated in the case of your request because of the joint investigation by CSD's child protective services unit and its foster home certification unit. As discussed above, child abuse reports and investigation records contained within the foster home certification file may not be disclosed, ORS 418.770(1), (2), (4), and are exempt from disclosure under the Public Records Law. ORS 192.502(8). Any information derived from child abuse reports or records and incorporated into documents in the foster home certification file would also be exempt from disclosure consistent with ORS 418.770(1) and (2). ORS 418.770(4), 192.502(9). However, those portions of any of these records or documents in the foster home certification file that contain only

your own statements may be disclosed to you, since release of such information would not undermine the confidentiality policies underlying ORS 418.770. Cf. Public Records Order, October 23, 1990, Fleming/Troutwine.

The names of, and identifying information about, children in CSD's custody who are placed in a foster home are prohibited from disclosure, except in limited situations not relevant here, e.g., clear and immediate danger to society. ORS 419.567(3), (5); OAR 412-01-165. Because ORS 419.567 prohibits disclosing to you the names of children in the foster CSD custody, those names are exempt from disclosure under the Public Records Law. ORS 192.502(8).[2/]

In this case, the foster home certification file contains several documents resulting from and pertaining to CSD's investigation of you. These documents include child abuse reports and investigation records, staffing records between the protective services unit and the foster home certification unit, certain Hosanna House log entries, notes of meetings with the certified foster parent and notice that the foster home certification was suspended.

We conclude that all of these documents with the exception of the child abuse reports and records may be disclosed to you, but that the identities of allegedly abused children must be deleted. ORS 418.770. Specific factual details of alleged abuse and the identities of allegedly abused children must also be deleted. Id. The identities of all other foster children must also be redacted. ORS 419.567.

Peter Asai, Supervisor, Foster Home Certification, Lane CSD, informs us that CSD will provide the non-exempt portions of the

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[2/] The identities of the foster children may also be exempt from disclosure under the personal privacy exemption in the Public Records Law. ORS 192.502(2). That exemption requires a balancing of the privacy interests and the public interests to determine if an unreasonable invasion of privacy would result from a disclosure. Under that exemption, your assertion that confidentiality interests should be minimal in light of your access to all of Hosanna residents' files while you were employed there might be relevant. However, we need not reach that issue because we find that ORS 419.567 prohibits disclosure of the names of the foster children contained within the CSD foster home certification file. ORS 419.567 does not permit any balancing of the competing interests.

foster home certification records to you. Accordingly, with respect to those foster home certification records that CSD has agreed to provide, we deny your petition as moot. CSD may charge you a fee to reimburse itself for its actual cost in making such records available, including its photocopy costs and the time spent in reviewing the records. See 192.440(3).

With respect to the child abuse reports and investigation records and those portions of the foster home certification file containing the identities of the children and specific details of child abuse, we deny your petition to compel disclosure for the reasons stated above.

Sincerely,

Amy Veranth
Opinions Coordinator
General Counsel Division

AV:JGG04ECE

c: Susie Dey, Lane CSD Branch Manager
Peter Asai, Lane CSD Foster Home Certification Supervisor