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July 7, 2021

VIA E-MAIL ONLY: jacobwren@me.com

Jacob Wren
1237 Cortez Ave
Burlingame, CA 94010

Re: Petition for Public Records Disclosure Order
Oregon Liquor Control Commission
DOJ File No.: 845600-GA0108-21

Dear Mr. Wren:

This letter is the Attorney General's response to your petition for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received on June 18, 2021,[1] asks the Attorney General to direct the Oregon Liquor Control Commission (OLCC) to disclose historical marijuana sales data at the retailer level. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law, and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain any such denial. *Id*.

According to your petition, OLCC provided you with a report containing monthly marijuana sales data aggregated by each county in Oregon. That report included monthly revenues and quantities sold for various marijuana products (e.g., usable marijuana, concentrates, edibles, etc.) within each county from 2016 to the present. After receiving that report, you asked OLCC to provide a similar report broken down by individual marijuana retailers. OLCC denied your request after determining

[1] We appreciate your agreement to extend the time for us to respond to your petition.

that such data is proprietary licensee information that is exempt from disclosure under ORS 475B.451. Your appeal followed.

We contacted Jeannine Stickle, OLCC Public Records Coordinator, regarding your petition. She informed us that marijuana retailers are required to report individual sales data to OLCC through a tracking program called Metrc, but OLCC considers such data to be private business information that retailers routinely seek to protect from disclosure to their competitors. OLCC has therefore determined that the retailer-specific sales data it receives is proprietary licensee information and is exempt from disclosure under ORS 475B.451.

ORS 475B.451(1)(c) exempts from disclosure any information that "[i]s related to any record that the Oregon Liquor Control Commission determines contains proprietary information of a licensee." The term "proprietary" is not defined in statute or rule. The dictionary defines "proprietary," in part, as "held as the property of a private owner * * * relating or belonging to a proprietor * * *." *Webster's Third New Int'l Dictionary* 1819 (unabridged ed 2002); *see also Black's Law Dictionary* 1219 (6th ed 1990) (defining "proprietary," in part, as "belonging or pertaining to a proprietor; relating to a certain owner or proprietor; defining "proprietary rights" as "[t]hose rights which an owner of property has by virtue of his ownership * * *;" and defining "proprietary information" as "information in which the owner has a protectable interest."). Thus, we understand "proprietary information of a licensee" in the context of ORS 475B.451 to mean information, privately owned by an OLCC licensee, over which the licensee retains some protectable interest.

With this understanding, we have no reason to second-guess the determination, statutorily entrusted to OLCC, that sales data (e.g., revenues, pricing, sales volumes) attributable to a particular retailer is the proprietary information of that retailer. Such information clearly belongs to individual retailers and we share OLCC's conclusion that it is the sort of information that private retailers routinely shield from disclosure to their competitors. We also observe that your petition – which states that you will not further disclose the raw data, trade names or information specific to any retailer – appears to acknowledge that the retailers have an interest in preventing this information from being publicly disclosed. And because we accept OLCC's determination that this information is proprietary to OLCC's licensees, it is expressly exempt from disclosure under ORS 475B.451. *See also* ORS 192.355(9)(a) (exempting from disclosure records or information made confidential, restricted or privileged under other Oregon law). We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via email only: Jeannine Stickle (OLCC)