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February 20, 2009

SENT VIA REGULAR MAIL AND 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:
Oregon University System Records

Dear Dr. Harbaugh,

We write once again in response to a petition from you seeking a Public Records Order directing the University of Oregon ("UO") to immediately provide you with records related to its Underrepresented Minority Recruitment Program. The present petition was received on February 13, 2009. The underlying records have been the subject of previous Public Records Orders dated February 12, 2009 and May 20, 2008, both addressed to you. Those Orders describe the history of the underlying request.

Your current petition largely takes issue with the fact that our February 12 Order did not question the time estimate generated by UO in response to your records request in assessing whether UO had exceeded a reasonable time in responding to your request. You regard UO's estimate as grossly excessive, and you suggest that UO General Counsel's estimate should not be trusted. We understand, however, that the time estimate was not generated in the UO General Counsel's Office. Instead, the estimate was generated by the UO Department with actual control over the documents and corresponding responsibility for gathering them.

You also take issue with the fact that UO intends to take time to review the documents, arguing that "OSU allows anyone to access these same sorts of records, with no review" and that the Legislative Assembly is considering legislation that would require free online access to such information. We note that the Court of Appeals has stated that agencies should have an opportunity to review documents prior to review by the Attorney General:

> The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter. ORS 192.430(2).

Morse Bros., Inc. v. Oregon Department of Economic Development, 103 Or App 619, 621-622, 798 P2d 719 (1990). You assert that review should not be necessary. UO disputes that proposition, as we discuss below. Regardless of whether review is necessary, the law allows UO to review the documents to decide what attention they merit, and to give the documents that attention, within reasonable limits.

UO reports that it has compiled approximately 300 pages responsive to your request. Those are in the Office of the General Counsel awaiting review. That office anticipates that it will redact information that would identify individual professors, because in the context of your request for records related to the UMRP, disclosing a professor's identity would also disclose information that UO believes is confidential.[1] Before UO has made its final decisions with respect to any redactions, it is unnecessary to opine on whether such redactions are, in fact, permitted; it is sufficient to note that UO has a reasonable basis for believing that they may be allowed. *See*, Public Records Order, September 5, 2008, Harbaugh.

Your petition does not directly contend that UO has constructively denied your request by exceeding a reasonable time for providing you with access to the nonexempt material you seek. To the extent your petition is nevertheless making that argument, we reject it. UO has gathered responsive documents and has started reviewing them. In light of the complexity of your request, UO's other duties, and the staff available to work on your request, we do not find that there has been unreasonable delay. Thus, we could not conclude that UO has "constructively denied" your request.

For the foregoing reasons, your petition is respectfully denied.

Sincerely,

Mary H Williams

MARY H. WILLIAMS
Deputy Attorney General

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[1] We are aware that you believe it is improper for UO to place the Office of the General Counsel in charge of reviewing these documents, in light of your complaints against Ms. Grier. However, we cannot see how the individual identity of any professor would be relevant to those complaints. Moreover, if you believe that UO makes any redaction that is not allowed by the Public Records Law, you have the right to petition the Attorney General to review those redactions, and UO will be required to provide the Attorney General with the unredacted documents. *See*, ORS 192.470(2). We discern no basis for the Attorney General to direct UO with respect to which staff it should assign to review the documents.