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June 28, 1996

RECEIVED
JUL 0 1 1996
GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Leslie L. Zaitz, Publisher
Keizertimes
142 Chemawa Road N.
Keizer, OR 97303

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

Dear Mr. Zaitz:

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 June 7, 1996,[1/] asks the Attorney General to direct the State Office for Services to Children and Families (SCF) to make available "its files concerning Aimee Jo Greene."[2/] You also provided an Authorization for Release of Information signed by Aimee Greene's father, Orrin Greene. The authorization states that SCF "may share and exchange information about my family and my circumstances" with the *Keizertimes* to be used in a newspaper story about Aimee Greene.

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

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

[2/] SCF originally estimated that its file on Aimee Greene consisted of 150 pages. When the branch offices submitted copies of their files on Aimee Greene to the central office, SCF discovered that there are approximately 2500 pages of records, many of which are duplicates.

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).

SCF has agreed to release some of the records you seek. To the extent the records are being released, your petition is denied as moot. The remainder of your petition is denied for the reasons discussed below.

1. **ORS 192.502(8) - Other State Law Exemption**

ORS 192.502(8) exempts from disclosure "records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."

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

Records of child abuse reports and investigations are made confidential by ORS 419B.035, which states, in part:

> (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.030 ***are confidential and are not accessible for public inspection.*** However, the Children's Services Division shall make records available to:
>
> (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
>
> (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[;]
>
> (d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children 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;

> (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
>
> (f) The Child Care Division for certifying, registering or otherwise regulating child care facilities.
>
> (2) The division may make reports and records available to any person * * * 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 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. * * *
>
> * * * * *
>
> (4) ***No officer or employee of the Children's Services Division*** 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.***

(Emphasis added).

ORS 419B.035 places strict limits on disclosure of records concerning child abuse reports and investigations. The terms of ORS 419B.035 neither express nor imply exceptions to its restrictions and include criminal penalties for unauthorized disclosure. ORS 419B.035(5). Although SCF has the discretion to make the reports and records available for certain purposes under ORS 419B.035(2), none of those purposes exist in this case. Moreover, we find no support in ORS 419B.035 for your claim that "the death of the subject of the records negates the prohibition." Because the records of child abuse reports and investigations are made confidential under ORS 419B.035(1), they are exempt from disclosure under the Public Records Law, ORS 192.502(8).[3/] Accordingly, your petition is denied with respect to such records.

[3/] We also conclude that the consent for release of information signed by Orrin Greene is not effective to authorize release of records protected by ORS 419B.035. Neither the child who is the subject of the child abuse reports and investigations nor the child's parent is among the persons or agencies that SCF must provide with those reports. The confidentiality of the covered information cannot be waived by the persons who are subjects of the records or their successors; it is not theirs to waive.

B. **ORS 419A.255 - Juvenile Records**

ORS 419A.255 makes confidential certain materials concerning children who are within the jurisdiction of the juvenile court. 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) Records 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 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 attorneys are entitled to examine and obtain copies of any reports or other material relating to the child's or youth's prognosis. Any attorney who examines or obtains copies of such reports or materials shall be responsible for preserving their confidentiality and shall return the copies to the court upon the conclusion of the attorney's involvement in the case.
>
> (3) Except as otherwise provided in subsection (6) of this section, ***no information appearing*** in the record of the case or ***in reports or other materials 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 as evidence in any proceeding to establish criminal or civil liability against the child or youth * * *.
>
> (6) * * *

(c) Nothing in this subsection affects the provisions of ORS * * * 419B.035.

(Emphasis added.)

Aimee Greene was within the jurisdiction of the juvenile court, and SCF was her legal custodian and guardian. SCF is required to plan and provide for the physical, medical, psychological, educational and other needs of children within SCF's legal custody. *See* ORS 419B.337. In the course of performing those duties, SCF develops, obtains and maintains records concerning the child. Many of those records come within the definition of records protected by ORS 419A.255(1) and (2). We have held previously that ORS 419A.255 protects the records and information described in that statute when those records or underlying information are contained in SCF files. Public Records Orders dated April 10, 1995 (Deutsch, Howe) and August 17, 1987 (Zaitz).

