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August 19, 2009

Via Email
wtharbaugh@gmail.com
William T. Harbaugh
University of Oregon
538 PLC
1285 University of Oregon
Eugene, OR 97403-1285

Re: Petition for Public Records Disclosure Order:
University of Oregon Records; Fee Waiver Petition

Dear Professor Harbaugh,

On August 12, 2009, you petitioned the Attorney General, seeking an order directing the University of Oregon (UO) to waive a $13.89 fee charged to you in conjunction with your request for certain records. For the reasons that follow, your petition is respectfully denied.

The Public Records Law confers a right to inspect public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Under the Public Records Law, a public body "may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." ORS 192.440(4)(a). A public body may waive or reduce that fee if "making the record available primarily benefits the general public." ORS 192.440(5). If a request for a fee waiver is denied by a state agency, the requester can petition the Attorney General to determine whether the denial was reasonable. ORS 192.440(6).

We assume that UO had authority to waive or reduce its fee. Even in those circumstances, a public body still has discretion to grant or deny a requested fee waiver. ***In Defense of Animals v. Oregon Health Sciences University***, 199 Or App 160, 189-190, 112 P3d 336 (2005). UO's denial must be upheld if it is reasonable under "the totality of the circumstances presented." *Id.* at 190. Moreover, the strength of the public's interest must be judged as of the time the waiver was ruled on by the agency. Public Records Order, March 13, 2008, Harbaugh.

Following those premises, UO's decision was reasonable. Our reasoning is essentially identical to our reasoning in Public Records Order, February 26, 2009, Harbaugh (sustaining UO's initial denial of waiver), which we incorporate herein.

Under the totality of the circumstances, we conclude that UO's denial of your fee waiver request was reasonable. Your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Doug Park