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DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

December 4, 1992

Daniel W. Seitz, P.C.
Attorney at Law
P.O. Box 209
Roseburg, OR 97470

Re: Petition for Public Records Disclosure Order;
Oregon State Police Records

Dear Mr. Seitz:

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 November 17, 1992,[1/] asks the Attorney General to direct the Oregon Lottery Commission (Lottery) and the Oregon State Police (OSP) to make available the following records:

1. Application for Video Poker Permit on part of Panda Enterprises, dba The Snakepit and Dion Fotenos.

2. Any and all additional information provided by the Applicant and/or parties operating on the Applicant's behalf.

3. All materials obtained by the Oregon Lottery Commission and/or the Oregon State Police to evaluate this Application.

4. Copies of the proceedings of the Oregon Lottery Commission and any final determination made by that agency.

[1/] We appreciate your extension of time within which the law would have otherwise obligated us to respond.

For the reasons stated below, 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. If a public record contains exempt nonexempt materials, the public body must separate the materials and make the nonexempt materials available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt materials. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

The materials identified in paragraph 4 of your petition have already been disclosed to you by the Lottery by letter dated November 20, 1992, from Gary Williams.

OSP now informs us that it will make the remaining records available for your inspection and copying, as follows. You may contact Sgt. Roger Jencks at 373-0240 to obtain all of the remaining records with one exception. A February 27, 1992, report to James Davey, Director, Oregon Lottery Commission, from John McCafferty, Deputy director for Security, Oregon Lottery Commission, contains criminal offender information about certain individuals named in that report. That criminal offender information has been deleted from the report.

ORS 181.560 sets forth the procedure for obtaining criminal offender information, which includes notice to the individual about whom the information pertains. If you wish to obtain the deleted criminal offender information, you may contact Lt. Cliff Daimler, Forensic Services Division, Identification Services Section, at 378-3070. That information will be released to you in accordance with ORS 181.560.[2/]

[2/] 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, we conclude that such information is exempt from disclosure except in accordance with ORS 181.560.

The agency may charge you a fee to reimburse it for its actual cost in making such records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. See ORS 192.440(3).

Because the Lottery and OSP have agreed to release to you the records you request, we deny your petition to compel disclosure as moot.

Sincerely,

Amy Veranth
Opinions Coordinator
General Counsel Division

ALV:alv/JGG052A0

cc: Lt. Cliff Daimler
Sgt. Roger Jencks