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

ORS 419A.255(1) requires that the "legal" record be "withheld from public inspection" and specifies who may inspect the "legal" record of the case. Your request for those records was made pursuant to the Public Records Law for the stated purpose of using the records to prepare a newspaper article. You are not a party that may inspect the record. Because ORS 419A.255(1) restricts the disclosure of these records and you do not come within the categories of persons permitted to inspect the records, they are exempt from disclosure under the Public Records Law. ORS 192.502(8).

The signed release by Orrin Greene does not alter that analysis. ORS 419A.255(1) permits Orrin Greene, as the parent, to inspect the "legal" record. Mr. Greene personally may inspect the records in SCF's file that are defined in ORS 419A.255(1). The statute does not authorize a person who is permitted to inspect the records to extend that right to persons who are not also authorized to inspect the records under ORS 419A.255(1). Further, Mr. Greene is not permitted to copy the materials defined in ORS 419A.255(1). Under that section, only the attorneys are entitled to copies of the record of the case. Accordingly, your petition for inspection of records is denied insofar as it requests records the disclosure of which is restricted by ORS 419A.255(1). ORS 192.502(8).

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

ORS 419A.255(2) makes privileged "reports and other material relating to the child's or youth's history and prognosis." Reports and other material relating to the child's history and prognosis includes information about the child's entire life, the information that forms the basis for the court's initial and continuing jurisdiction over a child, information

concerning services being provided to improve the child's condition and circumstances, and information about the agency's planning for the child's future. Therefore, much of SCF's file on any given child is confidential under ORS 419A.255(2). That includes information in SCF's files about the parents or other relatives when it relates to the child's history and prognosis.

ORS 419A.255(2) prohibits the disclosure of those records "directly or indirectly" to anyone other than the judge of the juvenile court or the attorneys of record in the juvenile proceeding. ORS 419A.255(3) reinforces that materials relating to the history and prognosis of the child may not be disclosed to anyone not described in ORS 419A.255(2) without the consent of the juvenile court.

Parents are not among the persons enumerated in ORS 419A.255(2) who may inspect the materials relating to history and prognosis. Accordingly, Mr. Greene would be required to obtain an order from the juvenile court in order to inspect those materials.

However, under ORS 419A.255(2), disclosure is authorized if requested by the child. SCF as legal custodian of the child has the authority to consent on behalf of the child to the disclosure of records concerning the child's history and prognosis under ORS 419A.255(2). SCF has promulgated administrative rules to define how SCF will exercise its authority to consent to disclosure of those records.

Oregon Administrative Rule (OAR) 413-010-0040 applies in this case. OAR 413-010-0040 provides, in part:

> (1) A person having access to SOSCF records has the freedom to look at, obtain copies, and make use of the information contained in the record, with the exception of the following:
>
> (a) Information about adoptive placements and sealed adoption records;
>
> (b) The identity or identifying information of a person reporting suspected child abuse;
>
> (c) Information in a report of the investigation of a child abuse report may be withheld from a client when a protective services or criminal investigation is still in process;
>
> (d) Information from records sealed by a court order of expunction;

(e) Confidential information provided to SOSCF in good faith on the basis that the information will not be disclosed. This includes reports from treatment facilities, medical, drug and/or alcohol, psychiatric and psychological treatment reports that are provided to SOSCF and marked confidential, as well as information provided in confidence by private citizens. Unless SOSCF receives permission to release such information, the client shall only be informed that SOSCF has such information and advised to contact the source of the information.

(2) Since SOSCF records are often multi-person records, a person entitled to access a record shall not have complete access to a particular file if it contains confidential information about others (e.g., ex-spouse, other relatives, half-siblings, etc.).

* * * * *

(4) When the child is receiving services on a voluntary basis, a parent having legal custody or a legal guardian may review the same information about their dependent child under age 18 as a client may see about himself or herself.

(5) When a child is in the legal custody of the agency based on a court order, the following shall apply:

* * * * *

(b) A parent or guardian may have the same information about their child as a parent having legal custody unless:

(A) The child objects; or

(B) SOSCF as legal guardian believes that sharing the information will be harmful to the child or to the person caring for the child.

