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October 7, 2013

Todd Peterson
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825 NE 20th Ave.
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Re: Petition for Public Records Disclosure Order
Oregon Department of Transportation / Driver & Motor Vehicles Division
DOJ File No. 257001-GA0099-13

Dear Mr. Peterson,

This letter is the Attorney General's order in response to your petition asking our office to order the Driver and Motor Vehicles Division of the Oregon Department of Transportation (DMV) to disclose records to you pursuant to the Oregon Public Records Law, ORS 192.410 to 192.505. Specifically, you seek copies of police agency reports regarding vehicular accidents that various police agencies have submitted to DMV. For the reasons that follow, we respectfully deny your petition.

You requested the reports in question from DMV on July 19, 2013. DMV informed you that it would be willing to provide the reports, but would redact any personal information appearing in them. DMV asserts that the reports, in the hands of DMV, constitute information DMV obtains in connection with "motor vehicle records" and that; as a consequence, ORS 802.177 generally prohibits DMV from disclosing personal information from those reports. DMV further asserts that none of the exceptions to the general nondisclosure requirement are applicable to your request. DMV therefore asserts that the records are exempt from disclosure pursuant to ORS 192.502(9).

You take issue with the first of DMV's determinations, arguing that the reports submitted to DMV are not "motor vehicle records." You consequently conclude that the prohibition against disclosure of personal information is inapplicable. Where DMV focuses on state law, your argument cites mainly to analogous federal statutes prohibiting state DMVs from disclosing

personal information in motor vehicle records, 18 USC §2721. Because DMV is relying on state law to uphold its denial of your request for personal information, our analysis and order focus on the state provisions.[1]

The Oregon Public Records Law provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). A public body that asserts a statutory exemption from disclosure has the burden of demonstrating that the law permits the material in question to be withheld from public disclosure. ORS 192.450(1); ORS 192.490(1).

As previously noted, DMV relies on ORS 192.502(9)(a), which expressly exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." Specifically, DMV asserts that ORS 802.177 generally prohibits DMV from disclosing the information you request:

> Except as otherwise provided in ORS 802.179, neither the Department of Transportation nor any officer, employee or contractor of the department may knowingly disclose or otherwise make available to any person personal information about an individual that is obtained by the department in connection with a motor vehicle record.

In this case, there is no dispute about the scope of the "personal information" to which ORS 802.177 applies. *See* ORS 802.175(3). Nor is there any dispute about whether disclosure to you would be authorized by any of the exceptions to the prohibition that are codified at ORS 802.179. Consequently, the only issue presented by your petition is whether the personal information that DMV has said it will not provide to you is "personal information about an individual that is obtained by the department in connection with a motor vehicle record" and therefore within the express scope of the disclosure prohibition of ORS 802.177. We conclude

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[1] Because DMV's reliance on state law makes it unnecessary to consider the analogous federal statutes in depth, we have not done so. At first blush, however, it appears to us that the result under federal law would likely be the same as the result under state law. That is, both laws generally prohibit DMV from disclosing "personal information * * * about any individual obtained by the department in connection with a motor vehicle record." 18 USC §2721(1)(a). You refer us to an unpublished decision of a court in the Federal District of Colorado, which you describe as concluding that this prohibition "does not include accident reports," citing *Mattivi v. Russell*, Not Reported in F Supp 2d, 2002 WL 31949898 (2002). In addition to being an unpublished decision by a district court, it does not appear to us that the decision is on point. *Mattivi* pertains to publication by a newspaper of a police report obtained from a police department that happened to include information the police had received from the Colorado DMV. It does not address whether DMVs are generally prohibited from disclosing personal information contained in police reports to a DMV pursuant to the DMV's functions.

that the reports are "obtained by [DMV] in connection with a motor vehicle record" and that DMV correctly denied your public records request for personal information contained therein.

ORS 802.175 defines a "motor vehicle record" as "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." The effect of ORS 802.177 is to prohibit the disclosure of any personal information "obtained * * * in connection with" such a record.

ORS 810.460 requires a police officer to submit a report to the DMV whenever the officer investigates a vehicle accident required to be reported under ORS 811.725 or 822.600, or prepares a report after investigating an accident. Pursuant to ORS 802.040, DMV is to specify the manner for reporting accidents under ORS 810.460 and the agency has adopted a form for this purpose. Once submitted, DMV is required to maintain the reports. ORS 802.200(11). DMV is required to analyze and tabulate information from the reports in order to publish statistical information concerning accidents. 802.050(2). DMV also uses these reports to determine if the vehicles involved in the accident were covered by an insurance policy as required by ORS 806.010. If DMV determines from a report that a vehicle did not have insurance at the time of the accident, DMV takes action to suspend the driving privileges of the driver of that vehicle under ORS 806.010 and 809.417. DMV is also required to post the accident on the driver's driving record maintained by DMV. ORS 802.200(9)(b),(c). Under ORS 809.480 and OAR Division 72, a person's driving privileges may be suspended based on the driver's record of accidents and convictions.

In sum, the reports submitted to DMV pertain directly to the grant of driving privileges to the individuals named on the reports. In some cases, reports may lead to suspension of driving privileges, and the reports will result in an accident being noted on the driver's driving record. It follows that the personal information on the reports is "obtained by the department in connection with a motor vehicle record" and squarely within the express scope of the disclosure prohibition of ORS 802.177. We therefore agree with DMV that the personal information you are seeking is exempt from public disclosure in the hands of DMV. As a consequence, we must respectfully deny your petition.

Sincerely,

Mary H Williams

MARY H. WILLIAMS
Deputy Attorney General

MCK:lmt/4648375
cc: Craig Daniels, DMV