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December 11, 1998

Bruce Black
11044 SW Greenburg Road #218
Tigard, OR 97233

Re: Petition for Public Records Disclosure Order:
State Office for Services to Children and Families Records

Dear Mr. Black:

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 December 4, 1998, asks the Attorney General to direct the State Office for Services to Children and Families (SOSCF) to make available all records involving yourself, Joshua Lynn Rainville, Joshua's mother, Terry Lynn Rainville and Joshua's siblings.

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).

On December 9, 1998, we contacted you to request an extension of time to respond to your petition so that we could review the records you requested in their entirety. You denied our request. We have reviewed some of the records, but did not have sufficient time to review all of the records. We spoke to Rob Abrams, Assistant Regional Administrator, Metro Branch, SOSCF, who informed us that SOSCF has agreed to provide you access to records that are not exempt from disclosure regarding you and your son, Joshua Rainville.

Based on our partial review of the records and our conversations with SOSCF representatives, we are ruling on your petition as follows: 1) With respect to records involving Joshua or you that are not exempt from disclosure, your petition is moot as SOSCF has agreed to

permit you access to these records; 2) With respect to juvenile court records regarding Terry Rainville and Joshua's siblings that are not exempt from disclosure pursuant to ORS 409.255(5), your petition is moot as SOSCF has also agreed to provide you access to these records to the extent they are located in SOSCF files; 3) With respect to those records regarding yourself, your son Joshua, Terry Rainville and Joshua's siblings that are exempt from disclosure, your petition is respectfully denied. The reasons for our ruling are discussed below.

1. ORS 192.502(9) - Other State Law Exemption

ORS 192.502(9) exempts from disclosure "records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." This exemption incorporates into the Public Records Law other state statutes that make records confidential or privileged, such as ORS 409.225, 419B.035, 419A.255 and 179.505. We discuss each of these statutes below.

A. ORS 409.225 - Confidentiality of SOSCF Records

SOSCF records pertaining to an individual, family or other recipient of services are confidential pursuant to ORS 409.225, which provides in relevant part:

> (1) In the interest of family privacy and for the protection of children, families and other recipients of services, the State Office for Services to Children and Families shall not disclose or use the contents of any records, files, papers or communications that contain any information about an individual child, family or other recipient of services for purposes other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or 419B.035. The records, files, papers and communications are confidential and are not available for public inspection. * * *
>
> (2) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the State Office for Services to Children and Families shall disclose records:
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> (a) About a recipient of services, to the recipient if the recipient is 18 years of age or older or is legally emancipated, unless prohibited by court order.
>
> (b) Regarding a specific individual if the individual gives written authorization to release confidential information;
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> (c) Concerning a child receiving services on a voluntary basis, to the

child's parent or legal guardian;

(d) To the juvenile court in proceedings regarding the child; and

(e) Concerning a child who is or has been in the custody of the State Office for Services to Children and Families, to the child's parent or legal guardian except:

(A) When the child objects; or

(B) If disclosure would be contrary to the best interests of the child or could be harmful to the person caring for the child.

Under ORS 409.225, all SOSCF records pertaining to Terry Rainville or Joshua's siblings are confidential and not open to public inspection. SOSCF is prohibited from disclosing confidential records for purposes other than the administration of the child welfare laws. ORS 409.225(1). SOSCF is, however, required to disclose certain records to certain persons. ORS 409.225(2). As to records involving Terry Rainville or Joshua's siblings, you do not qualify as a person to whom SOSCF is required to disclose records. ORS 409.225(2), (3). SOSCF has concluded that disclosing records to you involving Joshua's mother or his siblings would not serve the purpose of administering the child welfare laws. Because SOSCF records containing information about Terry Rainville and Joshua's siblings are made confidential by ORS 409.225, they are exempt from disclosure under the Public Records Law, ORS 192.502(9). Accordingly, we deny your petition with respect to those SOSCF records made confidential under ORS 409.225.

