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
TTY: (503) 378-5938

November 5, 1999

Lt. Peter Spirup
Oregon Department of State Police
400 Public Service Bldg.
Salem, OR 97310

Mr. Shawn P. Bedsole
P.O. Box 95
Westlake, OR 97493-0095

Re: *Petition for Public Records Disclosure Order*
Department of State Police Records

Dear Mr. Bedsole:

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 October 15, 1999,[1] asks the Attorney General to direct the Oregon Department of State Police to make available a police report. For the reasons that follow, we grant your petition in part and deny it in part.

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).

Below, we consider the exemptions from the Public Record Laws' disclosure mandate that are potentially relevant to the records you seek.

1. Exemptions Incorporating Federal or State Laws Prohibiting Disclosure

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

Two of the exemptions from disclosure in the Public Records Law, ORS 192.502(8) and 192.502(9), incorporate the confidentiality protection for records provided by either federal law or a state statute outside the Public Records Law. ORS 192.502(8) exempts from disclosure:

> Any public records or information the disclosure of which is prohibited by federal law or regulations.

Similarly, ORS 192.502(9) exempts from disclosure:

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

The purpose of these exemptions is to ensure that the Public Records Law is consistent with other federal or state law that directly prohibits disclosure of the requested information. In order for a public body to claim these exemptions, the public body must point to a specific federal or state law prohibiting or restricting disclosure of the record.

The federal Driver's Privacy Protection Act (DPPA) generally prohibits, subject to various exceptions, a state department of motor vehicles from knowingly disclosing to any person or entity personal information about an individual obtained in connection with a motor vehicle record. 18 USC § 2721(a). Exceptions to the prohibition authorize disclosure of personal information for various business or governmental uses, including use by a governmental agency in carrying out its functions. 18 USC § 2721(b)(1). Those persons and entities authorized by the statute to obtain personal information are restricted in their ability to redisclose such information 18 USC § 2721(c).

A corresponding state statute, ORS 802.177, prohibits the Oregon Department of Transportation (ODOT) from disclosing personal information obtained in connection with a motor vehicle record to any person. A "person" is defined as an individual, an organization or an entity, but does not include the State of Oregon or any state agency. ORS 802.175. The exceptions to the general prohibition on disclosure are set out in ORS 802.179. There are also restrictions on the redisclosure of personal information by a person or government agency authorized under ORS 802.179 to receive such information. ORS 802.181.

In a letter to the Oregon Department of State Police (OSP) dated September 13, 1999, you requested a copy of police reports that you filed "against Richard and Arlene Lockner approximately May 24th or 25th of 1999." On September 29, OSP Sergeant Malcolm T. Lewis responded to your request and informed you that OSP was releasing the requested report to you but that "House Bill 2096 [*codified as* ORS 802.175 to ORS 802.191] had to be applied and personal information was redacted."

We have spoken with Recruit Trooper Christine George, the author of the police report, and learned that the redacted personal information contained in the narrative and witness list portions of the report came from her personal interviews with the suspects and witnesses concerning the alleged criminal conduct. Recruit Trooper George further informs us that the

redacted personal information contained in the Uniform Citation and Complaints came from a combination of her interviews with the suspects and personal information contained in the suspects' driver licenses. Finally, Recruit Trooper George also informs us that upon completing her interviews, she attached to her police report a computer printout obtained from ODOT containing information in ODOT records pertaining to the suspects' driving record. This printout has not been provided to you.

a. Information from Driver Licenses

Because part of the redacted personal information came from driver license documents issued by "a state department of motor vehicles," your petition requires us to determine whether a person's ***driver license*** is a "motor vehicle record" for purposes of the DPPA and ORS 802.175 to ORS 802.191.

Under the federal DPPA, "motor vehicle record" means:

> Any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.

18 USC § 2725(1). Oregon's definition of "motor vehicle record" was taken from the DPPA and is nearly identical to its federal counterpart:

> Any record that pertains to a grant of driving privileges, an identification card issued by the Department of Transportation, a vehicle title or vehicle registration.

ORS 802.175(1).

Under federal statutory construction analysis, if from review of the particular language and the statute as a whole, the common use meaning is unambiguously expressed, such meaning must ordinarily be regarded as conclusive. *Sullivan v. Stroop*, 496 U.S. 478, 110 S. Ct 2499, 110 L. Ed 2d 439 (1990). In interpreting Oregon statutes, we first look to the text and context of a statute, which also includes other provisions of the same statute and related statutes. In doing so, we consider statutory and judicially created rules of construction that guide us on how to read the text. As the Supreme Court ruled in *PGE v. Bureau of Labor and Industries,* 317 OR 606, 859 P2d 1143 (1993):

> Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning. *See State v. Langley,* 314 Or 247, 256, 839 P2d 692 (1992) (illustrating rule); *Perez v. State Farm Mutal Ins. Co.,* 289 Or 295, 299, 613 P2d 32 (1980) (same).

