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DEPARTMENT OF JUSTICE

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August 12, 2010

Mark A. Erikson
Attorney at Law
1111 Main St., Suite 402
Vancouver, WA 98660

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

Dear Mr. Erikson:

This letter is the Attorney General's order on your petition asking that the Attorney General require the Oregon Department of Transportation, Driver and Motor Vehicle Services Division (DMV) to provide you with certain information under the Oregon Public Records Law, ORS 192.410 to 192.505. Specifically, you ask the Attorney General to order DMV and its employees to produce a copy of the following:

1. Records evidencing the current policy, and statutory authority, regarding recognition of Ignition Interlock Licenses [(IILs)] issued by the State of Washington after driving privileges have been suspended, revoked or canceled, as exempt from the requirement to hold an Oregon license or permit under ORS 807.020 when operating a motor vehicle in the State of Oregon.

2. Records evidencing the current policy, and statutory authority, authorizing individual police authorities to set standards for licensing of out-of-state drivers in the State of Oregon.

3. Records evidencing the current policy, and statutory authority, authorizing the Oregon Department of Transportation to charge $75 to "restore [out-of-state] driving status in Oregon."

In your request, you inform us that you seek "only the minimum documentation necessary to respond to the foregoing." For the reasons that follow, we respectfully deny your petition.

A "public record" "includes any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics." ORS 192.410(4)(a). ORS 192.420 confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations.

We have reviewed your correspondence with Connie Crapser, Records Policy Manager at DMV. On the whole, that correspondence shows a dispute between you and DMV regarding whether you are currently authorized to drive in Oregon. Among the correspondence are communications, dated June 21 and July 15, 2010, in which you made a request to DMV for written policies and statutory authority relating to IILs.

Our review of the correspondence does not indicate that your second or third requests were ever made to DMV, and you did not respond to an inquiry from our office about whether you had made those requests of DMV. We must deny your petition with respect to the requests you have not made to DMV, because we lack authority to order DMV to disclose public records in the absence of a denial by DMV. ORS 192.450(1); *see also, Morse Bros. v. ODED*, 103 Or App 619, 622 (1990) ("The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter.")

As for the first numbered request appearing in your petition, we observe that on June 28, Ms. Crapser explained to you that ORS 807.060 is the statute that governs eligibility for driving privileges in Oregon. In response to your further questions on the same subject, Ms. Crapser again forwarded that email to you on July 19. You did not indicate to Ms. Crapser that her response was inadequate in light of your request for "the minimum documentation necessary" to respond.

In any event, Ms. Crapser indicates that DMV does not have any current policies with respect to IILs. DMV has not denied your request for policies. As a result, to the extent you are seeking policies related to IILs, we must deny your petition.

To the extent that you are asking for documents "evidencing * * * the statutory authority" for the position DMV has taken in response to your inquiries, you appear to be seeking an opinion regarding the meaning of the Oregon Revised Statutes and the scope of DMV's authority under those statutes. The Public Records Law does not require DMV to provide you with such an opinion. The statutes themselves are readily available for public inspection, including on the internet at http://www.leg.state.or.us/ors/. DMV's administrative rules interpreting the statutes are also available, at http://arcweb.sos.state.or.us/rules/OARS_700/OAR_735/735_tofc.html. As we mentioned above, however, Ms. Crapser in fact informed you that ORS 807.060 governs

driving privileges in Oregon. If you question whether DMV is correctly applying the law to you, you are free to discuss those with an attorney of your choosing. The Oregon State Bar operates an attorney referral service. *See* http://www.osbar.org/public/ris/ris.html#referral.

Because DMV does not have policies responsive to your first numbered request, because your request for documents "evidencing the * * * statutory authority" for DMV's position is not actually a request for records, and because in any event Ms. Crapser has explained to you that ORS 807.060 governs eligibility for driving privileges in Oregon, we deny your petition with respect to the first numbered item. As for the second and third numbered items, we deny your petition because you never made the underlying requests to DMV. We note, however, that your requests once again reach "documents evidencing the * * * statutory authority" for various positions taken by DMV. Again, the statutes and DMV regulations are widely accessible to the public. If you have questions about what the statutes authorize and whether DMV's positions are consistent with the statutes, you are free to discuss those questions with an attorney. The Public Records Law does not require DMV to provide you with a legal opinion or state the statutory basis for its actions.

Your petition is respectfully denied.

Sincerely,

KEITH S. DUBANEVICH
Chief of Staff and Special Counsel
to the Attorney General

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c: Connie Crapser, DMV