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

July 21, 2005

Ella Marie Jackson
1420 SE 16th Ave., #506
P.O. Box 40812
Portland, OR 97240

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

Dear Ms. Jackson:

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 July 11, 2005, asks the Attorney General to direct the Department of Transportation, Driver and Motor Vehicle Services (DMV) to make available "a copy of the letter of complaint submitted to DMV, in an attempt to suspend my driver's license." 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).

Your petition states that you asked DMV to disclose the requested record on June 14, 2005. We spoke to Deana Hampton, Manager of the Driver Safety Unit at DMV, about your petition. Ms. Hampton confirms that you requested a copy of a report that was submitted to DMV on a Driver Evaluation Request form and that, on June 22, 2005, DMV sent you a letter denying your request.

Ms. Hampton told us that DMV denied your request due to the report being exempt from disclosure because it was submitted to DMV in confidence. 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. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG'S MANUAL) (2004) 67.

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.

AG'S MANUAL at 68.

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 record from disclosure. First, the individual who submitted the report did so in confidence, expressly requesting confidentiality by checking the appropriate box on the DMV 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, 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 735-074-0150, to oblige itself to maintain confidentiality. Also, we recognize the 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 735-074-0150.

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, 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 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 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. 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 of harassment or retribution.

Based on this analysis, we conclude that the record you requested is exempt from disclosure under ORS 192.502(4).[1] Accordingly, we respectfully deny your petition.

Sincerely,

Philip Schradle for

PETER D. SHEPHERD
Deputy Attorney General

AGS15919
c: Deana Hampton, DMV

[1] We have previously denied petitions for disclosure of this type of record. *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).