DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

June 3, 1988

Robin E. Bower, Supervisor
Driver Control Unit, Driver Services
Branch
Motor Vehicles Division
1905 Lana Avenue NE
Salem, Oregon 97314

Ellen R. Charley
Attorney at Law
909 American Bank Building
621 SW Morrison Street
Portland, Oregon 97205

Re: Petition of Nancy Fae Hyman for Public Records Law Disclosure Order: Motor Vehicles Division Records

Dear Supervisor Bower and Attorney Charley:

This letter is the Attorney General's order on the petition of Nancy Fae Hyman for Public Records Law disclosure of Motor Vehicles Division records. The petition dated May 26, 1988, was received by this office on May 27, 1988, with a letter from Ms. Charley, the attorney for Ms. Hyman. For the reasons stated below, we grant the petition which was filed pursuant to ORS 192.450(1).

The petition asks the Attorney General to order the Motor Vehicles Division (MVD) to disclose:

> "All documents and materials relating to the most recent request for Re-Examination of Nancy Fae Hyman, driver's license no. 300207."

In accordance with ORS 192.470(2), the MVD has transmitted to the Attorney General copies of records relating to Supervisor Bower's May 18, 1988 letter to Ms. Hyman. The letter requests an opinion from Ms. Hyman's doctor about her physical condition. The principal issue for our determination

is whether the MVD lawfully may withhold disclosure of a May 9, 1988 letter to the MVD from a private citizen. That letter contains statements about Ms. Hyman's health and evidently triggered MVD's May 18, 1988 request for a Driver's Medical Certification under ORS 807.090 and 807.070(4).

We recently determined on two occasions that MVD could withhold disclosure of information submitted by a citizen alleging grounds for a medical re-examination of a licensed driver. Public Records Order, Haim/MVD (May 13, 1988) and Public Records Order, Jones/MVD (April 28, 1988). In those two cases, we held that the information was exempt from disclosure under ORS 192.502(3). That law provides an exception to the disclosure requirements of the Public Records Law for:

> "(3) 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;"

In Haim and Jones, we found that the citizen-supplied information met all the tests for exemption stated in ORS 192.502(3). In the present matter, we find no factual basis for concluding that citizen who wrote the May 9, 1988 letter to MVD submitted the information "in confidence."

The citizen's May 9, 1988 letter contains no express request for confidential treatment. We find nothing in the letter or other documents tendered to us from which we reasonably can infer that the citizen intended to submit the information in confidence. This case is therefore distinguishable from Haim and Jones.

In fact, the issue of the confidentiality of the citizen's May 9, 1988 letter can be resolved under a MVD administrative rule that effectively interprets ORS 192.502(3) in the context of the Driver's Medical Certification Program. OAR 735-74-010(2) provides:

> "All written documentation pertaining to a person's ability or qualifications to drive due to any mental or physical disability shall be kept confidential and not released to any person unless:

"(a) The Attorney General directs the agency pursuant to the public records law to disclose the source; or

"(b) Confidentiality is not requested." (Emphasis added.)

Finding no request for confidentiality in this matter, we conclude that neither the citizen's May 9, 1988 letter to the MVD nor other documentation relating to the May 18, 1988 letter from the MVD to Ms. Hyman is exempt from disclosure under ORS 192.502(3). We therefore grant the disclosure petition. Accordingly, we order the MVD to disclose to Ms. Hyman or her attorney Ms. Charley, the documentation relating to the May 18, 1988 Request for Re-Examination. The MVD may charge Ms. Hyman for its actual costs in providing the requested copies of these documents.

Respectfully submitted,

James E. Mountain Jr.

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

JEM:cm
cc: Dwight Apple, Assistant Administrator, Hearings Branch, Motor Vehicles Division
Pete Nunnenkamp, Manager, Driver Safety Section, Motor Vehicles Division
Jim Russell, Assistant Attorney General
Peter Higgins, Assistant Attorney General
3021a