> * * * "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all," ORS 174.010, and that "a particular intent shall control a general one that is inconsistent with it," ORS 174.020. Other such rules of construction are found in case law, including, for example, the rules that use of a term in one section and not in another section of the same statute indicates a purposeful omission, *Emerald PUD v. PP&L,* 302 Or 256, 269, 729 P2d 552 (1986), and that use of the same term throughout a statute indicates that the term has the same meaning throughout the statute, *Racing Com. V. Multnomah Kennel Club,* 242 Or 572, 586, 411 P2d 65 (1966).

Id at 611. If the legislature's intent is clear from this analysis, our inquiry ends.

In the DPPA, Congress specifically used the words "any record that pertains to [the listed documents]" in defining a "motor vehicle record." In its plain and ordinary usage, "pertain" means "to have some connection with or relation to something : have reference : RELATE." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged 1993). Thus, the listed documents do not appear to be included within the definition of a "motor vehicle record." A "motor vehicle record" would be any record that "relates" to "a motor vehicle operator's permit, motor vehicle title, motor vehicle registration or identification card." Had Congress intended "motor vehicle record" to include the listed documents, it easily could have done so. In enacting the statutory definition of "motor vehicle record," that term could have been defined as "pertaining to" ***and including*** the listed documents.

Similarly, the Oregon legislature defined the protected records as "any record that ***pertains to*** a grant of driving privileges, an identification card issued by the Department of Transportation, a vehicle title or vehicle registration." ORS 802.175(1) (emphasis added). ORS chapter 801 contains the definitions of "driving privilege," driver permit," "title" and "registration." These words do not have a definitional counterpart under the DPPA. In Oregon, "driving privilege" is defined as "the grant of authority by a jurisdiction to a person that allows that person to drive a vehicle on highways with that jurisdiction * * *" and includes *the physical document* of a "license," a "driver permit," or any indorsement or a license or driver permit." ORS 801.255. "Driver permit" is defined as the grant of driving privileges by this state or another jurisdiction" and may also refer to *the document* issued as evidence of a grant of driving privileges under a driver permit. ORS 801.250. "Title" is defined as "an ownership interest in a vehicle that is evidenced by a record of the Department of Transportation." This record may also be in the form of *the physical certificate of title* or another form, including electronic or machine-readable form. ORS 801.526. Finally, "registration" is defined as "the recording of a vehicle as authorized for use within a jurisdiction and includes *any documentation* or devices issued as evidence of that authorization." ORS 801.410. Except where the context requires otherwise, these definitions in ORS chapter 801 govern the vehicle code's construction. ORS 801.100. Although "identification card" is not specifically defined in the Oregon Vehicle Code, its issuance is governed by ORS 807.400.

These definitions suggest that physical documents are not records of ODOT "that pertain to a grant of driving privileges, an identification card issued by the Department of Transportation, a vehicle title or vehicle registration." If "motor vehicle record" is read to

include the physical documents listed by the definition, the definition becomes nonsensical. For example, by substituting "identification card" for "record," the definition becomes: "any [identification card] that pertains to * * * an identification card issued by the Department of Transportation * * *."

The context of ORS chapter 802 also supports the conclusion that the listed physical documents are not included in the definition of "motor vehicle record." In ORS 802.200, the legislature has mandated the type and contents of "records" the Department must maintain with regard to vehicle titles, vehicle registrations and driver licenses. According to ORS 802.200(1), the Department's records regarding "titles" must not only identify the vehicle, they must include the following: the names of any security interest holders, the name of any lessor, the vehicle description, whether the vehicle is reconstructed, a replica, or totaled, and all odometer readings. Nowhere in the context of ORS chapter 802 has the legislature required the Department to maintain a copy of the physical document of title issued for a vehicle.

ORS 802.200(3) also describes the contents of the Department's records concerning vehicle registrations. In addition to identifying the vehicle, the records must include the following: the registration plate number assigned by the Department, the name of the vehicle owner, the vehicle description and vehicle identification number, and whether the vehicle has been totaled. Again, nowhere in ORS chapter 802 has the legislature required the Department to maintain a copy of the physical registration issued to vehicle owners.

ORS 802.200(9) describes the record requirements for "driver licenses" as follows:

> The department shall maintain suitable records of driver licenses and driver permits. The records required under this subsection ***shall include*** all of the following:
>
> (a) An index by name and number.
>
> (b) ***Supporting documentation*** of all licenses or driver permits issued.
>
> (c) Every ***application*** for a driver license or driver permit.
>
> (d) All licenses or driver permits ***that have been suspended or revoked.***
>
> * * * * *

[Emphasis added]. Under this statute, the Department is required to include in its records only *the application* for a driver license or permit, but not the actual license or permit itself. Only when the Department suspends or revokes a license is the Department required to maintain within its records the actual license or driver permit.

