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April 30, 2009

SENT VIA E-MAIL

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

Re: Petition for Public Records Disclosure Order:
University of Oregon Documents Submitted to USDOJ

Dear Professor Harbaugh:

On April 24, 2009, we received your petition for a Public Records Order compelling the University of Oregon (UO) to disclose to you certain documents that UO provided to the United States Department of Justice (USDOJ) in conjunction with USDOJ's now-closed investigation of UO's Underrepresented Minority Recruitment Program (UMRP). For the reasons that follow, we respectfully deny your petition.

The records in question fall within four categories. First, there are 28 forms nominating specific faculty candidates as appointments for which UMRP funds may be expended. Second, there are 13 documents analyzing whether 11 of the candidates discussed in the nomination forms would address under-utilization. Third, there are spreadsheets for each year from 2003-04 to 2007-08 showing all tenure-related faculty appointments during those years, the amount of central startup support provided (including UMRP startup), and, in some cases, estimated or actual amounts of College, School or Department support. Finally, there are two spreadsheets that were initially attached to memorandums prepared by Lorraine Davis to Yvette Weber-Davis and then Interim Chancellor Pernsteiner in 2004 and 2005; each of those spreadsheets shows appointments that occasioned UMRP distributions for the then-current year and the preceding four years, and the amount of central support and College, School or Department support associated with each appointment (with projected amounts for the then-current year). *See also* Public Records Order, September 5, 2008, Harbaugh at 4 (describing documents).

UO has withheld these documents from inspection on the basis that they are not subject to the public records law by virtue of ORS 351.065(5). We considered and upheld UO's claim in Public Records Order, September 5, 2008, Harbaugh (copy attached). You have asked UO to reconsider that decision and provide you with the records in question. By email to you on April 24, 2009, UO declined to do so. Your petition to the Attorney General followed shortly.

We have reviewed our Order of September 5, 2008 and we believe that it was correctly decided. We therefore adhere to it, and respectfully deny your petition.

We do, however, take this opportunity to clarify a particular aspect of our September 5, 2008 Order. With respect to the two categories of spreadsheets described above, our earlier Order concluded that the spreadsheets were not public records, in part, because the spreadsheets contained information about a faculty member's ethnicity. Public Records Order, September 5, 2008, Harbaugh at 5. The conclusion is correct. But our reasoning could be interpreted to allow UO to exempt any of its records from the application of the Public Records Law by including some personal information about a faculty member on any record, even if that information is largely or wholly irrelevant to the record.[1] We do not believe that would be a correct interpretation of the law. For purposes of resolving your petition, we need not precisely describe the required relationship between a particular record and the kinds of information described in ORS 351.065(6). In this case, each line of each spreadsheet, or at least the vast majority of the lines, contains information about a specific faculty member's ethnicity, which we have concluded is personal information. Public Records Order, September 5, 2008, Harbaugh at 5; Public Records Order, April 16, 2009, Harbaugh, at 3. And the nature of the UMRP, and USDOJ's investigation of the UMRP, is such that the ethnicity of individual faculty members is necessarily – and centrally – relevant. In short, we believe that the September 5, 2008 Order correctly determined that the records in question are exempted from the operation of the Public Records Law by virtue of ORS 351.065.

As described above, your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1384479
c: Doug Park, University of Oregon

[1] UO did not assert that the BANNER accounting records recently provided to you were wholly exempt from the public records law, but instead removed personal information from those records before disclosing them to you. See Public Records Order, April 16, 2009, Harbaugh at 3.