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RECEIVED
MAY 18 1995
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SALEM, OREGON

May 17, 1995

Robert Dean Hasty
1732 Parnell Drive
Eugene, OR 97404

Re: ***Petition for Public Records Disclosure Order: Oregon State Lottery Records***

Dear Mr. Hasty:

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 May 10, 1995, asks the Attorney General to direct the Oregon State Lottery (Lottery) to make available a background investigation report that relates to an application you made for employment with the Lottery, including all documents regarding your personal history.

For the reasons that follow, we respectfully deny your petition, in part because three records contain information that is exempt from disclosure under the Public Records Law, and in part because the Lottery has agreed to make available to you those records that are not exempt from disclosure.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to the exemptions and limitations contained in that law. *See* ORS 192.420. If a public record contains both exempt and non-exempt materials, the public body must separate the exempt materials and make the non-exempt portions available for examination if it is "reasonably possible" to do so while still preserving the confidentiality of the exempt materials. ***Turner v. Reed***, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

The director of the Lottery informs us that the Lottery will make available the requested records that this order does not determine to be exempt from disclosure. You may contact Shirley Summers, Personnel Manager of the Oregon State Lottery, at (503) 373-

0201, to arrange for an examination of these records. We deny your petition as moot with respect to these records.

We next address those records that contain information that we have determined to be exempt from disclosure. These records are:

(1) A two-page criminal offender information print-out, the disclosure of which may be made only by the Department of State Police following the procedure set forth in ORS 181.560;

(2) A two-page Credit Information Service Personal Credit Report, which under an agreement between the Lottery and the credit information service that provided the report must be kept confidential; and

(3) Information provided the Lottery subject to the understanding that the information would be kept confidential, which is, therefore, exempt under ORS 192.502(3).

1. Criminal Offender Information System Records

As stated above, the records that you request include a print-out of information maintained in the Oregon State Police Criminal Offender Information System. ORS 181.560 prescribes the procedure that an individual must follow to obtain that information.

ORS 192.502(8) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." Because ORS 181.560 restricts the disclosure of Criminal Offender Information System information, we conclude that such information is exempt from disclosure except in accordance with ORS 181.560. *See* Public Records Order, December 4, 1992, Seitz.

If you wish to obtain access to that information, you must contact the Oregon State Police Forensic Services Division, Identification Services Section, telephone number 378-3070, and follow the procedure established by ORS 181.560 and OAR 257-10-035 (copies enclosed).

2. Credit Information

The requested records also include an Equifax Credit Information Service Personal Credit Report. In a written agreement between the Lottery and that credit information

service, the Lottery agreed to maintain the confidentiality of the credit reports that the Lottery obtains under that agreement.

ORS 192.502(3) exempts from disclosure:

> 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[.]

Under the agreement with Equifax, the information was submitted in confidence and the Lottery "has obliged itself in good faith not to disclose the information." The information is not required by law to be submitted. It should reasonably be considered confidential because dealing in such information is the service by which the credit bureau obtains a financial return and the dissemination of the information by third parties, such as the state, would constitute an unauthorized provision of a commodity that the credit bureau the right to market.

The public interest would suffer by the disclosure for at least two reasons. First, the disclosure would constitute a violation of the Lottery's agreement, potentially subjecting the Lottery to legal liability, or the credit information service's termination of the agreement. More importantly, if the Lottery breached its commitment not to disclose the information, credit information services would refuse to continue to provide important background information to the Lottery, thus seriously crippling its ability to determine the qualifications of parties who apply to act as contractors, retailers and employees of the Lottery.

Therefore, we conclude that the credit information is exempt from disclosure under ORS 192.502(3). Because individuals have an independent ability to directly obtain a review of their own credit histories and to correct errors in those compilations, the adverse impact of any disclosure of credit history reports on the public interest in facilitating the Lottery's background investigations easily outweighs any interest of an individual in obtaining these records from the Lottery.

3. Background Investigation Information

The final category of exempt material also falls within the exemption from disclosure established for material submitted in confidence, ORS 192.502(3). The Lottery background investigation involved interviews in which, at the inception of the conversations, certain individuals were afforded the opportunity to request, and did request, that their comments be

kept confidential. The Applicant Investigation memorandum dated March 29, 1995, includes a summary from such interviews.

This information was submitted to the Lottery in confidence by individuals who were not required by law to provide it to the Lottery. The information reasonably should be considered confidential, because without a commitment of confidentiality, the information would not be available to the Lottery, and the Lottery's ability to conduct meaningful background investigations of applicants would be impaired. The Oregon Constitution and statutes emphasize that the Lottery shall be operated in a manner that "insures the integrity, security, honesty and fairness of the Lottery." Or Const Art XV, § 4(4)(a). *See also* ORS 461.100(4), 461.150(4), 461.190.

For these reasons, "the public interest would suffer by the disclosure" of the confidential material. If it became known that the Lottery would not honor its commitments to maintain the confidentiality of information that results from background interviews, that source of information would cease to be productive, and the Lottery's ability to conduct meaningful background investigations seriously would be compromised.

We conclude that the information contained in the Applicant Investigation memorandum that was provided by persons requesting confidentiality is exempt from disclosure under ORS 192.502(3). ORS 192.505 requires the segregation of exempt materials from material that must be disclosed under the Public Records Law. Accordingly, the Lottery must disclose the memorandum with the exception of those portions containing the exempt confidential material.

For the above reasons, we deny your petition for disclosure of the three classes of records discussed above. Because the Lottery has agreed to make the remainder of the requested records available, we deny the remainder of the petition as moot.

Sincerely,

THOMAS A. BALMER
Deputy Attorney General

TAB:jpl/JAA01846.W51
c: Shirley Summers, Personnel Officer
Oregon State Lottery
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