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August 12, 1988

Michael Dean
Staff Writer
The Anchorage Times
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Anchorage, Alaska 99510-0040

Re: Petition for Public Records Disclosure Order; Oregon State System of Higher Education Records

Dear Mr. Dean:

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 August 5, 1988, asks the Attorney General to direct the Oregon State System of Higher Education (OSSHE) to disclose records of the identity of applicants for the position of Oregon Chancellor of Higher Education. The OSSHE disclosed to you the name, address and current employment of the four finalists for the position, but the OSSHE declined to provide you with record information regarding nonfinalist applicants. For the reasons stated below, we respectfully deny your request that we order release of the identity of nonfinalist applicants.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. The records you wish to inspect fall within exceptions to the general rule of public accessibility to government records.

ORS 192.502(2) exempts private personal information from the disclosure requirements of the Public Records Law. The statute exempts:

> " . . . [i]nformation of a personal nature such as but not limited to that kept in a personal, 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. . . ." (Emphasis added.)

The OSSHE has demonstrated that information regarding an individual's application for the chancellor position is normally regarded as personal in nature unless the individual is selected as a finalist candidate. The OSSHE informs us that prior to selection as a finalist, applicants normally do not share with strangers the fact that they have applied for a position such as chancellor. The information you seek to inspect therefore is sufficiently "personal" for purposes of ORS 192.502(2). See, Morrison v. School Dist. No. 48, 53 Or App 148, 155, 631 P2d 784 (1981) (personal information is that which "normally would not be shared with strangers.")

The information that the OSSHE refused to disclose is also sufficiently "private" for purposes of ORS 192.502(2). Public revelation that a person has applied for a position such as chancellor, prior to or in the absence of the person's selection as a finalist, may unreasonably threaten the person's current employment relationship and professional standing. But you have not presented any information to us to carry your burden of disproving that disclosure would constitute an unreasonable invasion of privacy. Morrison, supra, 53 Or App at 154.

Nor are we convinced that the public interest requires disclosure in this particular interest. Release of information regarding nonfinalist applicants for the particular position of chancellor reasonably can be expected to prompt many qualified applicants to refrain from applying. Early release of applicant status may unduly interfere with the work of appropriate selection committees. In short, release of applicant-but-nonfinalist status may disserve the public interest in maintaining an effective chancellor selection process. Cf. ORS 192.660(1)(a) (the exception to the Open Meetings Law that authorizes governmental bodies to meet in sessions closed to the public in order to deliberate on employment of a chief executive officer.)

We conclude that the applicant information you desire qualifies for exemption under ORS 192.502(2). For many of the

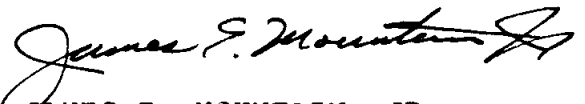
same reasons, we conclude that this particular information also is exempt from disclosure under the confidential information exception, stated in ORS 192.502(3), for

> "[i]nformation submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interests would suffer by the disclosure. . . ."

We are informed that all applicants for the chancellor position requested that their applications be treated confidentially unless they were selected as a finalist. The applications were submitted voluntarily; and, for the reasons discussed above, we determine that the information reasonably may be deemed confidential, that the OSSHE acted in good faith in obliging itself to treat the information as confidential, and that disclosure would harm the public interest.

We conclude that the information you wish to inspect is exempt from disclosure under the Public Records Law and that the OSSHE lawfully withheld disclosure in this particular instance. Accordingly, we respectfully deny your petition to compel disclosure.

Respectfully submitted,



JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: W.T. Lemman, Vice-Chancellor of Higher Education
Jim Mattis, Assistant Attorney General
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