Under ORS 409.225, you are entitled to SOSCF records regarding yourself unless protected by court order or otherwise exempt from disclosure under the Public Records Law. Mr. Abrams informs us that SOSCF has agreed to provide you access to all SOSCF records regarding yourself that are not protected by court order or otherwise exempt from disclosure under the law. Accordingly, we deny your petition for an order with respect to SOSCF records about you as moot.

ORS 409.225 requires SOSCF to disclose information concerning a child that has been in the custody of SOSCF to the child's parent unless the child objects or SOSCF concludes that disclosure is not in the child's best interests. SOSCF has agreed to provide to you information concerning Joshua that is not otherwise exempt from disclosure unless SOSCF determines that such disclosure would not be in Joshua's best interests. Because we have not had an opportunity to review these records, we do not know whether SOSCF will determine that disclosure of any of these records is not in Joshua's best interest and we do not know whether we would uphold with

such a determination if it were made. If SOSCF does refuse to disclose any of these records because the agency determines that disclosure is not in Joshua's best interest, you may file a subsequent petition with this office.

B. ORS 419B.035 - Child Abuse Reports and Investigations

Reports and investigations of child abuse made pursuant to ORS 419B.010 to 419B.030 are confidential. ORS 419B.035. ORS 419B.035 provides:

> (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection. However, the State Office for Services to Children and Families shall make records available to:
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> (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
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> (b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;
>
> (c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;
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> (d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;
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> (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect; and
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> (f) The Child Care Division for certifying, registering or otherwise regulating child care facilities.
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> (2) The State Office for Services to Children and Families may make reports and records available to any person, * * * when the office determines that

> such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the assistant director gives prior written approval. * * *
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> * * *
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> (4) No officer or employee of the State Office for Services to Children and Families or any person or entity to whom disclosure is made pursuant to subsections (1) and (2) of this section shall release any information not authorized by subsections (1) and (2) of this section.

Strict limits are placed on the disclosure of child abuse reports and investigations and criminal penalties are provided for unauthorized disclosure. ORS 419B.035(5). With respect to any child abuse reports or investigations concerning Terry Rainville or Joshua's siblings, you are not a person to whom SOSCF is required to disclose such information. ORS 419B.035(1). Because records of child abuse are exempt from disclosure under ORS 192.502(9), your petition is denied with respect to records of child abuse involving Terry Rainville or Joshua's siblings.

Child abuse reports and investigations concerning Joshua are likewise confidential. Parents of the child are not listed as people to whom SOSCF must disclose child abuse reports. ORS 419B.035(1). While SOSCF has discretion to disclose reports of child abuse and investigations pursuant to ORS 419B.035(2), SOSCF does not have sufficient information on which to conclude that disclosure in this instance would be authorized by ORS 419B.035(2). Thus, child abuse reports involving your son, Joshua, are exempt from disclosure, and your petition is denied with respect to any such records.

C. ORS 419A.255 - Juvenile Records

ORS 419A.255 provides in part:

> (1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other material relating to the child's or youth's history and prognosis. The record of the case shall be withheld from public inspection but shall be open to inspection by the child or youth, parent, guardian, court appointed special advocate, surrogate or a person allowed to intervene in a proceeding involving the child or youth under ORS 109.119(1), and their

attorneys. The attorneys are entitled to copies of the record of the case.

(2) Reports and other material relating to the child's or youth's history and prognosis are privileged and, except at the request of the child or youth, shall not be disclosed directly or indirectly to anyone other than the judge of the juvenile court, those acting under the judge's direction, service providers in the case and to the attorneys of record for the child or youth or the child's or youth's parent, guardian, court appointed special advocate, surrogate or person allowed to intervene in a proceeding involving the child or youth under ORS 109.119(1). * * * The service providers in the case, law enforcement agencies and attorneys are entitled to examine and obtain copies of any reports or other material relating to the child's or youth's history and prognosis. Any service provider in the case, law enforcement agency or attorney who examines or obtains copies of such reports or materials is responsible for preserving their confidentiality and shall return the copies to the court upon the conclusion of the service provider's, law enforcement agency's or attorney's involvement in the case.

(3) Except as otherwise provided in subsection (7) of this section, no information appearing in the record of the case or in reports or other material relating to the child's or youth's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child's or youth's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child or youth, * * *.

