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ASUO
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Re: **Petition for Public Records Disclosure Order; Associated Students of University of Oregon Records**

Dear Messrs. Dewing, Stout and Bailey:

This letter is the Attorney General's order on the petition, by Mr. Dewing and Mr. Stout, for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on May 15,[1] asks the Attorney General to direct the Executive Office of the Associated Students of the University of Oregon (ASUO) to make available to the petitioners: uncensored transcripts of interviews; compiled notes and other information; and the tape recorded interviews made by the ASUO Executive Office in its investigation of a complaint alleging the alteration of certain minutes of the Incidental Fee Committee (IFC). For the reasons that follow, we grant the petition in part and deny it in part.

This petition arises from a controversy among students and their leaders at the University of Oregon. The university's IFC reviews budgets and recommends the allocation of student incidental fees. The committee keeps minutes of its meetings, prepared by a student hired for that purpose. This student became convinced that the minutes had been improperly altered.

Because she believed that the minutes were her responsibility, and because many members of the IFC were running for ASUO office against each other or were aligned with different factions, she complained to the ASUO Executive Office rather than to the IFC.

The Executive Office investigated the matter. In doing so, the ASUO President and Affirmative Action Coordinator interviewed 21 persons, eight of whom were elected student officers, one a graduate teaching fellow, and the others University of Oregon students. The interviewers tape recorded the interviews and kept extensive notes regarding their investigation. They ultimately concluded that the IFC's Chair had altered the minutes They called for the IFC to use its power to remove the IFC Chair from the committee. The investigation was carried out within a larger political context in which various members of the IFC, including the Chair, were running against each other for ASUO executive positions.

In response to the petitioners' disclosure request, the Executive Office complied in large part. The Executive Office withheld the tapes of the interviews, based on its mistaken understanding that the petitioners had not asked for those tapes. Additionally, various portions of the requested records were deleted in reliance on two exemptions: ORS 192.502(2) (personal information) and 192.502(3) (information submitted in confidence). Specifically, ASUO refused to disclose:

1. A few commercial establishment and public body telephone numbers.

2. Interviewees' personal telephone numbers or home addresses.

3. Some interviewees' opinions or analyses of their or others' relationships to other student officers (e.g., "close", "official", "professional")[1], and some derogatory comments about the IFC Chair.

4. Some interviewees' whereabouts at particular times.

5. The names of four persons interviewed.

6. Some of the interviewers' questions, and his evaluations of the interviewee (e.g., the interviewee was evasive).

7. A computer file of one member of the IFC reviewed during the course of the investigation.

ASUO Executive Office as a "Public Body" Subject to the Public Records Law

The Public Records Law covers every "public body" in Oregon. ORS 192.420. The term "public body," as defined in ORS 192.410(1), includes "all state and local government instrumentalities." Attorney General's Public Records and Meetings Manual 2 (1989) (Manual). We previously have concluded that the power of a university's recognized student government under ORS 351.070(1)(d) and (e) to recommend incidental fee assessments and allocations to the Board of Higher Education makes that government a "governing body" subject to the Public Meetings Law. See 44 Op Atty Gen 69 (1984). For similar reasons, we conclude that the ASUO Executive Office is a "public body" subject to the Public Records Law.

Personal Information Exemption

ORS 192.502(2) exempts from disclosure:

> Information 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[.]

For the reasons that follow, we conclude that none of the withheld information falls within this exemption.

"Personal" information is information "specific to one individual." Jordan v. Motor Vehicles Division, 308 Or 433, 441, 781 P2d 1203 (1989). This exemption is not for the benefit of the public body. Rather, it protects only the privacy of the person about whom the record contains information. Manual at 28. Not all personal information is exempt from disclosure; only personal information the public disclosure of which "would constitute an unreasonable invasion of privacy" is exempt. Id.

An invasion of privacy will be unreasonable where "an ordinary reasonable person would deem [it] highly offensive." Jordan v. Motor Vehicles Division, supra, 308 Or at 442-43.

The telephone number of a commercial establishment or a public body (item 1) plainly is not "personal" information. There is, therefore, no basis to withhold that information under ORS 192.502(2).

Home addresses and telephone numbers (item 2) plainly are "personal" information. Jordan v. Motor Vehicles Division, supra, 308 Or at 441. Such information may be withheld, however, only "on an individualized basis and * * * based on a sufficient showing of justification." Guard Publishing Co. v. Lane County School Dist., 310 Or 32, 39, 791 P2d 854 (1990). We have no individualized information suggesting that disclosing the addresses and telephone numbers will constitute an unreasonable invasion of any specific individual's privacy here.

