Kelly Carlson

HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

November 7, 2005

Mr. George DuBois
10048 NE Campaign Street
Portland, Oregon 97220

Re: Petition for Public Records Disclosure Order:
Oregon State Police Records

Dear Mr. DuBois:

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 31, 2005, asks the Attorney General to direct the Oregon Department of State Police to make available the following records:

1. The logbook entry of OSP Trooper Roger Reid of the citation of the Petitioner on March 12, 2005 – citation number E106413.

2. The logbook entry of OSP Trooper Roger Reid of the citation of Kristopher Clifton on March 13, 2005 – citation number believed to be E106414.

For the reasons that follow, we 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).

1. Exemptions Incorporating Federal or State Laws Prohibiting Disclosure

Two of the exemptions from disclosure in the Public Records Law, ORS 192.502(8) and 192.502(9), incorporate the confidentiality protection for records provided by either federal law or state statute outside the Public Records Law. ORS 192.502(8) exempts from disclosure:

> Any public records or information the disclosure of which is prohibited by federal law or regulation.

ORS 192.502(9) exempts from disclosure:

> Public Records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

Except in certain circumstances, both federal and state Driver Privacy Protection laws prohibit the redisclosure of personal information contained in motor vehicle records. Generally speaking, a "motor vehicle record" is "[a]ny record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." 18 USC §2725(1). *See also* ORS 802.175(1) (under Oregon law, a "motor vehicle record" is defined as "[a]ny record that pertains to a grant of driving privileges, an identification card issued by the Department of Transportation, a vehicle title or vehicle registration.")

In a letter dated June 7, 2005, Cort Dokken, OSP Risk Manager, denied your request for personal information about Mr. Clifton due, in part, to Mr. Dokken's belief that OSP Trooper Roger Reid had obtained the relevant information in his logbook only through accessing DMV computer records through OSP dispatch. If that were the case, disclosure by OSP would have been unlawful. *See* 49 Op Atty Gen 127 (OSP's redisclosure of personal information obtained from a *motor vehicle record* prohibited unless requestor is authorized to receive and intends to use information for authorized purpose).

On November 1, 2005, we spoke to Trooper Reid about your petition. He told us that he took the information in his logbook concerning your citation (citation number E106413) from your driver license and not from DMV records accessed through OSP dispatch. Trooper Reid further said that, although he initially ran Mr. Clifton's license plate through dispatch, he later personally contacted him and obtained the information contained in his logbook concerning Mr. Clifton's citation (citation number E106414) directly from Mr. Clifton's driver license.

Because Trooper Reid obtained the information pertaining to Mr. Clifton in the requested logbook entries from Mr. Clifton's driver's license, OSP is not prohibited from disclosing the requested records. This is because we have determined that a *driver's license* is not a "motor vehicle record" for purposes of either the federal or state Driver Privacy Protection laws. Public Records Order dated November 5, 1999 (Bledsole).

Accordingly, we have concluded that pursuant to a public records request, OSP's disclosure of personal information that was recorded by a law enforcement officer from a person's driver's license would not be a prohibited redisclosure of such information under federal or state law. *Id.* In light of Trooper Reid's accounting of how he obtained the requested information recorded in his logbook, the records you request are not exempt from disclosure under ORS 192.502(8) or ORS 192.502(9).

2. Personal Privacy Exemption.

ORS 192.502(2) exempts some personal information from the disclosure requirements of the Public Records Law. Specifically, this provision exempts:

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

The purpose of this exemption is to protect the privacy of individuals from unreasonable invasion. The exemption is not intended for the benefit of the public body. In *Jordan v. Motor Vehicles Division*, 308 Or 433, 781 P2d 1203 (1989), the Oregon Supreme Court discussed the elements of ORS 192.502(2) and the application of this exemption to a request for a home address. The court identified two threshold questions to be answered by the public body responding to a records request: whether the requested information is of a personal nature, and whether disclosure will constitute an unreasonable invasion of privacy. If both of these questions are answered affirmatively, then the public body must answer a further question: whether the public interest nonetheless requires disclosure in the particular instance. *Id.* at 440.