We construe OAR 413-010-0040 to require that a parent without legal custody of the child shall have access to the same information that a parent with legal custody could have about the child except where otherwise precluded or prohibited by the factors set out in OAR 413-010-0040 or otherwise conditioned on or prohibited by statute or rule. OAR 413-010-0040(1) lists several classes of information that the child (and thus the parent) cannot access. OAR 413-010-0040(2) limits the parent's access to information about other persons in the

file. Statutory sources of confidentiality as to the child (or the parent), also apply.[4/] Stated somewhat differently, we conclude that except as limited by OAR 413-010-0040(1)(a)-(e), (2) or (5)(b), or by statute or rule, SCF's rules permit a parent to have access to records about the parent's own child that are maintained by SCF. A parent also may see information about himself.

In this case, Orrin Greene has authorized SCF to release information to you about Aimee and about himself. Unlike the analysis under ORS 419A.255(1) pertaining to public inspection of the "legal" record, we do not believe that ORS 419A.255(2) would prohibit you from viewing the record, given that signed consent. Under ORS 419A.255(2), the child or youth is not limited by the statutory language restricting release to the judge of the juvenile court, those acting under the judge's direction and to the attorneys of various listed persons. SCF as legal custodian has authority to exercise the child's rights under the statute and has set forth rules that govern the exercise of those rights. Those rules give the parent various rights to inspect the record. By signing a consent for you to view the records, Orrin Greene has authorized you to examine the records to the extent permitted by statute and rule.

Under OAR 413-010-0040(5)(b), SCF may refuse to release records otherwise available to a parent in a particular case if (A) the child objects, or (B) SCF believes that sharing the information will be harmful to the child. In this case, the child is deceased. Therefore, she cannot object to the release. OAR 413-010-0040(5)(b)(B) permits SCF to refuse to release information if SCF believes that sharing the information will be harmful to the child. Under that rule, SCF may consider who will be the ultimate recipient of the information to determine if release ***to that recipient*** would be harmful to the child. SCF does not believe that sharing the information with you would be harmful to the deceased child. Neither ground stated in OAR 413-010-0040(5)(b) prevents disclosure in this case. SCF has agreed to make the records concerning Aimee and Orrin Greene available for your inspection, to the extent a parent's access to those records is not restricted by statute or rule.

As discussed below, certain records concerning Aimee's history and prognosis that are made privileged under ORS 419A.255(2) are not disclosable under SCF's rule. Accordingly, they are exempt from disclosure under ORS 192.502(8).

[4/] ORS 419B.035, discussed in the text above, prohibits the disclosure of child abuse reports and investigations and, therefore, is a limitation on the parent's access to information under OAR 413-010-0040.

(i) OAR 413-010-0040(1)(a)-(e) - Confidential Information

Orrin Greene may not have access to any of his child's records that would not be disclosed to the child (or the parent) under OAR 413-010-0040(1)(a)-(e). SCF's records on Aimee Greene contain some "confidential information provided to SCF in good faith on the basis that the information will not be disclosed." OAR 413-010-0040(1)(e). Such records are not available for inspection under SCF's rule or ORS 419A.255(2).[5/]

Two records are exempt from disclosure under OAR 413-010-0040(1)(e). First, there is a Psychoeducational Report concerning Aimee dated April 19, 1985. The report was issued by School District 24J and is marked confidential. Second, SCF's files on Aimee Greene contain reports from Poyama Land which cover the dates February 1986 to June 1988. Correspondence in the file from Poyama Land indicates that the records submitted to SCF were not to be redisclosed. John Schwartz, Executive Director of Poyama Land, confirmed that Poyama Land submits reports to SCF in confidence on the basis that the information will not be redisclosed. Pursuant to OAR 413-010-0040(1)(5), SCF will not disclose those records to you; you will have to contact the source of the information directly to obtain any records.

