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March 26, 2003

Keith Randy
1455 Washington Blvd., #207
Stamford, CT 06902

Re: *Petition for Public Records Disclosure Order*:
University of Oregon Records

Dear Mr. Randy:

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 March 21, 2003, asks the Attorney General to direct the University of Oregon (University) to produce a copy of the following records for three University employees – Ernie Kent (Men's Basketball head coach), Scott Duncan (Men's Basketball assistant coach) and John Cooper (Men's Basketball assistant coach):

All employment contracts (including all amendments/extensions);
All contracts for participation in radio and television shows;
All endorsement and consultation contracts with shoe, equipment, apparel, and other companies;
All contracts for coaching clinics and sports camps; and
All contracts for personal appearances and speaking engagements

For the reasons that follow, 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. ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

We spoke with Melinda W. Grier, General Counsel for the University, about your petition. Ms. Grier told us that she mailed to you all records responsive to your request on March 13, 2003, redacting certain information from Ernie Kent's employment contract. According to Ms. Grier, the redacted material identifies two pieces of information: the beneficiary of Mr. Kent's deferred compensation account and the timing and distribution of certain incentive payments.

With reference to the redactions made to the disclosed records we consider the Board of Higher Education's authority under ORS 351.065(1) to promulgate rules related to personnel records. In relation to this rulemaking authority, ORS 351.065 further provides that:

> (5) Any category of personnel records specifically designated as confidential pursuant to valid rules or orders pursuant to this section shall not be deemed a public record for the purposes of ORS 192.420.
>
> (6) As used in this section "personnel records" means records containing information kept by the institution, division or department concerning a faculty member and furnished by the faculty member or by others about the faculty member at the member's or at the institution, division or department's request, including, but not limited to, information concerning discipline, membership activity, employment performance or other personal records of individual persons.

The board has delegated its rulemaking authority to the University, OAR 580-022-0060, and the University has promulgated OAR 571-030-0005 through 571-030-0050. The University's rules define four categories of information maintained about University faculty members, two of which are relevant to the information redacted from Mr. Kent's employment contract:

> "Salary Information" shall include the rate of pay and terms and conditions of employment.
>
> "Personal Records" are all other records containing information concerning an academic staff member, apart from those identified above.

OAR 571-030-0010(3), (4). The University may release Salary Information without a faculty member's consent. OAR 571-030-0015(1). However, Personal Records are designated as confidential, and the University may not release them without the concerned faculty member's consent. OAR 571-030-0015(2); 571-030-0025(3). Moreover, because the University has designated them as "confidential," under the terms of ORS 351.065(5) Personal Records are not "public records" subject to disclosure under the Public Records Law. *See* Public Records Order, June 1, 2001, Hinkle/Williams.

According to Ms. Grier, Mr. Kent is a member of the University's academic staff. Therefore, if the beneficiary of Mr. Kent's deferred compensation account and information about

the timing and distribution of certain incentive payments constitute information within his Personal Records, they are not subject to disclosure under the Public Records Law.

The identity of the beneficiary of Mr. Kent's deferred compensation account is not part of the terms and conditions of his employment by the University. Therefore, under the definitions provided in OAR 571-030-0010, this information is part of Mr. Kent's confidential Personal Record. The amount of incentive payments made to Mr. Kent is Salary Information and has been disclosed to you. However, the payments are not part of his base salary, which is payable pursuant to ORS 351.097. They also are not part of his compensation as defined in ORS 351.067. Therefore, we agree with Ms. Grier that how, when and where Mr. Kent chooses to receive such compensation payments are not part of the terms and conditions of his employment. Therefore, this information is also part of Mr. Kent's confidential Personal Record.

In summary, with respect to records the University has disclosed to you, we deny your petition as moot. Because we find the redacted portions of Mr. Kent's employment contract to be part of his confidential Personal Records that, under ORS 351.065(5), are not subject to disclosure under the Public Records Law, we also deny your petition as it pertains to disclosure of that information.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

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c: Melinda Grier, UO General Counsel