Applying this analysis, the *Jordan* court upheld the Motor Vehicles Division's (DMV) refusal to disclosure an individual's home address contained in its records. The court held a home address is personal information, because a home address is information specific to an individual. *Id.* In determining whether disclosure of such personal information would constitute an unreasonable invasion of privacy, the court looked to the purpose for which the requestor would use the information. In determining that disclosure of the requested record would more likely than not constitute an unreasonable invasion of privacy, the court concluded that "* * * providing the information would allow Jordan to harry [the subject of the record] incessantly to the extent that an ordinary reasonable person would deem highly offensive." *Id.* at 442-443.

Having concluded that both of the threshold requirements for an exemption were established, the court next turned to the question whether Jordan, the party seeking disclosure, had met his burden of proof to overcome the exemption. The court found that Jordan had offered nothing to prove that the invasion of privacy permitted by disclosure would not be unreasonable or that disclosure was in the public interest. *Id.* at 443.

Accordingly, the court held that the individual's home address was exempt from disclosure under ORS 192.502(2). *Id.*

Trooper Reid's logbook entries for citation E106413 and citation E106414 contain a photocopy of the Uniform Traffic Citations and Complaints issued to you and Mr. Clifton. The citations indicate that both you and Mr. Clifton were cited into the Yamhill County Circuit Court on the alleged 'speed racing' incident. OSP Lieutenant Marty West told us that you indicated to her that you already have obtained unredacted copies of both citations from the Yamhill County Circuit Court, and that she confirmed this with the court. Although arguably the citations may contain personal information, disclosure of the citations contained in OSP's records would not constitute an unreasonable invasion of privacy. Of course, any privacy interest in Trooper Reid's logbook entry for citation E106413 is yours. Therefore, none of these three records are exempt from disclosure.

However, Trooper Reid's logbook entry for citation E106414 contains two telephone numbers for Mr. Clifton which do not appear on the citation itself. For purposes of ORS 192.502(2), an individual's telephone number constitutes personal information. Thus, Mr. Clifton's telephone numbers are subject to the personal privacy exemption if their public disclosure would constitute an unreasonable invasion of privacy, *i.e.* be highly offensive to an ordinary reasonable person.

Lt. West told us that after Trooper Reid issued citation number E106414 to Mr. Clifton, Mr. Clifton contacted her and requested that his personal information not be disclosed to you due to the underlying circumstances of the "speed racing" incident. Mr. Clifton told Lt. West that he did not know you prior to the incident and that he was concerned about further contact from given his recollection of how the "speed racing" incident occurred. Lt West also told us that during telephone conversations with her, when she raised the possibility of requested records not being disclosed to you, you raised your voice and became verbally upset. Based on this evidence, we find that disclosure of Mr. Clifton's telephone numbers would more likely than not be highly offensive to an ordinary reasonable person and therefore constitute an unreasonable invasion of Mr. Clifton's privacy.

You have not shown that public disclosure of Mr. Clifton's telephone numbers would not be an unreasonable invasion of privacy, and we have no evidence to suggest that the public interest by clear and convincing evidence requires disclosure in this instance. In written correspondence to OSP, you indicated that you needed the citations and logbook entries because of an appeal and civil rights lawsuit you anticipated filing against OSP and the State of Oregon. However, "[a]n interest in private litigation does not qualify as a public interest requiring disclosure." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 29. Therefore, we conclude that Mr. Clifton's telephone numbers contained in Trooper Reid's logbook entry for citation number E106414 are exempt from disclosure under ORS 192.502(2).

For these reasons, we respectfully deny your petition. Betsy Enos, OSP Risk Management Director, has indicated that OSP will disclose to you copies of citations E106413 and E106414, as well as Trooper Reid's logbook entry concerning citation E106413 in unredacted form Therefore, we deny your petition as moot as to these records. Furthermore, as to your petition as it relates to Mr. Clifton's telephone numbers contained in Trooper Reid's logbook entry for citation E106414, because we have concluded that Mr. Clifton's telephone numbers are exempt from disclosure, OSP has agreed to disclose this record to you with that information redacted. Accordingly, we deny your petition as it relates to Mr. Clifton's telephone numbers and deny your petition as moot as it relates to the remaining portion of that record.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS/gvk:AGS16426
c: Betsy Enos, OSP