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January 19, 1995

Brad Good
906 NE 77th
Portland, Oregon 97213

Re: ***Petition for Public Records Disclosure Order: Children's Services Division and Others DOJ File No. 412.001-412001***

Dear Mr. Good:

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 January 12, 1995, asks the Attorney General to direct Multnomah Juvenile Justice, Children's Services Division and the Department of Health and Human Resources to make available the following:

1. Any and all records or system of records relating to Kimberly K. Good and Mandi June Good.

2. Any and all oral or documentary evidence given at any hearing regarding the children named above.

3. All transcripts of testimony and exhibits from any proceeding involving the children named above.

4. Records or information compiled by any law enforcement agency.

5. Records or information compiled from a Request for Review investigation requested by you.

6. All other records defined in the Administrative Procedure Act.

For the reasons that follow, we respectfully deny your petition.

A. Records of Multnomah Juvenile Justice

Your petition alleges that Multnomah Juvenile Justice denied your request for records. Under the Public Records Law, the district attorney is the official responsible for reviewing public records decisions by local governments. ORS 192.460. Thus the district attorney is the proper official to whom to direct your petition. If the Multnomah County District Attorney denies your petition, the Attorney General would not review that denial. Public Records Order, January 21, 1988 (Wright) (under ORS 192.480, Attorney General may not order the district attorney, an elected official, to release public records). Rather, ORS 192.480 and 192.490 establish the procedure to obtain judicial review of a district attorney's denial of a records request.

B. Records of Department of Health and Human Resources

Your petition alleges that the Department of Health and Human Resources denied your request for records. There is no Department of Health and Human Resources in this state. If you are referring to the Multnomah County Health Department, then the analysis above regarding Multnomah Juvenile Justice would apply here, for the Health Department is a county agency.

If you are referring to the Department of Human Resources of the State of Oregon, then any records that would be covered by your request would be in the possession of the Children's Services Division, which is a division of that department. The analysis of your request for records of the Children's Services Division set forth below applies with equal effect to any request for records from the Department of Human Resources.

C. Records of Children's Services Division

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitation. *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 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).

Your letter states that CSD has not responded to your requests to inspect and/or copy CSD records relating to your children. Ms. Hoffard, the CSD caseworker for your children, informs us that CSD was not aware of any request from you for the records, which could be one reason CSD has not responded to your request. In any event, Ms. Hoffard states that those portions of the file that are not confidential under state and federal statute and rule are available for your inspection at the CSD Midtown Branch, which is located at 1425 NE Irving. Please contact Diana Frost, the CSD Midtown Branch Manager, at 731-3147, to arrange a convenient time for inspection.

Some of the records in the CSD file contain confidential information which cannot be disclosed because disclosure is prohibited by state or federal law. *See, e.g.,* 42 USC § 5103(b)(2)(E); 45 CFR § 1340.14(i); ORS 419A.255(2), 40.230, 40.235, 40.250, and 40.260. Such information is exempt from disclosure under the Public Records Law. ORS 192.502(7) and (8). Also, CSD does not have many of the documents you requested in your letter, and has no duty to obtain those records from other government agencies in order to make them available to you. *See* ORS 192.410(1), 192.430 (custodian of records has duty to make records available). You will need to go the government agencies that have possession of such documents and ask them to permit you to inspect their files.

Because CSD has not denied a request for records, it is premature for us to respond to this element of your petition. Absent a request for and a denial of records, the Attorney General has no statutory authority to order disclosure. *See* ORS 192.450(1). Accordingly, with respect to these records, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:AV:lry:jpl:JAA0164F/
c: Pat Hoffard, CSD
Diana Frost, CSD