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May 10, 1996

John G. Kelley
P.O. Box 817
Oakridge, OR 97463

Re: ***Petition for Public Records Disclosure Order; Driver and Motor Vehicle Records***

Dear Mr. Kelley:

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 May 7, 1996, asks the Attorney General to direct the Oregon Department of Transportation, Driver and Motor Vehicle Services Branch (DMV) to allow you to exercise your right to inspect the nonexempt records of the agency. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and/or copying of the records in the office of the custodian. ORS 192.430. In making records available for inspection, or furnishing copies of public records, it may be necessary for the custodian to review the record and delete any exempt material. ORS 192.505.

The Public Record Law permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available. ORS 192.440(3). We disagree with your statement that ORS 192.440(3) authorizes a fee only for "the making, summarizing, compiling and tailoring of certified copies and copies of records maintained in machine readable or electronic form." Rather, this office has consistently interpreted this statute to authorize a public body to charge for any of its costs in making public records available under the Public Records Law, including the time spent by staff in locating and reviewing the requested records in order to delete exempt material and supervising a person's inspection of original documents in order to protect the records. *See* Public Records Order, April 7, 1989 (Martin); Public Records Order, May 19, 1993 (Smith); OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 10 (1995). An agency may charge for its search time even if it fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure. *Id.* ORS 802.220 and 802.230 specifically authorize DMV to establish and charge a "reasonable fee" for furnishing information from its records.

Some public bodies may waive or reduce fees. ORS 192.440(4). However, because DMV is supported by funds dedicated by Article IX, section 3a, of the Oregon Constitution to specific "highway purposes," the Oregon Constitution prohibits DMV from waiving fees that are reasonably established to cover costs in responding to a public records request. 39 Op Atty Gen 61, 64-64 (1978). OAR 735-10-030 and 735-10-040 establish by administrative rule, the fees charged by DMV for furnishing most records requested.

We have spoken to Barbara Pierce, Manager of DMV Information Services Support Section, concerning your petition. We have also reviewed a copy of the letter she sent to you on May 8, 1996, in response to your letter dated April 12, 1996. We agree with Ms. Pierce that DMV is not required under the Public Records Law to allow you access to records via dial-up modem access to your personal computer. The record custodian has the responsibility to ensure that public records are secure. *See* ORS 192.430(2). According to Ms. Pierce, DMV currently has no way to protect records from modification or destruction if direct modem access by the public were allowed. Moreover, the DMV records contain both exempt and nonexempt information, and DMV currently has no means to limit modem access only to the information that is not exempt from disclosure.

Ms. Pierce informs us that DMV employees in any field office will furnish to you for inspection any requested nonexempt records that are accessible from the DMV computer system. Such records may or may not be provided for inspection in electronic form, depending on whether it will be necessary to redact from the records information that is exempt from disclosure. Nonexempt records that are not accessible at a DMV field office, will be furnished for inspection at the DMV Headquarters Office at 1905 Lana Avenue NE, Salem, OR 97314. As explained above, DMV must charge a fee to recover the costs incurred in providing the records for inspection. If the type of record you wish to inspect is not included on the fee list that has been sent to you, Ms. Pierce states that you may contact her or one of her staff at (503) 945-5455, and they will let you know the fee.

DMV has informed you that you may inspect DMV records if you make a request and provide the appropriate fee. Because DMV has not denied your records request, the Attorney General has no authority to order the agency to disclose records. *See* ORS 192.450. Accordingly, we respectfully deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

SC:AV/JGG0DB59
c: Barbara Pierce, Manager, DMV Information Services