* * * * *

(5) Notwithstanding any other provision of law, the following are not confidential and not exempt from disclosure:

(a) The name and date of birth of the child or youth;

(b) The basis for the juvenile court's jurisdiction over the child or youth;

(c) The date, time and place of any juvenile court proceeding in which the child or youth is involved;

(d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the child or youth where jurisdiction is based on ORS 419B.100(1)(g) or ORS 419C.005;

(f) The names and addresses of the youth's parents or guardians; and

(g) The register described in ORS 7.020.

When SOSCF is appointed legal custodian and guardian of a child within the jurisdiction of the juvenile court, SOSCF is required to plan and provide for the child's needs. ORS 419B.337. To perform those duties, SOSCF develops, obtains and maintains records concerning the child. We have previously held that ORS 419A.255 protects the records and information described in that statute when those records or underlying information are contained in SOSCF files. Public Records Order dated June 28, 1996 (Zaitz).

1. ORS 419A.255(1) - Legal Record

Under ORS 419A.255(1), the "legal" record of the case (motions, petitions, order and other pleadings submitted to the court excluding records of the child's history or prognosis) is not open to public inspection. With respect to juvenile court legal records involving Terry Rainville and Joshua's siblings, you are not within the category of persons permitted to inspect the records. Thus, we deny your petition with respect to juvenile court legal records involving Terry Rainville and Joshua's siblings.

SOSCF has agreed to permit you to inspect juvenile court "legal" records pertaining to Joshua found in SOSCF files. However, you are not entitled to copies of these records. ORS 419A.255(1).

2. ORS 419A.255(2) - History and Prognosis

ORS 419A.255(2) prohibits the disclosure of "reports and other material relating to the child's or youth's history and prognosis" to anyone other than the judge, service providers, and attorneys of record in the juvenile court proceeding unless the child requests otherwise. These reports and other material include the information that forms the basis for the court's jurisdiction over the child, information concerning services being provided to the child, and information about the agency's planning for the child. Only the judge and the attorneys of record in the juvenile proceeding are entitled to disclosure. ORS 419A.255(2). With respect to history and prognosis reports involving Terry Rainville and Joshua's siblings, you are not one of the people entitled to disclosure under ORS 419A.255(2). Those records are privileged and are thus exempt

from disclosure under ORS 192.502(9). Your petition for records pertaining to Terry Rainville and Joshua Rainville's siblings is denied with respect to their history and prognosis reports.

History and prognosis reports pertaining to Joshua are also privileged. ORS 419A.255(2). Materials relating to the child's history and prognosis may not be disclosed to anyone not described in ORS 419A.255(2) without the consent of the juvenile court. ORS 419A.255(3). Parents are not described as individuals entitled to disclosure under ORS 419A.255(2). Disclosure is authorized, however, if requested by the child. We interpret this to also authorize disclosure if requested by a custodial parent of a minor child. A noncustodial parent has the right to inspect records concerning the child to the same extent as the custodial parent may inspect such records. ORS 107.154. Therefore, SOSCF has agreed to permit you to inspect history and prognosis records pertaining to Joshua found in SOSCF files. However, you are not entitled to copies of these records. ORS 419A.255(2).

3. Bases of Juvenile Court Jurisdiction

Notwithstanding the confidentiality of juvenile court records, the name and date of birth of the child, the basis of the juvenile court's jurisdiction, the date, time and place of any juvenile court proceeding involving the child, the disposition of the child if jurisdiction is based on delinquency or emancipation, and the names and addresses of the child's parents or guardians are not confidential and not exempt from disclosure. Mr. Abrams informs us that SOSCF has agreed to provide you with this information with respect to Terry Rainville, Joshua and Joshua's siblings to the extent it is found in SOSCF's records. Accordingly, we deny your petition with respect to these records as moot.

