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May 18, 1990

L. Merl Schmoe
P.O. Box 32
Filer, ID 83328

Re: **Petition for Public Records Disclosure Order; Senior and Disabled Services Division Records**

Dear Mr. Schmoe:

This letter is the Attorney General's order on your petitions for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petitions, which we received on May 11, 1990, ask the Attorney General to direct the Oregon Senior and Disabled Services Division (SDSD) to disclose complaint investigation report log numbers 28903 and 32516. You acknowledge that the SDSD disclosed to you a partial copy of log number 32516. SDSD declined to provide you with a copy of log number 28903. For the reasons stated below, we respectfully deny your request that we order release of complaint investigation report log number 28903 or further release of material in log number 32516.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. The records you wish to inspect fall within exceptions to the general rule of public accessibility to government records.

1. Log Number 28903 - Protective Services Report

The primary exemption here is ORS 192.502(8), which exempts from disclosure material which is otherwise confidential or privileged under Oregon law. ORS 410.150, which applies here, provides:

> "For the protection of applicants for and recipients of services, the Senior and Disabled Services Division shall not disclose or use the contents of any records, files, papers or communications for purposes other than those directly connected with the administration of the laws of Oregon, and these records, files, papers and communications are considered confidential subject to the rules of the Senior and Disabled Services Division, except as otherwise provided in ORS 411.325 to 411.335. In any judicial proceedings, except proceedings directly connected with the administration of public assistance laws, their contents are considered privileged communications."

We previously have addressed the scope of this statute. See Public Records Order dated September 16, 1982 (Sherman-Stadius). As we explained there, we do not construe ORS 410.150 to exempt SDSD entirely from the requirements of the Public Records Laws. The statute must be read in light of its stated purpose: to protect applicants for or recipients of services. It governs cases in which identifiable persons apply for or receive direct services, not cases in which the SDSD is carrying out its general regulatory, supervisory, protective and administrative obligations. See Stivahtis v. Juras, 13 Or App 519, 511 P2d 421 (1973); Cf. 37 Op Atty Gen 186, 189-92 (1974) (discussing predecessor statute to ORS 410.150 and underlying federal confidentiality statutes).

The report in question concerns an identifiable person who has received protective services from SDSD. There is no way to segregate the requested material to prevent the identification of that protected person. Unless the purpose of the request is directly connected with the administration of the laws of Oregon, SDSD may not disclose this report to you, at least without the consent of the subject of the report or her guardian. See OAR 411-05-010 (disclosure with the consent of the concerned person or the person's guardian). You have not claimed that your request is directly connected with SDSD's administration of the law. Nor have you submitted the necessary consent for access to the report. That report, therefore, is exempt from disclosure.

2. Log Number 32516 - Nursing Facility Abuse Report

ORS 441.671 addresses nursing facility abuse reports, as follows:

> "(1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of complainants and patients compiled under the provisions of ORS 441.640 to 441.660 are confidential and are not accessible for public inspection. However, the division shall make the information available to any law enforcement agency, to any public agency which licenses or certifies long term care facilities or licenses or certifies the person practicing the healing arts therein and to the Long Term Care Ombudsman.
>
> "(2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505 apply to all records and reports compiled under ORS 441.640 to 441.665."

In our Public Records Order dated June 27, 1984 (Harrison), we reviewed a comparable statute governing adult foster homes. We concluded that abuse reports are subject to disclosure, after the deletion of the names of informants and of persons allegedly abused, and deletion as well of any information that otherwise would be exempt under the Public Records Law. That order also states:

> "A further question remains. Although the statutes clearly intend protection of the privacy of an elderly victim of alleged abuse, this petition identifies the patient by name. Thus, disclosure of the report, even with the name deleted pursuant to statute would disclose identifiable personal information concerning the patient.
>
> "Accordingly, we conclude that a request for a report of an investigation concerning alleged abuse to a named elderly person may be declined, if disclosure would reveal personal information concerning the person resulting in an unreasonable invasion of privacy. The particular report contains medical and other information about the patient. We conclude that public disclosure would be an unreasonable invasion of privacy."

Id. at 6 (emphasis in original).

The same analysis applies here. The disclosure of the report, even with the name of the elderly victim deleted pursuant to statute, would disclose identifiable personal information

concerning the victim. Portions of the report already have been disclosed, perhaps unnecessarily, but the undisclosed portions of the report contain medical and other personal information about the patient. We conclude that disclosure would be an unreasonable invasion of privacy and, therefore, prohibited by ORS 410.150.

3. Conclusion

We conclude that the information you wish to inspect is exempt from disclosure under the Public Records Law, and that the Senior and Disabled Services Division lawfully withheld disclosure in this particular instance. Accordingly, we respectfully deny your petitions to compel disclosure.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:LDG:RDW:dp/4471F

c: Richard C. Ladd, Administrator, SDSD
Aileen Kaye, Supervisor, LTCO, SDSD