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

December 27, 1993

Mr. Jeff Nielson
The Bulletin
1526 N.W. Hill Street
Bend, OR 97701

Re: Petition for Public Records Disclosure Order:
Oregon State Lottery Records

Dear Mr. Nielson:

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 December 20, 1993, asks the Attorney General to direct the Oregon State Lottery to make available copies of records that would identify:

> How much total revenue each business in Crook, Deschutes and Jefferson counties that has video poker has earned from each machine since installation, and how much each business has earned in commissions from each machine.

The lottery's refusal to disclose the foregoing information was based on ORS 192.501(5). That subsection of the Public Records Law exempts from disclosure sales records and similar business records of private businesses which are required by law to be submitted to a public body, and which are used by the public body to establish quotas. That provision states in 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:
>
> * * * * *

> (5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas * * * to the extent that such information is in a form which would permit identification of the individual concern or enterprise.

The records you request are business records that are required by law - the administrative rules of the lottery - to be submitted to the lottery. See OAR 177-100-065(1) (requiring video lottery retail contractors to submit financial and operating records to the lottery). However, after consulting with officials of the lottery, this office and the lottery have determined that the sales and commission records that relate to video lottery activity are not used to establish the production quotas that the lottery has established for certain lottery retail contractors. See OAR 177-40-040(2) (establishing weekly sales quotas for certain lottery games).

Therefore, the lottery has agreed to permit the inspection of the records identified in your request. You may contact Marlene Meissner, Public Affairs Assistant for the Lottery, at 378-3545, to arrange to inspect or obtain copies of the records. The lottery remains authorized, by ORS 192.440(3), to charge you a fee to reimburse it for its reasonable expenses in making those records available.

Because the lottery has agreed to make the records available to you, we respectfully deny your petition as moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:WFN:bjs/JGG088C6

c: Dan Simmons, Director;
Marlene Meissner, Public Affairs Assistant;
Oregon State Lottery
P.O. Box 12649
Salem, OR 97309