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personal privacy
racing applicant

January 2, 1985

William L. Reagan
Executive Director
Oregon Racing Commission
113 State Office Building
1400 SW Fifth
Portland, Oregon 97201

John Snell
The Oregonian
1320 SW Broadway
Portland, Oregon 97201

Dear Messrs. Reagan and Snell:

This constitutes an order of the Attorney General in response to Mr. Snell's request for disclosure of records submitted by Mr. John Jensen in connection with his application for a license from the Oregon Racing Commission. Specifically, Mr. Snell requested a copy of the joint financial statement and a copy of any state or federal tax returns submitted to the commission by Mr. and Mrs. Jensen.

We have been informed by the Racing Commission that it does not have copies of the Jensen's tax returns. Your request for those records is therefore denied.

The Racing Commission denied your request for a copy of the financial statement, citing ORS 192.500(2)(b) as grounds for the denial.

ORS 192.500(2)(b) exempts from disclosure:

> "Information of a personal nature such as but not limited to that kept in a pesonal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular

> instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy; . . ."

In a public records order issued May 25, 1983, we discussed the analytical process to be followed in determining whether records are exempt from disclosure under this statute.

> "Under this statute, a three-step inquiry must be made to determine whether a public record is entitled to the 'personal privacy' exemption. . . ."
>
> "First, is the record 'personal'? It could be said that any information about a person is personal, but a narrower test has been adopted by the Oregon Court of Appeals. The information covered by the exemption is that information about a person or a person's affairs which is not ordinarily shared with strangers. Morrison v. School Dist. No. 48, 53 Or App 148, 631 P2d 784 (1981); Turner v. Reed, 22 Or App 177, 538 P2d 373 (1975). The court apparently concludes that there is no invasion of privacy in disclosing information of a nature usually and readily shared with strangers, and therefore it is not personal. The case before us relates to personal financial statements, which are not ordinarily shared with strangers. We have no difficulty in concluding that these records are 'personal.'" (Emphasis added.)

You also seek personal financial statements. We have no difficulty in concluding now, as we did in our May 25, 1983 order, that these records are "of a personal nature."

We therefore move to the second and third parts of the analysis. Our May 25, 1983 order continued:

"Second, would the disclosure constitute an unreasonable invasion of privacy? Apparently the decision as to whether the information is 'personal' is to be decided on an objective basis, based on the nature of the information rather than on particular circumstances. And apparently disclosure of personal information is per se an invasion of privacy. But a decision as to whether that invasion of privacy is unreasonable requires consideration of particular circumstances."

"The burden of showing that disclosure would not constitute an unreasonable invasion of privacy is on the person seeking disclosure. That person must show the particular circumstances negating the unreasonableness of the invasion, such as that a person has directly or impliedly invited disclosure and the resulting invasion of privacy; that previous disclosure has reduced or destroyed expectations of privacy; that the degree of disclosure sought is reasonable and for good purposes."

"Third, even if it is concluded that disclosure would be an unreasonable invasion of privacy, an order of disclosure will still be appropriate if it is concluded that 'the public interest by clear and convincing evidence requires disclosure in the particular instance.' The burden of proof referred to in the last sentence of the paragraph does not apply, and the decision is to be made by the Attorney General on the basis of all the evidence before him. However, the Attorney General does not have the resources or the time (within the limits prescribed by law for response) to develop significant evidence himself, and of course primarily will consider evidence furnished by the petitioner seeking disclosure and the agency opposing it."

> "The second and third inquiries often cannot be made independently of each other. Any intrusion into privacy may be unreasonable if there is no public interest in the disclosure, but if there is a substantial public benefit to be achieved by the disclosure, the intrusion may become reasonable."

We believe this is a case where the second and third inquiries must be considered together. You have offered several arguments in an attempt to meet your burden of showing that disclosure would not result in an unreasonable invasion of privacy, or that the public interest nevertheless requires such disclosure.

First, you note that the financial statement was submitted as part of Mr. Jensen's application for a license to own and operate Portland Meadows, and that such information historically has been required by the commission to insure that licensees have the resources and financial acumen to operate the track successfully. You point out that the license is to operate a sensitive enterprise which is often linked with corruption and organized crime, and that the commission has stated that it would intensely examine an applicant's financial status because of a history of financial problems at the track. You also note that Mr. Jensen submitted his application shortly after Mr. Meling withdrew his application for the track license, and point out that Mr. Meling's finances came under intense public scrutiny, including publication of his federal tax returns, before he withdrew his application.

You suggest that in view of these factors, Mr. Jensen could not have had a reasonable expectation that his financial records would be kept confidential.

We believe that public disclosure of an individual's detailed financial statement is per se an unreasonable invasion of privacy. The question we must answer is, does the public interest by "clear and convincing evidence" nevertheless require disclosure in this case?

We agree that there is a strong public interest in knowing that licensees have the resources and financial acumen to successfully operate the track. We do not agree that this necessarily requires that an applicant lay bare to public scrutiny the details of his or her private finances. The strongest

legitimate public interest lies in assuring the public that the applicant has a net worth adequate successfully to operate the track. There is also a substantial public interest in knowing the applicant's financial interests which are related to racing activities.

Based upon the factors cited in your arguments for disclosure, and in view of the nature of the license here involved, we believe that there is clear and convincing evidence justifying disclosure of Mr. Jensen's net worth as shown in his financial statement. We also believe that adequate grounds exist under the statute to justify disclosure of investments which are related to the racing industry. We do not find that the public interest by clear and convincing evidence requires disclosure of other details of Mr. Jensen's financial statement.

Accordingly, we order the Racing Commission to disclose Mr. and Mrs. Jensen's financial statement, deleting reference to all financial details in the statement except references to financial activities related to the racing industry, and showing the net worth disclosed by the statement. A copy of the financial statement with exempt material deleted has been provided to the commission for its information.

Under ORS 192.450(2), the Racing Commission must comply with this order within seven days, that is, not later than January 9, 1985. It may instead send a notice of intention to institute proceedings for relief from the order, within the same time period, to the Attorney General and by certified mail to the petitioner. It must thereafter (if it so chooses) file suit in Marion County Circuit Court within seven days after issuing its notice of intention. ORS 192.450(3) authorizes the retention of special counsel for this purpose. If the petitioner is dissatisfied with this order, he may also challenge it in Marion County Circuit Court under ORS 192.450(2).

Very truly yours,

DONALD C. ARNOLD
Special Counsel to the
Attorney General

DCA:cm
cc: Vernon Burda, Attorney at Law
Ron Still, Chief, Portland Police Bureau
Mike Reed