THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

October 10, 1996

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GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

VIA FACSIMILE TO (503) 654-6545

Michael V. Reed
Attorney at Law
P.O. Box 68987
Milwaukie, OR 97268

Re: ***Petition for Public Records Disclosure Order: Oregon Liquor Control Commission Records***

Dear Mr. Reed:

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 October 3, 1996, asks the Attorney General to direct the Oregon Liquor Control Commission (OLCC) to make available witness statements that the agency collected in the course of an investigation regarding a liquor law license application by Paul Bunyan's Steakhouse, Inc. 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. One of those exemptions is pertinent to this petition. ORS 192.501 provides in relevant part:

> The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:
>
> * * * * *
>
> (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim.

The purposes of the exemption in ORS 192.501(3) include protecting the integrity of criminal investigations and avoiding any compromise of a potential criminal prosecution that might result from such investigations. We have previously concluded that the exemption extends to documents that originally were not created for criminal law enforcement purposes but later were gathered for criminal law enforcement purposes. Public Records Order, December 23, 1991 (Mayes). In reaching our conclusion, we noted that in ***John Doe Agency v. John Doe Corp.***, 493 US 146, 110 S Ct 471, 107 L Ed2d 462 (1989), the United States Supreme Court construed the nearly identical provision in the federal Freedom of Information Act exempting "records or information compiled for law enforcement purposes" to extend to such documents. Because the state and federal disclosure exemptions are comparable, we believe the Oregon Courts would reach the same conclusion. *See* ***Jensen v. Schiffman***, 24 Or App 11, 16, 544 P2d 1048 (1976).

Regarding the records you request, Ken Tew, OLCC Inspector, informs us that OLCC representatives have interviewed several individuals and obtained statements regarding possible liquor law violations. Violations of the Commission's statutes and rules carry criminal sanctions. ORS 471.410(4), 471.990. OLCC inspectors and investigators "have all the authority given by statute to peace officers of this state." ORS 471.775(2). ORS 471.605 provides

> [A]ll police officers within the State of Oregon shall enforce all provisions of the Liquor Control Act and assist the Commission in detecting violations of that statute and apprehending offenders. Each such enforcing officer having notice, knowledge or reasonable ground of suspicion of any violation of that statute shall immediately notify the District Attorney, and furnish the District Attorney with names and addresses of any witnesses, or other information within the officer's knowledge, of such violation.

From the first interview conducted by OLCC on September 11, 1996, the criminal law authorities were involved. A Baker city police officer sat in on several interviews; a State Police officer sat in on at least one of the interviews. Furthermore, on September 24, 1996, OLCC representatives and city and state police officers met with Baker County District Attorney Gregory L. Baxter to share their information and brief the District Attorney. At that meeting, District Attorney Baxter expressed interest in using the OLCC information to prosecute alleged wrongdoers and requested the OLCC to continue to investigate liquor law violations.

After that meeting, the OLCC has conducted additional interviews and obtained additional witness statements. Commission staff inform us that they have shared the substance of all interviews with criminal law enforcement authorities and have provided copies of the witness statements to them. OLCC has continued to confer with the District

Attorney. We find that, by virtue of being shared with law enforcement authorities in conjunction with their criminal investigation, the OLCC investigation records have been "compiled" for criminal law purposes.[1]

In a letter dated October 7, 1996, to Assistant Attorney General Robb Haskins, District Attorney Baxter wrote:

> Police officers from the Oregon State Police and Baker City Police are investigating possible criminal activities by the owner, management and employees of Paul Bunyan's. Ken Tew of the OLCC has been conducting an investigation pertaining to Paul Bunyan's liquor license. I have discussed this matter with Mr. Tew and the police.
>
> It is my opinion that the witness statements obtained by Mr. Tew contain information relevant to the criminal investigation and that there is a clear need to delay disclosure of these witness statements in the course of this specific criminal investigation. I ask that these witness statements not be released at this time.

Thus, the requested records have not only been compiled for criminal law enforcement purposes, but the District Attorney has informed us that there is a need to delay disclosure of those records in order to avoid compromising a pending criminal investigation. These facts clearly bring the requested records within the scope of the exemption in ORS 192.501(3). Therefore, it is necessary to determine whether the public interest nevertheless requires disclosure in this particular instance.

In ***Jensen v. Schiffman***, the Court of Appeals stated its view that information compiled in "investigations connected with pending or contemplated prosecutions ordinarily will remain secret because disclosure would likely 'interfere with [law] enforcement proceedings.'" 24 Or App at 16 (quoting 5 USC § 552(b)(7)(A), which the court found analogous to Oregon statute). The petition does not set forth any reasons why the public interest requires disclosure in this instance. The governmental interest that weighs against disclosure at this time is the general public's interest in having persons who have violated the law successfully prosecuted. The District Attorney has concluded that release of the records

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[1]In light of our conclusion that the OLCC investigation records have been "compiled" for criminal law purposes by virtue of being shared with law enforcement authorities in conjunction with their criminal investigation, we need not consider whether OLCC investigators and inspectors have authority in their own right to conduct criminal law enforcement investigations within the meaning of ORS 192.501(3).

should be delayed. On balance, we conclude that at this time the public interest in the successful operation of the criminal justice system outweighs the public interest in disclosure of the requested records.

Accordingly, we conclude that the requested records are exempt from disclosure under the Public Records Law. ORS 192.501(3).[2] Therefore, we deny your petition to compel disclosure.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

RLH:AV/JGG0EAC1
c: Pam Erickson, Administrator, OLCC
Gregory L. Baxter, District Attorney, Baker County
Ken Tew, OLCC Investigator (LaGrande)

[2]Because we find the requested records to be exempt from disclosure under ORS 192.501(3), we do not consider whether other exemptions, such as ORS 192.502(3), might apply to any of the witness statements.