We therefore conclude that the physical document of a driver license, identification card, vehicle title or vehicle registration is not a "motor vehicle record" within the context of the DPPA or ORS 802.175 to 802.191. Because Recruit Trooper George obtained the information

from the driver license of the persons and not from a "motor vehicle record," that information is not prohibited from disclosure by ORS 802.177 and the exemptions to the Public Records Law under ORS 192502(8) and ORS 192.502(9) do not apply.

b. Computer Print-out

As noted above, a computer printout of the suspects' driving record was attached to Recruit Trooper George's report. The Oregon Department of Transportation is prohibited from knowingly disclosing or making available to any person personal information about an individual that is obtained by the department in connection with a motor vehicle record. ORS 802.177. One exception to this general prohibition is when:

> The Department of Transportation, upon request or as required by law, shall disclose personal information from a motor vehicle record to a government agency for use in carrying out its governmental functions.

ORS 802.179(1). The term "governmental agency" commonly includes a state agency. The legal definition is "a subordinate creature of federal, state or local government created to carry out a governmental function or to implement a statute or statutes." BLACK'S LAW DICTIONARY 696 (6th ed 1990). The term "governmental agency" therefore includes an agency of the State of Oregon, such as OSP. ODOT-DMV may disclose personal information to such agencies for use in carrying out their governmental functions.

The term "governmental function" is not defined in ORS 802.175 to ORS 802.191. In 49 Op Atty Gen ___ (No. 8261, September 18, 1998), we addressed what constitutes "governmental functions" under ORS 802.179(1). We concluded

> that an agency is carrying out its "governmental functions" when it performs those duties for which the agency exists that are integral to the movement of the government in an area where it has the power and authority to act. In carrying out these functions, ORS 802.179(1) permits a governmental agency to use personal information from motor vehicle records.

Id. (slip op at 6).

ORS 802.181 allows a government agency to redisclose personal information provided to it by ODOT only to persons authorized to receive the information under ORS 802.179. In 49 Op Atty Gen ___ (No. 8261), we discussed whether a redisclosure of personal information by a government agency was authorized when a person made a request for the information pursuant to the Public Records Law. We concluded:

> A * * * redisclosure would occur for purposes of ORS 802.181(1), however, if a government agency reveals personal information for a purpose not related to carrying out the agency's particular governmental function. For example, pursuant to the Public Records Law, a person may request to inspect or copy an accident report in the custody of a police agency. ORS 192.420.

> Although the police agency may be statutorily required to make the report available for inspection or copying, complying with such a request is not related to the police agency's carrying out its law enforcement functions; the agency does not exist for the purpose of providing public records. Therefore, it would be a "redisclosure" under ORS 802.181(1) to reveal in response to a public records request for an accident report any personal information ***obtained from a motor vehicle record*** that may be contained in that report. The police agency must redact the personal information before providing a copy of the report unless the requestor is authorized to receive such information under ORS 802.179 and intends to use it for a purpose authorized under ORS 802.179. ORS 192.505, 802.181(1).

Id. (slip op at 7) (emphasis added). Since the "governmental function" of OSP is law enforcement and not compliance with the Public Records Law, we conclude that OSP may not disclose the computer printout of the suspects' driving record attached to Recruit Trooper George's report.

In sum, we conclude that the computer printout is a "motor vehicle record" for purposes of the DPPA and ORS 802.175 to 802.191. Because its disclosure is prohibited by those statutes, the computer printout is exempt from disclosure under the Public Records Law, ORS 192.502(8) and ORS 192.502(9).

2. Exemption for Criminal Investigatory Material

ORS 192.501(3) exempts information gathered during the course of a criminal investigation from the disclosure requirements of the Public Records Law. This provision exempts:

> Investigatory information complied for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
>
> (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
>
> (b) The offense with which the arrested person is charged[.]

The purpose of this exemption is to protect the integrity of a criminal investigation by a law enforcement agency or the identity of individuals who report crimes or who are victims of criminal activity. However, the information contained in an arrest record or crime report is required to be promptly disclosed unless a clear need exists for delaying disclosure during the course of a specific investigation.

Recruit Trooper George's police report indicates that the case was referred to the District Attorney for prosecution. The Lane County District Attorney's Office informs us that on June 11, 1999, Deputy District Attorney Kelly Johnson reviewed the police report and decided that no criminal charges would be filed. We therefore conclude that no clear need exists for delaying disclosure of the police report under ORS 192.501(3).

3. Conclusions

We have reviewed the other exemptions from the disclosure in the Public Records Law, including the Personal Privacy Exemption, ORS 192.502(2), and conclude that no other exemption applies in this case.

Because we conclude that the redacted information on the witness list and narrative portion of the police report, as well as Uniform Traffic Citation and Complaints, are not exempt from disclosure, we grant your petition as to that information, and we order the Oregon Department of State Police to disclose those records. That agency has seven days from the date of this order in which to comply. ORS 192.450(2).

Because we conclude that the computer printout from ODOT of the suspects' driving record is exempt from disclosure under ORS 192.502(8) and (9), we respectfully deny your petitioner for disclosure as to the computer printout.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS03352
c: Sgt. Malcolm T. Lewis, OSP