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November 6, 2009

Rogers C. Wheatley
P.O. Box 306
Cascade Locks, OR 97014

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

Dear Mr. Wheatley:

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. The petition, which we received on October 30, 2009, concerns a report submitted to the Department of Transportation, Driver and Motor Vehicle Services (DMV) which prompted DMV to require that you take tests to demonstrate your ability to safely operate a motor vehicle. 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. ORS 192.420. Any person denied the right to inspect or receive a copy of a public record of a state agency may petition the Attorney General to determine whether the record may be withheld. ORS 192.450(1).

In response to your request for a copy of your driver safety case file, DMV provided you materials from that file under cover of a letter dated June 17, 2008 and signed by Debbie Rico of DMV's Record Services Unit. But Ms. Rico also noted that "[a]fter retrieving your file and reviewing the documents, it has been determined that we are unable to disclose a portion of the Driver Safety Case file," citing OAR 735-076-0005(2). Ms. Rico explained that "DMV receives and maintains certain customer information that is considered protected and generally not disclosed, including medical information." You have made other inquiries to DMV for information regarding its procedures in these matters and regarding your case in particular, and you raise a number of those inquiries again in your petition. However, it does not appear that

any of these inquiries involve requests for records or resulted in the denial of any such requests.[1] Consequently, our order only addresses DMV's denial of your request for the report on which it based its requirement that you take the driver examinations.

We spoke to Craig Daniels, Records Section Manager at DMV, who confirmed that DMV denied your request because the report was submitted in confidence and DMV determined that it is therefore exempt from disclosure under the Public Records Law. ORS 192.502(4) exempts from disclosure:

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

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. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (MANUAL) (2008) at 74.

Five conditions must be met in order for the "submitted in confidence" exemption to apply:

- 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 kept confidential.
- The public body must show that it has obliged itself in *good faith* not to disclose the information.
- Disclosure of the information must cause harm to the public interest.

MANUAL at 74-75.

For the following reasons, we conclude that the five elements required by ORS 192.502(4) have been met so as to exempt the petitioned information from disclosure. First, the individual who submitted the report on a DMV Driver Evaluation Request form did so in confidence, expressly requesting confidentiality by checking the appropriate box on the form. Second, the individual was not required by law to submit the report to DMV, but did so voluntarily. Third, the report is of a nature that reasonably should be kept confidential. In part,

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[1] It also appears that DMV has provided information regarding the procedures that apply to situations of this kind. DMV has, however, continued to withhold information regarding the contents of the report on which it based its decision in your case.

we reach this conclusion based on the fact that, in order to encourage reporting, DMV considered confidentiality of these reports to be of such importance that the agency adopted an administrative rule, OAR 735-076-0005, to oblige itself to maintain confidentiality. Also, we recognize that disclosure of the identity of individuals who provide information to DMV about their concerns as to a person's driving ability could have the effect of jeopardizing personal and professional relationships, and there is a potential for harassment of reporters by those who are the subject of submitted reports. Fourth, DMV obliged itself in good faith not to disclose the reporter's identity through the cited administrative rule, OAR 735-076-0005.

Finally, we believe the public interest would suffer by disclosure of the record. By statute, DMV is responsible for determining whether a person is ineligible for a driver's license because that person's ability to drive safely is impaired due to a physical or mental disease or disability. ORS 807.060. DMV is also responsible for requesting a driver to reestablish eligibility for driving privileges by taking an examination or submitting a medical report or Certificate of Vision if DMV has reason to believe the person may no longer be qualified to hold a license or no longer 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, DMV relies on letters, reports and other information from concerned citizens, law enforcement officials and health care providers. We believe that the public safety interest in having concerned citizens continue to provide such reports to DMV would suffer by disclosure of the record, with such disclosures discouraging others from submitting good faith reports of apparently unsafe drivers due to fears that personal or professional relationships will be jeopardized or fears of harassment or retribution. We do not find any basis to believe the report was submitted for the purpose of harassment, vindictiveness or any other similar motive and therefore conclude the public interest would suffer by disclosure of this information.

Based on this analysis, we conclude that the information you requested is exempt from disclosure under ORS 192.502(4).[2] Accordingly, we respectfully deny your petition.

Sincerely,

DAVID E. LEITH
Associate Attorney General

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c: Craig Daniels, Records Section Manager, DMV

[2] We have previously denied petitions for disclosure of this type of record. *See e.g.*, Public Records Order, August 27, 2008 (Wilkinson), Public Records Order, July 21, 2005 (Jackson), Public Records Order , March 20, 2003 (Rask), 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).