D. ORS 179.505 - Mental Health Records

ORS 179.505 makes records maintained by providers of mental health care services confidential and provides in part:

> (2) Except as provided in subsections (3), (4), * * * (14), * * * (15) * * * of this section, case histories, clinical records, X-rays, treatment charts, progress reports and other similar written accounts of the patients of any provider maintained in or by the provider by the officers or employees thereof who are authorized to maintain such histories, records, X-rays, reports, charts and other accounts within the official scope of their duties shall not be subject to inspection. * * *
>
> (3) If the patient, or in the case of incompetence, the legal guardian, gives voluntary and informed consent, the content of any written account referred to in

subsection (2) of this section shall be released accordingly, if the consent is in writing and is signed and dated by the patient or guardian and sets forth with specificity the following: * * *

(4) The content of any written account referred to in subsection (2) of this section may be released without consent:

(a) To any person to the extent necessary to meet a medical emergency.

(b) At the discretion of the responsible officer of the provider, which in the case of any Mental Health and Developmental Disability Services Division facility or community mental health and developmental disabilities program shall be the Assistant Director for Mental Health and Developmental Disability Services, to persons engaged in scientific research, peer review and fiscal audits. However, patient identities shall not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit or when the disclosure benefits the provider or patient.

(c) To governmental agencies when necessary to secure compensation for services rendered in the treatment of the patient.

* * *

(14) Persons other than the patient who are granted access under this section to the contents of a written account referred to in subsection (2) of this section shall not disclose the contents of the written account to any other person except in accordance with the provisions of this section.

(15) Nothing in this section shall prevent the State Office for Services to Children and Families from disclosing the contents of written accounts in its possession to individuals or agencies with whom children in its custody are placed.

ORS 179.505 makes case histories, X-rays, and other records and reports of a provider of mental health confidential. ORS 179.505(2). A patient's consent is required to disclose such records. ORS 179.505(3). SOSCF may not disclose mental health records in its custody to anyone other than individuals or agencies who are caring for children in SOSCF's custody. ORS 179.505(14), (15). With respect to Terry Rainville and Joshua's siblings, any case histories, treatment reports, progress reports, X-rays and other written patient accounts in SOSCF's custody are confidential. You have not provided the agency with the consent of Terry Rainville or

Joshua's siblings. As such, mental health records involving Terry Rainville and Joshua's siblings are confidential under ORS 179.505(2) and thus exempt from disclosure under ORS 192.502(9). With respect to these records, we deny your petition.

To the extent that SOSCF records contain mental health information about your son, Joshua, the records are also confidential. Parents are not listed as individuals to whom mental health records may be provided absent the consent of the individual. 172.505(4), (15). The custodial parent of a minor child may receive copies of the child's records unless the record reflects that the attending physician has determined that disclosure of psychiatric or psychological information contained in the records is medically contraindicated because disclosure "would constitute an immediate and grave detriment to the treatment" of the child. ORS 179.505(9)(a). We believe that a noncustodial parent has the right to obtain records concerning the child to the same extent as the custodial parent. ORS 107.154. Nevertheless, ORS 409.225 makes SOSCF records, including mental health records contained therein, confidential, except that they must be disclosed to the child's parent unless SOSCF determines that disclosure would be contrary to the best interests of the child. ORS 409.225(2)(e)(B). We believe that this authorizes SOSCF to determine that mental health records contained in SOSCF files should not be disclosed to the child's parent.

SOSCF has agreed to provide to you mental health records concerning Joshua that are contained in SOSCF files and that are not otherwise exempt from disclosure unless SOSCF determines that such disclosure would not be in Joshua's best interests. Because we have not had an opportunity to review these records, we do not know whether SOSCF will determine that disclosure of any of these records is not in Joshua's best interest and we do not know whether we would uphold with such a determination if it were made. If SOSCF does refuse to disclose any of these records because the agency determines that disclosure is not in Joshua's best interest, you may file a subsequent petition with this office.

2. ORS 192.502(2) - Personal Privacy Exemption

ORS 192.502(2) exempts private personal information from the disclosure requirements of the Public Records Law. This provision exempts:

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy[.]

The purpose of this exemption is to protect the privacy of individuals from unreasonable invasion. *Jordan v. MVD*, 308 Or 433, 440-42 (1989). Only personal information that would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption. An invasion of privacy would be unreasonable if "an ordinary reasonable person would deem [it] highly offensive." *Id.* at 442-43.

