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July 18, 2007

The Honorable Kevin Kelly
201 Washington Street
Cumberland, Maryland 21502

Dear Delegate Kelly:

You have requested advice on whether under the State Public Information Act (PIA), Allegany County may deny access to certain public records relating to paper gaming profits of businesses licensed under §13-302 of the Criminal Law Article. Your request stems from the County's denial of a PIA request by the *Cumberland Times - News* for the three top venues in the County for paper gaming revenues. The County asserted that this information was personal financial information protected from disclosure by §10-617(f) of the State Government Article and that this prohibition applies to corporations, partnerships and other entities licensed under §13-302.¹

For reasons set forth below, it is my view that §10-617(f) would not bar disclosure of the sales data sought by the *Cumberland Times - News*.

Since §10-617(f) was added to the PIA in 1982, the Attorney General's Office has never construed the provision to apply to the financial information of corporations, partnerships and similar business entities. In addition, the Office has construed the substance of the prohibition narrowly, noting that:

[T]he exemption must be construed together with the general rule in favor of openness about public funds. As the Attorney General has made clear

¹ Section 10-617(f)(2) generally provides that "a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, book balances, financial history or activities, or creditworthiness."

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many times, the public is ordinarily entitled to know how, and to whom, the government spends its money.

Memorandum from Assistant Attorney General Jack Schwartz to Principal Counsel, dated July 26, 1995.

Significantly, this memorandum notes that “[t]he exemption for personal financial information applies primarily to information that the State obtains about an individual’s private financial activities - - that is, information unrelated to the individual’s financial transactions with the State itself.” *Id.*

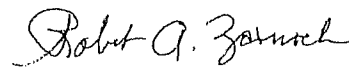
Under facts similar to those presented here, Illinois’ intermediate appellate court concluded that that State’s Freedom of Information Act required disclosure of sales from individual State lottery agents. *See Cooper v. Department of the Lottery*, 640 N.E. 2d 1299 (Ill. App. 1999). In rejecting nondisclosure, the Illinois Court noted that “[i]n becoming agents these business people took on a number of responsibilities and liabilities in exchange for the profitable opportunity to attract customers to their businesses as a lottery outlet and to receive commissions and bonuses from the State.” 640 N.E. 2d at 1307. The Court added that “[s]ince lottery agents performed State functions as fiduciaries, the disclosure of their sales data is information in which they have at best an attenuated privacy interest.” *Id.* at 1308. It is my understanding that the Maryland State Lottery permits access to lottery agent sales data such as that at issue in *Cooper*.

In light of this authority, it is my view that §10-617(f) would not bar disclosure of the top venues in Allegany County for paper gaming revenue. The information sought is related to a licensee’s financial transactions with the government, to its public duties and responsibilities and to the receipt of public funds. In fact, the County’s revenue from paper gaming is tied by statute to a percentage of the gross profits of the licensee. *See* Criminal Law Article §13-302(i).

For these reasons, it is my opinion that the records requested by the *Cumberland Times - News* are subject to disclosure under the State PIA.

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Sincerely,

A handwritten signature in cursive script that reads "Robert A. Zarnoch".

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

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