(ii) OAR 413-010-0040(2) - Information About Other Persons

As discussed above, information regarding the child's relatives may relate to the child's history and prognosis and, therefore, is exempt from disclosure under ORS 192.502(8). SCF's records concerning Aimee Greene contain information about the circumstances of Aimee's mother and other relatives and SCF's efforts to work with the mother and others to reunify the family. In this case, Aimee's record contains information about other persons' medical and treatment history, reports to the court that include information about others and case notes and service referrals about the parents' condition and circumstances. SCF's mission is to provide services to families of dependent children. Therefore, many of these records relate to the child's history and prognosis and are protected by ORS 419A.255(2).[6/]

[5/] This element of SCF's rule parallels the exemption in ORS 192.502(3) for records submitted to the public body in confidence. We need not decide the applicability of that exemption in the Public Records Law because we find disclosure of these records to be restricted under ORS 419A.255(2) and SCF rules and, thus, exempt from disclosure under ORS 192.502(8).

[6/] SCF's file on Aimee Greene contains information about Aimee's mother that is unrelated
(continued...)

As stated above, OAR 413-010-0040 outlines some of the parameters of SCF's authority to release records protected by ORS 419A.255(2). Many of the records covered by ORS 419A.255(2) and OAR 413-010-0040 are being released to you because of father's consent. To the extent the information in the file concerns the father, he can (and has) consent to the release of information about himself. However, Orrin Greene's access to records concerning his child is restricted by OAR 413-010-0040(2), which provides:

> (2) Since SOSCF records are often multi-person records, a person entitled to access a record shall not have complete access to a particular file if it contains confidential information about others (e.g., ***ex-spouse***, other relatives, half-siblings, etc.)

(Emphasis added.)

Orrin Greene cannot have information contained in SCF's files about relatives that concerns Aimee's history and prognosis and is privileged under ORS 419A.255(2)[7/] and not subject to disclosure under OAR 413-010-0040. The father cannot have access to those materials or authorize their disclosure because "it is confidential information about others."

[6/] (...continued)
to Aimee in that it does not mention Aimee and was not a part of SCF's case planning on Aimee's behalf. We conclude that those materials are beyond the scope of your public records petition which requests SCF "files concerning Aimee Jo Greene."

[7/] Even if those materials did not relate to Aimee's history and prognosis, it appears that those records would be exempt from disclosure under the personal privacy exemption, ORS 192.502(2). Because we conclude that this information is privileged under ORS 419A.255(2) and, therefore, exempt under ORS 192.502(8), we do not need to address the arguments in your petition regarding the applicability of the personal privacy exemption to records concerning the mother. Moreover, it is likely that some of those records would be protected by federal confidentiality laws or other state confidentiality laws regarding medical and treatment records, and thus would be exempt from disclosure under ORS 192.502(7) and (8).

OAR 413-010-0040(2).[8/] That information will be separated from nonexempt material to the extent possible.[9/]

SCF's disclosure to you of records concerning Aimee Greene is subject to any restrictions on redisclosure that are not expressly permitted by the terms of Orrin Greene's consent. OAR 413-010-0030 (3) provides:

> Individuals, agencies or organizations who exchange or receive confidential information about clients from SOSCF are expected to preserve the confidential nature of the communication. Assurance must be given that information will only be used for the purpose for which it was made available. Copies of information from client records that are stamped "Confidential" shall not be copied or shared with others without the prior permission of SOSCF.

This case also raises the question of whether the child's death entitles the parent to obtain any records beyond those accessible under OAR 413-010-0040. We conclude that it does not. The denial of information regarding history and prognosis and child abuse reports and investigations is based on specific statutory restrictions on disclosure, and the exemption in ORS 192.502(8), not on the personal privacy exemption, ORS 192.502(2). Therefore, we are not required to analyze whether personal privacy would survive death. The sole effect of the child's death in this case is to overcome the ground for denial set out in OAR 413-010-0040(5)(b)(A). Because the child is deceased, there is now no child who can object to the disclosure.

Based on the foregoing analysis, SCF has agreed to voluntarily release to you the nonexempt records it possesses concerning Aimee Jo Greene based on her father's signed authorization. Information concerning her mother or others that is exempt from disclosure or beyond the scope of your request will be separated from the nonexempt material. Because the agency is disclosing some of the records, your petition is denied as moot with respect to the records being disclosed.

