



MIKE SCHMIDT, District Attorney for Multnomah County

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September 8, 2020

Liani Reyna
2282 Vermont Lane
Naples, Florida 34120

Rebecca Plaza
Sr. Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Liani Reyna seeking access to a Portland Police Bureau report

Dear Ms. Reyna and Ms. Plaza:

In her public records appeal petitioner, Liani Reyna, asks this office to order the Portland Police Bureau (PPB) to provide her with a copy of PPB report 19-803955. PPB has declined to release it, asserting that, pursuant to ORS 419B.035, it is a report of child abuse and may not be released without the approval of the Department of Human Services (DHS). Petitioner asserts that, notwithstanding this is a report of child abuse usually exempt from disclosure, she has obtained the necessary approvals to allow PPB to release it to her. PPB has nonetheless still refused to release the report and points out that, although petitioner has obtained a letter from DHS that could be read that way, the letter is not in the form that DHS has previously told law enforcement agencies constitutes its approval to release under ORS 419B.035. Accordingly, PPB asks for this office's determination if the approval received by petitioner is sufficient to satisfy the requirements of ORS 419B.035.

For the reasons that follow, we agree that the wording of the letter from DHS to petitioner constitutes sufficient evidence of DHS' authorization to release the record, and grant the petition.

DISCUSSION

A. Child Abuse Reports – ORS 419B.035(12)

ORS 419B.035 requires that reports of child abuse be confidential and vests Oregon's Department of Human Services with sole authority to authorize the release of any report of child abuse. This rule itself is well-settled and is not the point of dispute in this petition. Although the procedural history of this case is long the disagreement presented for resolution surrounds what, precisely, constitutes authorization by DHS to a law enforcement agency to release a report of child abuse.

PPB has relayed to this office in November 2019 that DHS disseminated a protocol for release of records to local law enforcement agencies. This protocol stated that when DHS intended to authorize release it would directly communicate that to a local law enforcement agency and would include the following language:

This report was received by DHS as a cross report of child abuse per 419B.015. DHS is not retaining this report as part of a child abuse investigation that requires confidentiality under 419B.035 because it is not a report of abuse as defined by ORS 419B.005.

Through what petitioner describes as a series of hoops she was asked to jump through, she obtained from DHS a letter, dated July 9, 2020, that reads, in relevant part,

It is recommended you take a copy of this letter with you when you request this record from LEA [law enforcement agency] so they know your request has already been reviewed by the Public Records unit and should be fulfilled at their office.

Taken at face value this language indicates that DHS has reviewed the records request at issue and believes that it “should be fulfilled” by the local law enforcement agency. Counsel for PPB states that PPB’s records unit has tried repeatedly, and without success, to obtain specific clarification from DHS about its intent in this case. Because release of child abuse reports is flatly prohibited by law absent DHS approval, PPB’s caution is understandable and DHS’ refusal to clarify inexplicable. However, interpreting the two DHS letters presented here (the November 2019 protocol and petitioner’s case-specific letter), we agree that petitioner has obtained the necessary authorization.

The protocol cited by PPB references a determination by DHS that the report at issue is not a report of child abuse and thus ORS 419B.035 does not apply. This case presents a somewhat different situation. The report, according to petitioner, *is* a report of child abuse, but DHS has nonetheless authorized its release to this requestor.¹ The language in the letter sent to petitioner is thus not inconsistent with the policy disseminated by DHS in November 2019, which applies only to reports that DHS concludes are *not* reports of child abuse.

To be sure, DHS’ letter to petitioner indicates that DHS has reviewed its records and does not possess a copy of the responsive police report. The letter does not indicate an affirmative conclusion that the report is not a report of child abuse. Nonetheless, it is a letter from DHS’ public records unit that indicates that the request “should be fulfilled” by the local law enforcement agency (in this case PPB).

While certainly not clear cut, for all the reasons PPB has identified, the presumption in public records matters always favors disclosure. A reasonable interpretation of the language in DHS’ letter supports release. We therefore conclude that this is sufficient here to authorize PPB to release the record. If we have misinterpreted DHS’ intent, it can easily so indicate to PPB on any similar case moving forward by promptly responding to a request from PPB for confirmation or clarification.

¹ Petitioner states that she is both the parent of the child who is the subject of the report and the person who initiated the report.

ORDER

Accordingly, the petition is granted. PPB is shall provide petitioner with a copy of report 19-803955 pursuant to the authorization granted by DHS' July 9, 2020 letter to petitioner.

Very truly yours,



MIKE SCHMIDT

District Attorney

Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

20-35