DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

April 13, 1987

Chris Bristol
Managing Editor, The Vanguard
P.O. Box 751
Portland, Oregon 97207

Michael A. Corn
Assistant to the Director of
Business Affairs
Portland State University
P.O. Box 751
Portland, Oregon 97207

Re: Petition for Public Records Disclosure Order

Dear Messrs. Bristol and Corn:

This letter order responds to The Vanguard's March 25, 1987 petition for an Attorney General's order to disclose public records. The petition was received by the Department of Justice on March 30, 1987. With consent of the petitioner, the time for the Attorney General's response was extended to April 13, 1987. For the reasons set forth below, we respectfully deny The Vanguard's petition.

The petition seeks an order directing the State Board of Higher Education and Portland State University (PSU) to disclose to The Vanguard PSU payroll records (including time sheets) relating to a student's employment as student body president. The university previously denied a request to inspect these records, stating that the information is exempt from otherwise mandatory disclosure, under ORS 192.500(2)(b) (personal records), ORS 192.500(2)(g) (records exempt under federal law), and ORS 192.500(2)(h) (incorporating, among other laws, ORS 351.070 relating to the confidentiality of student records as determined by pertinent administrative rules).

We need not resolve the issues of whether the records are exempt from disclosure under ORS 192.500(2)(b) and (2)(h). We conclude that the information sought by The Vanguard is exempt from disclosure under ORS 192.500(2)(g), as previously interpreted by the Attorney General, and under ORS 192.496(4).

ORS 192.500(2)(g) exempts from statutorily mandated disclosure "[a]ny public records or information the disclosure of which is prohibited by federal law or regulations." More specifically, ORS 192.496(4) exempts from disclosure "[s]tudent records required by state or federal law to be exempt from disclosure." (Emphasis added.) The pertinent federal law is known as the Buckley Amendment to the Freedom of Information Act, 20 USC § 1232g.

The Oregon State Board of Higher Education, as an educational agency receiving federal funds, and PSU, as an educational institution receiving federal funds, are subject to the privacy-of-student-records requirements of federal law, 20 USC § 1232g(b)(2) and (d), and federal regulation 34 CFR § 99.3. This applicable federal law and regulation generally prohibit the payment of federal funds to educational agencies and institutions that have a practice or policy of disclosing certain educational records of students.

Although this federal law and regulation generally exclude from the definition of educational records those employment records relating to persons employed by institutions such as the university, the law and regulations specifically exempt from the employment records exclusion " . . . records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student." 34 CFR § 99.3; see, 20 USC § 1232g(a)(4) (defining "education records," and excluding from that definition an educational institution's employment records relating to person not in attendance at the institution).

In other words, if employment records of an educational institution, such as PSU, relate to a student's employment in a position that can be filled only by a student, the records may not be disclosed without jeopardizing the availability of federal funds to the university. We have orally confirmed this interpretation of the federal law and regulations with Pat Ballinger, the administrator in the United States Department of Education who has responsibility for administering federal law on this subject.

We recognize that the federal law and regulations outlined above do not directly prohibit disclosure of student records. However, we previously examined this issue and determined that the federal laws involved here sufficiently state a

prohibition on disclosure for purposes of the state public records law. In the Attorney General's Public Records and Meetings Manual, at (I-12 (1985), we said:

> " . . . We conclude that a federal law or regulation which expresses a clearly prohibitory policy, such as the Buckley Amendment to the Freedom of Information Act, 20 USC § 1232g, is to be deemed a prohibition even if the means of enforcing the federal policy - loss of federal funds - is only indirectly prohibitory."

We adhere to that conclusion.

Applying our interpretations of applicable state and federal law to the facts as we understand them, we conclude that the particular student's employment records are exempt from disclosure under ORS 192.496(4) and 192.500(2)(h). The records relate to the university's employment of a person in attendance at the university; the position held by the person (i.e., student body president) can only be filled by a student. Pertinent federal law erects a sufficiently prohibitory sanction for disclosure of the records. We therefore deny The Vanguard's petition for an order compelling disclosure of the records.

Very truly yours,

James E. Mountain Jr.

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

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