[8/] Documents in SCF's files on Aimee Greene also refer to persons other than Aimee and her relatives. That information has been segregated from the information disclosed to you because it is beyond the scope of your petition. In any event, OAR 413-010-0040(2) would prohibit its disclosure to you.

[9/] You agreed that SCF could redact social security numbers from any records provided for your inspection.

2. **Personal Privacy Exemption**

ORS 192.502(2) exempts from disclosure:

> 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 the personal privacy exemption is to protect the privacy of individuals from unreasonable invasion. ***Jordan v. Motor Vehicles Division***, 308 Or 433, 441, 781 P2d 1203 (1989). Only personal information that would constitute an unreasonable invasion of privacy if publicly disclosed is protected under this exemption.

SCF's file on Aimee Greene contains information on her paternal grandparents. Specifically, the file contains an "autobiography" written by Aimee's grandmother to assist SCF in determining whether the grandparents' home was a suitable placement for Aimee. The first determination that must be made is whether the information is of a "personal nature." The test for determining this, established in ***Jordan***, requires determining whether the information sought is specific to one individual. This "autobiography" is of a personal nature. It was not written for publication or distribution and it concerns private details of the grandmother's life.

The second determination to be made under the exemption is whether disclosure of the autobiography would constitute an unreasonable invasion of privacy. We conclude that it would. In the autobiography, the grandmother discusses her personal values and relationships with family members. Release of that document most likely would embarrass the grandmother. There is no basis for its release to others.

Thus, both requirements for threshold entitlement to an exemption from disclosure are met. The information is of a personal nature, and disclosure would constitute an unreasonable invasion of privacy. That does not end the inquiry, however, for the law still requires disclosure if the public interest by clear and convincing evidence requires disclosure in the particular instance. We weigh whether the public interest requires disclosure by examining the public interest in disclosure versus the public interest in non-disclosure.

You contend that the public's interest in knowing the details of Aimee's life justifies the invasion of her grandmother's privacy in this case. We disagree. Even if the public has an interest in knowing about Aimee's life, that interest does not extend to the personal details

of her family member's lives. When SCF steps in to protect a child, the family members' interests in privacy are not vitiated. Accordingly, we conclude that grandmother's autobiography is exempt from disclosure under ORS 192.502(2). Because deletion of the exempt portions of that document would render the document meaningless, SCF is not required to make the document available for your inspection. *See **Turner v. Reed***, 22 Or App at 186, n 8 (editing required only when segregating exempt and nonexempt material is reasonably possible).

Based on SCF's voluntary disclosure of records concerning Aimee Greene, your petition is denied as moot with respect to these records. With respect to the remainder of the records, your petition is denied because we find those records to be exempt from disclosure under ORS 192.502(8) and ORS 192.502(2).

3. **Access to SCF Files Rather Than Copies**

In your April 15, 1996, letter to Floyd Smith, you noted that you were seeking "access to the file, NOT a copy of any documents in the file. If the agency choses [*sic*] to copy material, it shall do so at its own expense."

SCF will grant you access to large portions of the files.[10/] Where nonexempt and exempt materials are combined so that confidentiality of the exempt materials cannot be preserved if you are given access to the file, SCF will copy the documents and redact exempt material.

A public body may charge for its actual costs of making the records available. ORS 192.440(3). Copying costs for those documents copied in order to redact exempt materials will be charged at $.10 per page. Under OAR 413-350-0080(1), SCF may also charge for the actual cost of staff time to search and edit the records. The minimum hourly charge for staff time will be $ 14.68. Additional charges may be made to cover any Attorney General review or consultation required by SCF in order to segregate the exempt and nonexempt materials.

You should contact Paul Drews, SCF Assistant Administrator, to arrange a time to inspect the records. SCF will require a reasonable time to prepare the records for your

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[10/] SCF plans to permit access to the copy of the files that we have reviewed for purposes of your petition since the original files are located in the SCF field offices. Because this copy was made for administrative purposes, you will not be charged for the copying costs.

inspection. They will be ready by July 12. SCF may require that you reach an agreement about payment before the materials are provided for your inspection. OAR 413-350-0080(2).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:jpl/JAA01EE8.W51
c: Paul Drews, SCF Assistant Administrator