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March 20, 2003

Paul J. Rask
Attorney at Law
106 Tabor Square
4610 S.E. Belmont Street
Portland, OR 97215

Re: *Petition for Public Records Disclosure Order:*
Department of Transportation, Driver and Motor Vehicle Services Records

Dear Mr. Rask:

This letter is the Attorney General's order on the petition prepared by your client, Albert Azorr, Jr., for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which you forwarded to this office on behalf of Mr. Azorr and we received on March 13, 2003, asks the Attorney General to direct the Department of Transportation, Driver and Motor Vehicle Services (DMV) to make available the entire contents of the files it maintains concerning Mr. Azorr's driver license. On behalf of your client, you narrowed the petition in a March 17, 2003 telephone conversation with Assistant Attorney General Sarah Castner to records contained in the file maintained by the DMV Driver Safety Unit relating to the suspension of Mr. Azorr's driving privileges. For the reasons that follow, we respectfully deny the amended petition.

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

Mr. Azorr's petition states that he asked DMV to disclose the requested records on six occasions and that he has received no records as of the date of the petition. Deana Hampton,

manager of the Driver Safety Unit at DMV, confirms that Mr. Azorr has requested the records and that DMV has made no disclosures as of this date. To respond to the amended petition, we consider the exemptions stated in the Public Records Law that may apply to the requested records.

1. Records submitted in confidence

The right to inspect public records contained in the Public Records Law is subject to specific exemptions and limitations. ORS 192.502(4) exempts from disclosure:

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

In previous orders,[1] we have stated that the purpose of the exemption is to encourage individuals to voluntarily provide relevant information to a public body, with some reasonable assurance that the information will be kept confidential. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG'S MANUAL) (2001) 64.

The five conditions that must be met in order for the "submitted in confidence" exemption to apply are:

> The informant must have submitted the information on the condition that the information would be kept confidential.
> The informant must not have been required by law to provide the information.
> The information itself must be of a nature that reasonably should be considered confidential
> The public body must show that it has obligated itself in good faith not to disclose the information.
> Disclosure of the information must cause harm to the public interest.

AG'S MANUAL at 64.

By statute, DMV is responsible for determining whether a person is ineligible for a driver license because that person's ability to drive safely is impaired due to a physical or mental disease or disability. 807.060, 809.410. DMV is also responsible for requesting a driver to reestablish eligibility for driving privileges by retaking an examination under ORS 807.070, if DMV has reason to believe the person may no longer be able to safely operate a motor vehicle. ORS 807.340. To help fulfill its responsibility for monitoring the eligibility and continuing qualification of licensed drivers, and to insure that motor vehicles are being operated safely,

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[1] Public Records Order, July 17, 1997 (Wilker); Public Records Order, January 16, 1998 (Flagg-Miller).

DMV relies on letters and other information from concerned citizens, and reports from law enforcement officials and health care providers who provide information to DMV about persons whose ability to safely drive may be impaired.

Records within the scope of the amended petition include those submitted by concerned citizens and received by DMV on August 19, 2002, December 23, 2002, December 24, 2002 and December 31, 2002. Additional records consist of notes taken by DMV staff members regarding discussions with these individuals about Mr. Azorr's driving ability and references to the submitted records and discussions in internal memorandums. Ms. Hampton told us that in a conversation with one of these individuals, that took place in December, 2002, the person made clear that the information was being provided under the belief that DMV would maintain its confidentiality. In part, this belief may have been based on the fact that DMV has adopted two administrative rules, OAR 735-074-0010 and OAR 735-076-0010, purporting to protect the confidentiality of information provided to DMV for this purpose. Ms. Hampton made assurances that confidentiality would be maintained. Based on Ms. Hampton's telephone call and other information received by DMV, we conclude that the concerned citizens who provided information falling within the scope of the amended petition would not have done so if they did not believe that DMV would maintain its confidentiality. On this basis, we believe that the submission of information meets the first criterion of ORS 192.502(4).

