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May 13, 1988

Patricia Ann Haim
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1211 SW Fifth Avenue
Portland, Oregon 97204-3795

Re: Request for Public Records Disclosure Order
Oregon Motor Vehicles Department

Dear Ms. Haim:

This letter is the Attorney General's order on your May 9, 1988 petition for disclosure of public records under the Public Records Law, ORS 192.410 through 192.505. Pursuant to ORS 192.450(1) and on behalf of your client, Glen Eaton, you ask the Attorney General to order the Oregon Motor Vehicles Department (MVD) to disclose certain letters received by the MVD. You describe those letters as relating to allegations that Mr. Eaton may have problems with driving due to physical or mental conditions. You also seek disclosure of correspondence, records, or notes of communications between MVD officials and the authors of the letters to which your petition refers. We respectfully deny your petition.

In a letter dated October 16, 1986, this office previously informed Mr. Eaton that two of the letters, now referred to in your recent petition, were exempt from the disclosure requirements of the Public Records Law. Our 1986 letter stated that these particular letters were exempt from public disclosure under former ORS 192.500(2)(c). We analyzed and applied that statute in light of pertinent provisions of the Motor Vehicle Code and former OAR 735-31-035(14). We adhere to that analysis, and deny your petition on the basis of ORS 192.502(3) (1987) and OAR 735-74-010.

In the course of its administration of the motor vehicle laws, the MVD may be called upon to determine whether "a person may be ineligible for a license because the person has a history of any physical or mental disease or disability that may impair the person's ability to safely operate a motor vehicle. . . ." ORS 807.090(1); see also ORS 807.070(4). The MVD may require any licensed driver to reestablish the person's eligibility for a license "if the division has reason to believe that the person may . . . [n]o longer be able to safely operate a motor vehicle." ORS 807.340(1)(b).

The rules of the MVD recognize that, in performing the above-described functions, the MVD may receive signed letters, memos or reports indicating that a person has or may have a mental or physical disability. OAR 735-74-010. Such letters generally are exempt from disclosure under the Public Records Law , pursuant to ORS 192.502(3).

ORS 192.502(3) exempts the following type of information from the disclosure requirements of the Public Records Law:

> "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[.]"

As we have noted in the Attorney General's Public Records and Meetings Manual at I-10 (1985): "The purpose of this exemption is to encourage citizens to provide relevant information voluntarily to governmental agencies with some reasonable assurance that the information will be kept confidential." Exemption of information submitted by citizens to the MVD and relating to the ability of a driver to safely drive is consistent with the purpose and limitations of ORS 192.503(2).

On our review of the documents you seek to inspect, we find that the information was submitted with express requests for confidential treatment. The information was submitted voluntarily, and we conclude that the information reasonably can be deemed confidential. On this point we note that when the Motor Vehicle Code requires the involuntary submission of information regarding the mental or physical condition of a driver, the law treats such information as "confidential." See ORS 807.710(3).

Moreover, we find evidence in OAR 735-74-010 that the MVD has given a good faith assurance to maintain the confidentiality of the information you wish to inspect. Finally, as we previously stated to your client, " . . . the public interest would be harmed by a breach of confidentiality." Disclosure of the identity of the persons who filed the information, and public access to the information they submitted, would discourage them and others from providing information, relating to traffic safety, to the state agency responsible for investigation and certification of driver qualifications.

We conclude that the information you petition to inspect lawfully may be withheld from public disclosure. Accordingly, we deny your petition.

Respectfully submitted,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Peter Nunnenkamp, Manager, Driver Safety Section, Division of Motor Vehicles
James Russell, Assistant Attorney General
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