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October 30, 2002

Steven Edelman
680 NW Torreyview Lane
Portland, OR 97229

Re: *Petition for Public Records Disclosure Order*:
Oregon Department of Transportation Records

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 October 23, 2002, asks the Attorney General to order the Oregon Department of Transportation (ODOT) to produce a copy of the "mailing list, including addresses, for the Notice of Proposed Rulemaking Hearing for Rule 735 filed August 14, 2002." For the reasons that follow, we respectfully deny your 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. *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).

According to the records you attached with your petition, Craig Daniels, the Records Policy Manager for the Driver and Motor Vehicle Services Division (DMV) of ODOT, denied your request on the basis that the mailing list "is considered a motor vehicle record under ORS 802.175(1) and is subject to the Privacy Law restrictions."

Among the people to whom an agency must provide notice of its intent to adopt an administrative rule are those who have made a written request to receive such notice. ORS 183.335(1)(c). From the written requests an agency establishes a "mailing list." ORS 183.335(8). In his denial of your request, Mr. Daniels stated that ODOT had not received "any requests from individuals merely wanting to be on the mailing list." In

other words, ODOT does not maintain a mailing list under ORS 183.335(8) relevant to the proposed rule with which you are concerned. Because an agency cannot be required to disclose a public record that does not exist, we deny your petition so far as it relates to a mailing list compiled under ORS 183.335(8).

ODOT sent notice of the proposed rulemaking to a total of eighteen people. According to Mr. Daniels, it sent notice to those individuals it determined would be interested in the rule based on the fact that they either comply with the financial responsibility requirements of ORS chapter 806 through means other than obtaining and maintaining a motor vehicle liability insurance policy or had contacted ODOT to inquire about such alternative methods of compliance. In addition, ODOT provided notice to Senator Verne Duncan, Representative Jerry Krummel, contact personnel in the Offices of Legislative Administration and Legislative Counsel, and two ODOT officials.

Under the Public Records Law, records are exempt from disclosure if their disclosure is "prohibited or restricted or otherwise made confidential or privileged under Oregon Law." ORS 192.502(9). Under Oregon statutes governing motor vehicles and drivers, a "motor vehicle record" is "any record that pertains to a grant of driving privileges, an identification card issued by the Department of Transportation, a vehicle title or a vehicle registration." ORS 802.175(1). ODOT and its employees are prohibited from disclosing "personal information about an individual that is obtained by the department in connection with a motor vehicle record."[1] ORS 802.177. Protected "personal information" includes a person's name and address, excluding a five-digit zip code. ORS 802.175(3). To the extent that ODOT mailed a notice of rulemaking to a person by consulting a motor vehicle record for his or her name and address, the information is exempt from disclosure under ORS 192.502(9).

Mr. Daniels has told us that ODOT mailed a notice of rulemaking to seven people by retrieving their names and addresses from financial accountability records maintained by the agency. Because a statement of compliance with financial responsibility requirements is a required component of applying to register a vehicle in Oregon, ORS 803.370(8), financial accountability records are motor vehicle records under ORS 802.175. Therefore, the mailing information for those seven people, except for the zip codes, is exempt from disclosure under ORS 192.502(9).[2] Mr. Daniels has agreed to provide you with the non-exempt zip codes. According to information provided by Mr. Daniels and his staffs, the mailing information for the remaining ten people to whom ODOT sent notice of rulemaking, excluding you, was not taken from motor vehicle records. Mr. Daniels has agreed to provide you with that information as well.

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[1] While there are statutory exemptions to this prohibition listed in ORS 802.179, none are relevant to your request.

[2] We understand that DMV has already disclosed to you the names of the people to whom it sent notice of rulemaking, including the names of the seven people whose mailing information was taken from motor vehicle records. In relation to this disclosure we note that state statutes provide criminal and civil penalties for the use of personal information from motor vehicle records in violation of ORS 802.175 to 802.187. *See* ORS 802.189 and 802.191.

To summarize, ODOT sent notice of rulemaking to a total of eighteen people, including you. Because ODOT took the mailing information for seven of those recipients from motor vehicle records, the information is exempt from disclosure under ORS 192.502(9). DMV has agreed to provide you with a copy of the non-exempt zip codes for those seven recipients and the mailing information for the ten remaining recipients. Because ODOT has agreed to provide you will all non-exempt information, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS11229
c: Robert C. Daniels, ODOT