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April 28, 1988

Richard E. Jones
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Karen Pearl
Administrative Assistant
Motor Vehicles Division
1905 Lana Avenue, N.E.
Salem, Oregon 97314

**Re: Petition for Public Records Disclosure Order; MVD Records**

Dear Mr. Jones and Ms. Pearl:

This letter responds to Mr. Jones' April 21, 1988 petition for a public record disclosure order of the Attorney General. Mr. Jones asks the Attorney General to order the Motor Vehicles Division (MVD) to disclose what Mr. Jones describes as ". . . the letter from Irene A. Jones . . . falsely alleging that I abuse alcohol & have blackout spells or periods of unconsciousness." For the reasons stated below, the Attorney General denies Mr. Jones' petition.

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 (ORS 192.410 to 192.505), 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). In MVD's experience and practice, this information usually is submitted with an express request for confidentiality or under circumstances that demonstrate that the reporting citizen intended that the information be confidential. Such information generally is submitted voluntarily, and we note that when the law requires a particular class of persons to report such information to the MVD, the law expressly provides that the reports are "confidential." See ORS 807.710(3). In light of the statute relating to mandatory reports, we conclude that, for purposes of ORS 192.502(3), information confidentially submitted by a citizen and relating to another person's physical or mental ability to safely drive generally will satisfy all the tests for exemption as a confidential communication.

In sum, such reports by their very nature are exempt from disclosure under ORS 192.503(3). See Turner v. Reed, 22 Or App 177, 187, 538 P2d 373 (1975). Therefore, in this case we need not say whether or not the MVD has any letter from Irene A. Jones regarding Mr. Jones' physical or mental ability to safely operate a motor vehicle.

The petition for a public records disclosure order is denied.

Respectfully submitted,

James E. Mountain Jr.

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

JEM:ti
cc: Dwight Apple, Assistant Administrator, Hearings Branch, Dept. of Motor Vehicles, 3896 Beverly Street, N.E., Building J, Salem, Oregon 97301
Jim Russell, Assistant Attorney General
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