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November 5, 2008

SENT VIA E-MAIL AND REGULAR MAIL

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

Re: Petition for Public Records Disclosure Order:
Records of the Chancellor of the Oregon University System

Dear Dr. Harbaugh:

This letter is the Attorney General's order on your petition received October 28, 2008.[1] That petition requests an order requiring disclosure of records in the custody of the Chancellor of the Oregon University System, under the Oregon Public Records Law, ORS 192.410 to 192.505. The records in question are "any employment or post-employment contracts for UO President David Frohnmayer." You explained the scope of the request in your initial email to Mr. Hagemann, dated October 7, 2008.

On October 27, in response to a petition you filed related to the same documents, we declined to find that the Oregon University System ("OUS") had constructively denied your request based on the thirteen days that elapsed between the date of your initial request and the initial response required by ORS 192.440(2). The present petition asks us to find that the OUS has constructively denied your request on the theory that the reasonable time that the law affords for providing access to records has elapsed. See generally, ATTORNEY GENERAL'S PUBLIC

[1] This petition reached us in two slightly different forms on October 28, 2008. First, Assistant Attorney General Christine Chute complied with a request you made in an October 24 email and submitted the present petition on the morning of October 28, following our Order addressed to you on October 27, 2008. Second, you separately emailed the petition, with "a slight change" on October 28. Because the two versions were received on the same day, relate to the same documents and rely on the same theory, we treat them as a single petition. We thank you for extending the time within which the law would otherwise have required our response.

RECORDS MANUAL (2008) ("MANUAL") at 10-12. You also seek a waiver of fees. We respectfully deny your petition, for reasons that follow.

Before proceeding to the merits of your petition, we note that you have also asked us to clarify the relative priority that Mr. Hagemann should assign to his custodial duties under the Public Records Law vis-à-vis the other duties of his position with OUS. We decline to do so. Both the general functions of OUS and the custodial duties imposed by the Public Records Law are ultimately statutory duties. So long as OUS and other public bodies provide "proper and reasonable opportunities for inspection and examination" of records, ORS 192.430(1), the Public Records Law does not give the Attorney General authority to tell public agencies how they must allocate agency resources in carrying out their various statutory functions.

Proceeding to the merits of your petition, we are informed by Mr. Hagemann that he provided you with a number of responsive documents, at no charge, on November 4, 2008. Mr. Hagemann indicates that only a small number of responsive documents remain to be disclosed, and states that he will disclose those documents in the very near future. Specifically, the Chancellor's staff is preparing to disclose to you documents pertaining to deferred compensation agreements with President Frohnmayer. Mr. Hagemann indicates that you will not be charged for those documents either.

As to the documents already provided by Mr. Hagemann, your petition is denied as moot. Because Mr. Hagemann has further indicated that the Chancellor will not charge you for the remaining documents either, your petition is wholly moot insofar as it asks us to order the Chancellor to waive fees. We therefore deny that request as well. The remaining question is whether the Chancellor has exceeded a reasonable time to provide you with records not already disclosed.

We do not believe that a reasonable time has been exceeded. A number of factors go into our determination of reasonableness:

> The amount of time that is reasonable will depend upon the volume of records requested, the staff available to respond to the records request and the difficulty in determining whether any of the records are exempt from disclosure. * * * The public body may consult with its legal counsel to determine whether records are exempt from disclosure and to receive advice on other questions relating to the Public Records Law.

MANUAL at 10.

As your previous petition regarding these records observed, there has never been any doubt about the fact that the Chancellor possesses records responsive to your request. Moreover, all of the records relate to President Frohnmayer, a single, high-profile public official. The requested records are fairly narrow in scope, consisting only of compensation agreements with that official entered into since October of 2006, or currently pending. The volume of responsive records is not particularly high. The Chancellor has not asserted that there has been any

"difficulty in determining whether any of the records are exempt." Viewed in isolation, these factors could support a finding that it is unreasonable to have taken over four weeks to provide you with responsive records.

On the other hand, as Mr. Hagemann has indicated to you, there was a period of time immediately surrounding your request when the staff resources of the Chancellor's office were reduced below their usual levels due to illness. Even at usual levels, the Chancellor's staff must (as previously noted) balance their custodial duties under the Public Records Law with their duties respecting the Chancellor's other functions on behalf of OUS.

In addition, the Chancellor's office has been consulting with legal counsel regarding your petition. That factor also weighs in favor of finding that a reasonable time has not been exceeded.

Moreover, Mr. Hagemann states that his response to date omits only a small number of responsive documents that Mr. Hagemann expects to provide to you shortly. This fact also tends to support a finding that the time taken by the Chancellor's office has not been unreasonable, as the time for response is unlikely to extend much further.

In weighing these competing factors, we are mindful that "[t]he Public Records Law is primarily a *disclosure* law," MANUAL at 23 (emphasis in original). Here, the bulk of the records have been provided to you, and Mr. Hagemann indicates that he will provide the remainder in the very near future. We are therefore satisfied that this primary interest of the law is being adequately served. With that in mind, the balance of the factors articulated above indicates that the Chancellor's office has not exceeded a reasonable time in responding to your request. As a result, your petition is respectfully denied as premature with respect to the remaining documents. *See* Public Records Order, August 13, 1987, Hall and Bristol (petition premature when agency was in the process of responding to a request).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Ryan Hagemann