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Re: Petition for Public Records Disclosure Order; Motor Vehicles Division Records

Dear Mr. Winkler and Ms. Bower:

This letter is the Attorney General's order on Mr. Winkler's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, as clarified through telephonic discussions between Mr. Winkler and Assistant Attorney General Jim Russell, asks the Attorney General to direct the Motor Vehicles Division (MVD) to disclose medical records relating to Thomas A. Rickert. For the reasons stated below, we grant the petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. Insofar as the records Mr. Winkler seeks contain medical information, those records could be exempt only under ORS 192.502(2), the personal privacy exemption.

ORS 192.502(2) exempts from disclosure:

> "Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy". (Emphasis added.)

ORS 192.502(2) thus expressly exempts from disclosure personal information in a medical file, if the other statutory criteria are met. Ordinarily, public disclosure of personal medical information would constitute an unreasonable invasion of privacy. Nonetheless, we conclude that there would be no unreasonable invasion of privacy in this instance. Mr. Rickert has testified under oath at a deposition, in Mr. Winkler's presence. From our review of that deposition, we find that Mr. Rickert divulged his medical condition and medications without objection, qualification, or request for a protective order or other limitation on the dissemination of this information. This testimony contained substantially the same information as that in the MVD records Mr. Winkler seeks. As a witness in a pending trial in which Mr. Winkler's client is a party, Mr. Rickert presumably would be subject to public examination and cross-examination about these same matters. For an invasion of privacy to be unreasonable, "the intrusion must be something which would be offensive or objectionable to a reasonable person." Attorney General's Public Records and Meetings Manual I-8 (1985). We conclude that any incremental invasion of privacy due to the release of these records would not be unreasonable. Accordingly, these records are not exempt under ORS 192.502(2), and must be disclosed.[1]

ORS 192.450(2) affords MVD seven days from the date of this order in which to comply. The agency may charge for its actual cost in making the records available to Mr. Winkler. ORS 192.440(2).

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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[1] Three MVD documents - two entitled "Drivers Medical Certification" and one entitled "Certificate of Medical Eligibility" - must be disclosed under this order. The most recent of these documents indicates that one item of information supplied by Mr. Rickert will be kept confidential. The same information, however, appears on the other forms with no provision of confidentiality. Accordingly, we conclude that ORS 192.502(3), the exemption for information submitted in confidence, does not apply here.