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November 21, 2012

William Stark
Attorney at Law
1960 E Nob Hill SE
Salem OR 97302

Re: Petition for Public Records Disclosure Order:
Oregon State Lottery Records
DOJ File No. 177001-GA0081-12

Dear Mr. Stark,

This letter is the Attorney General's order in response to your petition asking the Attorney General to order the Oregon State Lottery (Lottery) to disclose public records you had previously requested of the Lottery. Initially your petition listed three numbered categories of public records. But in subsequent discussions with our office you agreed that your correspondence should be treated as a petition only with regard to the records that you had previously sought from the Lottery, and otherwise treated as a request to Lottery through counsel. Consequently we address only your request for "a copy of any investigation report and investigator notes regarding Ms. Meyer's complaints about Lottery Director Larry Niswender."

On October 10, 2011 our office denied a petition from Harry Esteve of the *Oregonian* seeking a copy of the same investigation report. We concluded that the document was exempt from disclosure under the ORS 192.501(1), which under some circumstances permits public bodies to withhold from inspection "[r]ecords of a public body pertaining to litigation to which the public body is a party * * *." A copy of that order is attached for your convenience. We adhere to the reasoning of our prior order and respectfully deny your petition with respect to the investigator's report.

For essentially identical reasons, we conclude that the investigator's notes you requested are likewise exempt from public disclosure under ORS 192.501(1). As with the ultimate report, the notes were prepared by an investigator tasked with assisting Lottery to prepare a defense of litigation that Lottery reasonably foresaw. As a consequence, it is work product. *See*

ORCP 36(B)(3) ("party may obtain discovery of documents and tangible things otherwise discoverable * * *and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative * * * only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means"). And, as work product, it falls within the scope of the materials covered by ORS 192.501(1). *See, Lane County School District v. Parks*, 55 Or App 416, 419–20 (1981) (citing with approval a California appellate decision construing an exemption similar to ORS 192.501(3) to protect work product and similar documents). For the reasons expressed in our October PRO to Mr. Esteve, we conclude that the public interest presently favors nondisclosure of these conditionally exempt materials.

For the foregoing reasons, your petition is respectfully denied. Again, other aspects of your correspondence are being treated as public records requests to Lottery. We express no views with regard to the application of the Public Records Law to those materials.

Sincerely,

Frederick M. Boss

FREDERICK M. BOSS
Chief Counsel, Civil Enforcement Division

MHW:nog/Justice #3782882
c: Jon Clontz, Lottery