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June 28, 1990

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Driver Control Unit
Motor Vehicles Division
1905 Lana Avenue, N.E.
Salem, OR 97314

Ethel F. Brockway
195 Hessar Street
Grants Pass, OR 97527

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

Dear Ms. Bower and Ms. Brockway:

This letter is the Attorney General's order on Ms. Brockway's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. This petition, which we received on June 21, 1990, asks the Attorney General to direct the Motor Vehicles Division (MVD) to disclose records pertaining to the decision by MVD that Ms. Brockway retake the driver license examination to determine her ability to operate a motor vehicle. For the reason stated below, we grant the petition.

Pursuant to ORS 807.070(4), 807.090(1) and 807.340(1)(b), the MVD is authorized to retest a driver when it determines that such retesting is necessary to establish the driver's fitness to operate a motor vehicle safely on Oregon's highways. These important driver safety functions frequently are triggered by letters from concerned family members, friends or neighbors. To encourage such reporting, MVD has adopted an administrative rule, OAR 735-74-010(2), which provides that

such written documentation will be kept confidential when confidentiality is requested, unless the Attorney General directs otherwise under the Public Records Law.

This information generally may be withheld from disclosure pursuant to ORS 192.502(3), which exempts:

> "Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure."

Under this exemption five separate tests must be met. The information must be submitted voluntarily, must be submitted in confidence, must be of a nature which reasonably should be considered confidential, must be accepted by the agency with a good-faith obligation to maintain confidentiality, and the public interest must be harmed by disclosure. Attorney General's Public Records and Meetings Manual 32 (1989). We have held in similar cases that this exemption applies to information submitted to MVD by a private citizen, relating to another person's ability to drive. See, e.g., Public Records Order, Haim/MVD (May 13, 1988), and Public Records Order, Jones/MVD (April 28, 1988).

We conclude that four of the five tests were met. The information was submitted voluntarily and in confidence. The agency, by its administrative rule, has obliged itself in good faith not to disclose. The information is of a type which reasonably could be considered confidential.

However, we conclude that the public interest would not suffer by disclosure in this instance. Indeed, public interest could suffer by nondisclosure in this type of case. Information indicates that the informant believed he was the victim of harassment by others, including Ms. Brockway, and that he intended to retaliate. The informant's factual basis for challenging Ms. Brockway's safety as a driver was negated by a physician. Although the public interest would suffer if letters or reports submitted for driver safety purposes were subject to disclosure, no such harm occurs when the submission is made solely for vindictive rather than public safety purposes. Indeed, the public interest is enhanced by disclosure, as such reports will be discouraged, the driver is

saved the time and expense of retesting, and the agency can better allocate its limited resources to retesting truly unsafe drivers. Thus, we reach the same conclusion here as in a recent order concerning similar circumstances. See Public Records Order, Bower/Petterson (April 12, 1990).

We therefore grant the disclosure petition and order MVD to disclose to Ms. Brockway all records relating to MVD's decision to retest her. MVD may charge Ms. Brockway for its actual costs in providing the requested copies of these documents.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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