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July 23, 2002

Carey M. Theil
Grey2K USA
PO Box 442117
Somerville, MA 02144

Re: *Petition for Public Records Disclosure Order*:
Oregon Racing Commission Records

Dear Mr. Theil:

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 July 17, 2002, asks the Attorney General to direct the Oregon Racing Commission (commission) to release photographs taken by the commission's investigator, Carl Swanlund, during an investigation into the death of a greyhound dog while in the care of licensee Ronald M. Floyd. For the reasons that follow, we respectfully deny your petition.

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. The Public Records Law provides that any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the record to determine if it may be withheld from public inspection. ORS 192.450. The Public Records Law does not authorize the Attorney General to order an agency to disclose records that do not exist.

According to the correspondence provided with your petition, you requested the commission to disclose to you "[a]ny photographs and other evidence related to greyhound ruling number MG2002016." In response, the commission provided you with "the complete Oregon Racing Commission investigative file on this incident." The commission's June 28, 2002 letter to you stated that "no photographs [were] taken as a part of the investigation."

We spoke with the commission's Executive Director, Steve Barham, about your petition. Mr. Barham told us that, while the report prepared by Mr. Swanlund and disclosed to you refers to "documenting" the scene at Mr. Floyd's farm "by photography," Mr. Swanlund did not take still photographs but used only a video camera. In addition, Mr. Barham confirmed what is stated in the commission's letter to you, namely that the pictures taken at Mr. Floyd's farm with the video camera were subsequently taped over and no longer exist. Because the commission maintains no photographic records of the type described in your petition, the Attorney General has no authority to order disclosure. Therefore, we deny your petition.

With regard to the videotape, your petition asks this office to investigate "whether the Commission has violated laws and administrative rules . . . in destroying public information." Such an investigation is outside the parameters of the Attorney General's jurisdiction under the Public Records Law. Therefore, we have forwarded your request for an investigation to the commission.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS10567
c: Steve Barham, Racing Commission