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December 15, 2008

Phyllis L. White
4426 NE 41st Ave
Portland, OR 97211

Re: Petition for Public Records Disclosure Order:
Driver and Motor Vehicle Services Division Records

Dear Ms. White:

On December 8, 2008, the Attorney General received correspondence from you "requesting recent medical and driving documents" that you indicated were in the possession of the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV). We contacted DMV and learned that DMV had recently withheld certain records in response to a public records request you directed to the DMV. We consequently treat your letter as a petition for an order of the Attorney General under ORS 192.450(1) directing the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) to disclose the records that DMV withheld in response to your request. For the reasons that follow, your petition is respectfully denied.

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. Any person who is denied the right to inspect or receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1). According to Robert Reed, DMV Records Custodian, the documents DMV did not provide to you are (1) a copy of a Mandatory Impairment Referral submitted by a physician, and (2) a Driver Evaluation Request, which is a report submitted to request that DMV re-evaluate a driver's ability to drive safely.

We previously denied your petition for a copy of the Mandatory Impairment Referral. Public Records Order, April 29, 2008, White. We adhere to our previous decision that this document is exempt from disclosure under ORS 192.502(9).

We turn to the Driver Evaluation Request. According to Mr. Reed, DMV did not provide you with a copy of that document because DMV determined that the report, including the name and address of the reporter, is exempt from disclosure under ORS 192.502(4). That provision of the Public Records Law exempts from disclosure

> [i]nformation 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 kinds of information to public bodies, with some reasonable assurance that the information will be kept confidential." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) (MANUAL) 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.

We conclude that the five elements required by ORS 192.502(4) are present in this case, and the Driver Evaluation Request is exempt 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 this regard, we note that DMV has adopted an administrative rule, OAR 735-076-0005, making these records confidential. DMV reasonably could conclude that extending confidentiality to good-faith reports of this kind would encourage such reports. 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 submitting a medical report of 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. Eliminating the confidentiality of such reports could discourage others from submitting good-faith reports of apparently unsafe drivers. Prospective reporters may fear that personal or professional relationships could be jeopardized or that the reporter may be subject to harassment or retribution.

This result is consistent with our previous orders concerning Driver Evaluation Requests. *See, e.g.*, Public Records Order, August 26, 2008, Wilkinson. We note that Driver Evaluation Requests may be disclosed when the circumstances indicate that they were not submitted in good faith. *See* Public Records Order, March 11, 2008, O'Connor. In your petition, you suggest that DMV has received inaccurate information regarding your health. However, DMV does not believe that the report in question was motivated by vindictiveness, the desire to harass you, or any other improper purpose. We have no information indicating that DMV's assessment is inaccurate. We therefore conclude the public interest would suffer by disclosure of this record you seek.

As explained above, we conclude that the Mandatory Impairment Referral is exempt from disclosure under ORS 192.502(9), and the Driver Evaluation Request is exempt under ORS 192.502(4). Accordingly, we respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Robert Reed, DMV, Record Services Manager