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October 16, 1986

Glenn A. Eaton, Jr. PE
2892 Matheny Road
Gervais, Oregon 97026

Dear Mr. Eaton:

This letter responds to your written request for assistance from the Attorney General's office in obtaining copies of citizen letters in the custody of the Motor Vehicles Division (MVD). Your written request, dated October 7, 1986, was received by our office on October 9, 1986.

You do not ask us to order the MVD to disclose the citizen letters to you, but we have looked into the matter at your request, and we make the following report to address your concerns.

You asked the MVD for copies of letters from two citizens who suggested that you should be re-evaluated for drivers licensing purposes. You were re-evaluated by the MVD and passed the examination. However, your letter to us indicates that you are concerned about the government's authority to keep the citizen letters confidential. The Public Records Law grants the Motor Vehicles Division such authority.

ORS 192.500(2)(c) allows the government to withhold disclosure of certain types of confidential information. To qualify for non-disclosure, information not only must be submitted in confidence, but also must be submitted voluntarily and must be reasonably capable of being considered confidential. Additionally, the public body must have obliged itself in good faith not to disclose the information, and nondisclosure is justifiable when the public interest would be harmed by disclosure.

Information in the letters you wish to review meets the tests of ORS 192.500(2)(c). Our review of the letters indicates that the citizens requesting your re-evaluation asked that their letters be kept confidential. They were not required to submit their requests, but did so voluntarily. Furthermore, a MVD

rule gives such citizens an assurance of confidentiality. OAR 735-31-035(14) lists the factors MVD shall consider in determining whether a re-evaluation is necessary. Subsection (14)(d) allows MVD to rely upon requests from unofficial sources (e.g. private citizens). The rule states that: "The request must state the need for a re-evaluation by providing specific information pertaining to the person's operation of a motor vehicle. Requests must be in writing, and must not be anonymous. Requests will be treated with confidentiality if requested." (Emphasis supplied.)

Our review of the citizen letters confirms that the letters were not submitted anonymously. Our review confirms that the identity of the citizens, other information disclosing their identity, and information submitted for follow-up investigation reasonably can be considered confidential. Furthermore, the public interest would be harmed by a breach of confidentiality. Disclosure of the identity of these citizens would discourage them and others from providing information, relating to traffic safety, to an agency responsible for further investigation of a driver's qualifications.

In summary, we believe that the MVD is justified in denying your request for copies of the citizen letters because complete disclosure would reveal the names of the citizens and other confidential information. However, by copy of this letter, I am requesting the MVD to review the letters in an attempt to separate information, if any, which can be disclosed, from the large amount of information that the MVD is entitled to withhold as confidential. I expect that MVD's review will be completed by October 24, 1986, and we will contact you soon thereafter.

In the meantime, if you have any questions, please give me a call at 378-6002.

Very truly yours,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Robert A. Morris, Supervisor, Re-Exam Unit, (MVD)
Cynthia Carter, Assistant Attorney General