SOSCF files generally contain information of a personal nature, specific to one individual. To the extent that SOSCF records contain personal information regarding Terry Rainville, Joshua or Joshua's siblings that would constitute an unreasonable invasion of privacy if publicly disclosed, the information is protected unless the public interest by clear and convincing evidence requires disclosure. Given the nature of SOSCF records, we have no basis to conclude that the disclosure of the personal information contained in those records would not constitute an unreasonable invasion of privacy. Moreover, your petition does not demonstrate by clear and convincing evidence that the public interest requires disclosure of such records. Information of a personal nature contained in SOSCF files is exempted from public disclosure under ORS 192.502(2). Accordingly, we deny your petition with respect to these records.

3. ORS 192.502(1) - Internal Advisory Communications

ORS 192.502(1) exempts the following records from disclosure:

> Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

To the extent that SOSCF records regarding yourself, Terry Rainville, Joshua or Joshua's siblings contain communications within SOSCF or between SOSCF and another agency that cover other than purely factual information and are of an advisory nature, the materials may be exempt from disclosure. SOSCF must be able to show that the public interest in encouraging frank communication clearly outweighs the public interest in disclosure. To the extent that SOSCF can make that showing, such communications are exempt from disclosure under the public records law. Nevertheless, SOSCF must segregate the factual material from the non-factual material and disclose the factual information unless it is exempt for another reason. SOSCF has agreed to do so. Accordingly, we deny your petition with respect to any exempt internal advisory communications.

4. ORS 192.502(3) - Confidential Information Submitted by Citizens

ORS 192.502(3) provides:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself if good faith not to disclose the information, and when the public interest would suffer by disclosure.

To be exempt, information must be submitted in confidence and SOSCF must have agreed in good faith to keep the information confidential. ORS 192.502(3). SOSCF must show that the information should reasonably be considered confidential and that disclosure would harm the public interest. ORS 192.502(3). To the extent that SOSCF records regarding yourself, Joshua, Terry Rainville or Joshua's siblings contain information submitted in confidence by citizens who are not required by law to submit such information, the information is exempt from disclosure if SOSCF has agreed to keep the information confidential, the information should reasonably be considered confidential and the public interest would suffer if the information were disclosed. Accordingly, we deny your petition with respect to any such information.

For the above reasons, we deny your petition with respect to material regarding yourself, Joshua Rainville, Terry Rainville and Joshua's siblings that is exempt from disclosure. Because SOSCF has agreed to provide you with nonexempt information regarding yourself and Joshua and nonexempt juvenile court information regarding Terry Rainville and Joshua's siblings, your petition with respect to that information is moot.

5. SOSCF Administrative Rules Regarding Access to SOSCF Files

SOSCF has agreed to permit you access to nonexempt material regarding yourself, Joshua, Terry Rainville and Joshua's siblings. Nonexempt material regarding Terry Rainville and Joshua's siblings is limited to juvenile court information that is not exempt under ORS 419A.255(5).

ORS 192.430 authorizes state agencies to adopt reasonable rules necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. SOSCF has adopted rules regarding access to client records.

OAR 413-010-0040 provides in part:

> (2) Since SOSCF records are often multi-person records, a person entitled to access a record shall not have complete access to a particular case file if it contains confidential information about others.

SOSCF will segregate exempt information from nonexempt information. Where nonexempt and exempt materials are combined so that confidentiality of the exempt material cannot be preserved if you are given access to the file, SOSCF will copy the documents and redact exempt material.

A state agency may charge you a fee to reimburse it for its actual cost in making such records available, including its photocopy costs and the time spent by agency personnel in reviewing and segregating the records. *See* ORS 192.440(3). SOSCF may require that you reach an agreement about payment before the material is provided for your inspection. OAR 413-350-0080(2).

You should contact Paul Drews, SOSCF Regional Administrator, to discuss payment of costs and to arrange for a time to inspect the records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS01170
c: Caleb Heppner, Deputy Administrator
Betty Uchytil, Assistant Administrator
Paul Drews, Regional Administrator
Rob Abrams, Assistant Regional Administrator