Information about interpersonal relationships (item 3) also is "personal." Most of this information, however, consists of unremarkable comments about working relationships among student government officers. None of the withheld information reveals illicit or scandalous conduct the disclosure of which would constitute an unreasonable invasion of privacy. Therefore, this information also must be disclosed. The other information under item 3 (derogatory comments made about the IFC Chair) also is "personal." Those comments, however, primarily relate to his conduct in office. Accordingly, disclosure of that information would not constitute an unreasonable invasion of privacy. Manual at 31. To the extent that the comments are not so limited, disclosure nonetheless would not constitute an unreasonable invasion of privacy.

Statements of the interviewees' whereabouts at specific times (item 4) are "personal" information. We have no reason to believe, however, that disclosure of any of this information would constitute an unreasonable invasion of privacy.

We understand that the names of four persons interviewed (item 5) were inadvertently withheld. ASUO claims no right to withhold this information.

The questions asked by the interviewers (item 6) are not "personal" information. Although the interviewer's subjective

evaluation of the interviewee (e.g., "evasive") may be seen as "personal" (about the interviewee), disclosure would not be an unreasonable invasion of privacy. Those comments reveal a government officer's views on a person's participation in a government investigation, which should be no more confidential than public employee performance evaluations, which are not exempt. Manual at 31..

Finally, the computer file of one IFC member "reviewed during the course of the investigation" (item 7) is not exempt. That individual provided a computer disk, only the file headings of which were reviewed by the investigators. The file headings themselves do not appear to contain "personal" information. To the extent that those file headings are "personal," our review of the somewhat cryptic information in those headings persuades us that disclosure could not constitute an unreasonable invasion of privacy. Those file headings must be disclosed.

Information Submitted in Confidence

As already noted, the Executive Office also invoked ORS 192.502(3), the exemption for information submitted in confidence. That statute exempts from disclosure:

> Information 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 interest would suffer by the disclosure[.]

As we stated in the Manual, each of five different tests must be met in order for this exemption to apply:

> 1. The exemption applies only to information which is submitted voluntarily when the informant is under no legal obligation, by statute, rule, contract or otherwise, to provide the information.
>
> 2. The agency must be in a position to show that the information was of a nature which reasonably should be kept confidential.

> 3. The agency must show that it has obliged itself in good faith not to disclose the information.
>
> 4. Disclosure must cause harm to the public interest.
>
> 5. The person must have, in fact, submitted the information in confidence.

Manual at 32 (emphasis in original).

The only information here even arguably subject to this exemption is the interviewers' notes about the statements provided by the interviewees, and the tapes of those interviews. For the reasons that follow, we conclude that only a few highly inflammatory comments lawfully may be withheld.

The first test--voluntary submission of the statements--plainly is satisfied here. The interviewees were under no legal duty to speak with the interviewers.

The third test--the public body's good faith assurance of confidentiality--also appears to be satisfied. We understand that the interviewers promised all of the interviewees confidentiality to the extent the ASUO Executive Office believed that Oregon law would provide it.

Whether the persons interviewed actually submitted the information in confidence (fifth test) is not free from doubt. From the promise of confidentiality and the context of the investigation, however, we are willing to infer that the persons interviewed actually submitted the information in confidence. See Manual at 32.

We conclude, however, that few of the statements withheld are of a nature that reasonably should be kept confidential (fourth test). Most of those statements are merely opinions expressed by the interviewee as to his or her view of the interviewee's relationships with others: primarily other IFC committee members. Typical remarks are "friendly," "professional," and "official." We do not view these remarks to be of a nature that reasonably should be kept confidential.

There are, however, a few highly inflammatory remarks that were withheld. In our view, those selected remarks, which we will identify specifically to Mr. Bailey, reasonably should be kept confidential.

We also conclude that disclosure of those few highly inflammatory remarks also would harm the public interest (fourth test). Disclosure could unnecessarily strain IFC members' working relationships with each other and thus potentially hinder the committee in carrying out its responsibilities. Moreover, disclosure could compromise the Executive Office's ability to obtain candid and sensitive information in any future investigations it may conduct.

For these reasons, we conclude that the Executive Office lawfully may withhold only a few selected highly inflammatory remarks (which we will identify to Mr. Bailey) under ORS 192.502(3).

Conclusion

For the reasons stated above, we grant the petition in part, and order the ASUO Executive Office to disclose all of the withheld information (both the written notes and tape recordings) except for those brief segments that we will identify as confidential. The Executive Office has seven days from the date of this order in which to comply. See ORS 192.450(2).

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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[1] We acknowledge the petitioners' courtesy in allowing us to exceed the seven-day deadline for issuing this order.

[2] Originally, the Executive Office withheld significant portions of the interview with the IFC Chair. The IFC Chair, however, expressly disclaimed any confidentiality interest in that interview, and has asked that the interview be released. We understand that the Executive Office now has disclosed the remainder of that interview to the petitioners. Therefore, the petitioners' request for that information is moot.