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April 8, 1987

Raymond Gross
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Eugene, Oregon 97401

Joseph Hynes
Vice Provost for Academic Personnel
University of Oregon
Eugene, Oregon 97403-1226

Re: Petition for Public Records Disclosure Order

Gentlemen:

This letter order responds to Mr. Gross' petition for an Attorney General's order directing the University of Oregon to disclose certain public records. The petition, dated March 30, 1987, was received by the Department of Justice on April 1, 1987. The petition seeks disclosure of the following:

"1. A copy of the criteria for, duration and conditions of the 1986-87 (sabbatical) leave of absence of Mr. (Prof.) Steven Goldschmidt.

"2. A copy of the 1986-87 (sabbatical) leave proposal or application submitted by Mr. (Prof.) Goldschmidt."

For the reasons stated below, we grant the petition and direct the university to make available for Mr. Gross' inspection a record document entitled "Application and Contract for Sabbatical Leave," dated August 22, 1986, and signed by Professor Goldschmidt and responsible Higher Education officials.

We acknowledge that faculty personnel records of the state system of higher education generally are exempt from the disclosure otherwise required by the public records law. Specifically, ORS 192.500(1)(h) exempts "/p/ublic records or information the disclosure of which is prohibited or restricted or otherwise

made confidential or privileged under ORS . . . 351.065." The particular statute, ORS 351.065, authorizes the State Board of Higher Education and institutional executives to adopt rules limiting access to faculty personnel records. The board and the university have adopted administrative rules that have the effect of making a wide range of faculty personnel records confidential and exempt from disclosure under ORS 351.065 and ORS 192.500(1)(h). See OAR 580-22-060 through OAR 580-22-125 (board rules), and OAR 571-30-005 through OAR 571-30-050. However, specific rules of the board and university exempt, from restricted access, information of the type sought by the petitioner.

The board, by OAR 580-22-090(1)(c), has determined that "/s/alary information and the records of terms or conditions of employment" may be released on request and without the faculty member's consent. Similarly, the university has adopted administrative rules stating that salary information, including rate of pay and terms and conditions of employment, may be released upon request and without the faculty member's consent. OAR 571-30-010(3); OAR 571-30-015(1). Moreover, the university evidently has determined that this type of information is not within the definition of "personal records" that must be treated as confidential "in order to protect privacy rights in an adequate educational environment." OAR 571-30-015(2). The sabbatical information sought by the petitioner is, in our view, information relating to the salary, terms and conditions of employment of a faculty member.

We make this particular determination on the basis of our review of the pertinent sabbatical record itself. This document is styled as an application and contract for sabbatical leave. It recites on the form and in an attached supplemental statement the proposal for sabbatical activity, accepted by university officials. It states the salary figure for the sabbatical period. It reprints on the back of the form the pertinent administrative rules governing sabbatical leave. We conclude that by virtue of the rules of the board and the university, this particular sabbatical record is outside the exemptions from required disclosure provided by ORS 351.065 and ORS 192.500(1)(h).

In reaching this conclusion, we acknowledge that the university had a colorable basis for originally denying access to the sabbatical contract. The rules of the board and university which implement ORS 351.065 include faculty personnel data relating to such matters as "leaves" within administrative definitions of "personal records." OAR 580-22-065(1); OAR 571-30-010(4). The particular record here, however, is within a more specific description of disclosable information. We believe our resolution of this issue serves the policy of the public records law.

Accordingly, pursuant to ORS 192.450, we grant the petition and direct the University of Oregon to make the May 28, 1986 Application and Contract for Sabbatical Leave of Professor Goldschmidt available for inspection by Mr. Gross.

Respectfully submitted,

James E. Mountain Jr

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

JEM:ti
cc: Peter Swan
Jerry Casby
bcc: Dave Frohnmayer
Bill Gary