In relation to the second criterion for records to be exempt under ORS 192.502(4), the records in question contain information that was submitted to DMV on a voluntarily basis; submission was not required by law. As for the third criterion, we find that the information is of a nature that reasonably should be considered confidential. In part, we reach this conclusion based on the fact that DMV considered confidentiality of sufficient relevance to encourage reporting of concerns that the agency adopted administrative rules to oblige itself to maintain confidentiality. With regard to the fourth criterion, DMV, through its administrative rules and Ms. Hampton's December conversation, obliged itself in good faith not to disclose the information. Finally, we conclude that disclosure of the information submitted by concerned citizens would cause harm to the public interest by discouraging others from disclosing to DMV similar information of apparently unsafe drivers, thus impairing public safety.[2]

Based on our analysis, we conclude that records within the scope of the amended petition are exempt from disclosure under ORS 192.502(4) to the extent they contain information submitted by concerned citizens, either in writing or orally, or they identify those submissions.

2. Personal information

Some responsive records that are not exempt from disclosure as information submitted in confidence contain the names, addresses, phone numbers or other identifying information of the concerned citizens who contacted DMV about Mr. Azorr's driving ability. ORS 192.502(2) exempts:

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[2] We have previously denied petitions for disclosure of these type of documents. *See e.g.*, Public Records Order , December 3, 1993 (Bowes); Public Records Order, April 14, 1992 (Hickman); Public Records Order, May 13, 1988 (Haim) and Public Records Order, April 28, 1988 (Jones).

> 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.

For information to be exempt on the basis of personal privacy it must be the case that its disclosure would constitute an unreasonable invasion of privacy. The test is whether a reasonable person under the circumstances would deem disclosure to be offensive or objectionable. This office has concluded that normally, neither the name, home address nor telephone number of an individual is exempt on the basis of personal privacy because a person generally shares such information with other members of the public. However, we have also concluded that there are situations in which it can be established that such information is covered by this exemption. *See* Letter of Advice dated October 13, 1988 to Chancellor W.T. Lemman (OP-6248).

Through submitting information to DMV in confidence we know that the concerned citizens in question seek to maintain their anonymity. Under these particular circumstances, we conclude that disclosure of the identity of individuals who provided information to DMV about their concerns as to Mr. Azorr's driving ability would constitute an unreasonable invasion of privacy because such disclosure could have the effect of jeopardizing personal and professional relationships between these individuals and Mr. Azorr.

We do not find an overriding public interest which requires disclosure of the personal information under these circumstances. Such disclosure could discourage individuals who have relevant information about a person's driving ability from taking steps to make sure DMV is notified, which is detrimental to public safety and unnecessarily jeopardizes the ability of DMV to monitor the driving ability of persons who may no longer be qualified to drive.

Therefore, we conclude that identifying information about persons who submitted information to DMV in confidence, contained in otherwise nonexempt records, is exempt from disclosure and may be redacted.

3. Disclosure of Nonexempt Documents

Craig Daniels of the DMV Records Policy Unit has informed us that, with the exception of the records we have concluded are exempt from disclosure and subject to redaction of that information, DMV has agreed to disclose all other records responsive to the amended petition. OAR 735-010-0010 requires payment of fees for DMV records to be paid in advance and Mr. Daniels has calculated the fee to be $140.00. If Mr. Azorr does not wish to receive copies of correspondence sent from him or you to DMV, please contact Mr. Daniels and he will adjust the fee accordingly. DMV has agreed to disclose the records to you, in your capacity as Mr. Azorr's attorney, upon payment of its fee.

Because DMV has agreed to disclose the nonexempt records maintained in the Driver Safety Unit file, the amended petition is moot as to this material. Accordingly, we deny the petition as to the records DMV has agreed to disclose. We further deny the amended petition as to the remaining records because they are exempt from disclosure under ORS 192.502(2) and 192.502(4).

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS12057
c: Craig Daniels, DMV