HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

March 17, 1997

Cindy Chastain
11911 SE Division #65
Portland, OR 97266-1081

Re: *Petition for Public Records Disclosure Order: Health Division Records*

Dear Ms. Chastain:

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 on February 25, 1997,[1/] asks the Attorney General to direct the Health Division to make available: copies of your examination for an electrolysis license, the specific items contained in the Techniques and Use of Instruments section of the practical examination, and your examination results of the specific items within the general area of Techniques and Use of Instruments. For the reasons that follow, we respectfully deny your petition.

We understand from Patricia Allbritton, Health Division Program Operations Manager, that the examination for an electrolysis license consists of both a written and a practical examination. The written examination consists of a number of questions which are answered by the applicant by filling in circles on a "bubble" sheet. The practical examination is a demonstration of the applicant's skill in general areas which are listed in a document entitled "Instructions for Taking the Practical Examination." This document is provided to every applicant as part of their examination packet. That document lists a number of specific areas within each general area of the practical examination. During the practical examination, three proctors observe the applicants demonstrating their skills and

---

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

each proctor individually marks a score sheet that lists each specific activity or skill being tested. Those scores are later totalled and averaged by a Health Division staff person.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

Unless the public interest requires disclosure in the particular instance, ORS 192.501(4) exempts from disclosure:

> Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

This office has previously interpreted the exemption in ORS 192.501(4) to mean that "[i]nformation used to administer the test is confidential until the test has been given. Examination information remains confidential if the test will be reused." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 28 (1995).

Ms. Allbritton informs us that the same written examination questions are used for subsequent examinations for electrolysis licensing. Therefore, we conclude that those questions are exempt from disclosure under ORS 192.501(4) because disclosure of this information would jeopardize the integrity of the written examination.

The score sheets for the practical examination consists of four columns. The first column is a list of the specific items, within four general areas, on which the applicant's performance is judged by the proctors. The specific items listed on the score sheet are the equivalent of written examinations questions in that they identify the particular element or attribute being evaluated by the proctor. Ms. Allbritton informs us that these same items are the basis of subsequent examinations for electrolysis licensing. We find that disclosure of this information would jeopardize the integrity of the practical examination because it would identify for an applicant precisely what he or she needed to do to pass the examination. Accordingly, we conclude that this information comes within the exemption from disclosure under ORS 192.501(4).

The second column of the score sheet lists the possible points for the corresponding specific item. The third column of the scoring sheet lists the points awarded to the applicant for each specific item of the practical examination. Susan K. Wilson, Administrator for the Health Division Licensing Programs, informs us that the Health Division will provide you with the information for both the second and third columns of the score sheets from your practical examination.

The fourth and final column contains comments by the proctors. The comments on your score sheets would identify the specific items being tested which are exempt and would jeopardize the integrity of the examination, as discussed above. Therefore, we conclude that the information in this column also comes within the exemption from disclosure under ORS 192.501(4).

At the bottom of the score sheet are: a space for comments; a space for the name of the applicant; a space for the exam date and a space for the examiner's name. There are no comments on any of your three score sheets. Ms. Wilson informs us that the Health Division will provide you with all of the information described in this paragraph.

We find no basis to conclude in this particular instance that the public interest in disclosing the written questions and the information in the first and fourth columns of the score sheets for the practical examination outweighs the public interest in protecting the integrity of the tests used by the Health Division for electrolysis licensing purposes.

Therefore, with respect to the written examination questions and the information in the first and fourth columns of the practical examination score sheets that reveal the specific items being tested, we deny your petition because the information is exempt from disclosure under ORS 192.501(4). With respect to the remainder of the information, we deny your petition as moot because the Health Division has agreed to provide that information to you.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

MAC:AV:mac/JGG0F8CD

c: Susan K. Wilson, Licensing Programs Administrator, Health Division