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September 10, 2008

SENT VIA E-MAIL & REGULAR 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 Records

Dear Mr. Harbaugh:

This is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law. The petition was received on Friday August 29, 2008 via email.[1] The petition asks the Attorney General to order the University of Oregon ("UO" or "University") to respond to a public records request set forth in your email. Specifically, on August 18, you requested that the UO provide you with documents that either:

a. explain UO's general policy regarding the allowable use of administrative stipends

b. address the allowable use of Dr. Martinez's administrative stipend in particular.

As of the date of your petition, UO had not responded to that request. In your petition, you ask that we treat that lack of response as a constructive denial by the University and that we order UO to disclose the records. You also request that we order UO to waive associated fees, should it attempt to impose them. For the reasons that follow, we respectfully deny your petition.

[1] In light of the Labor Day holiday, in your petition you extended the 7 day response time until September 10, 2008. We appreciate that courtesy.

ORS 192.440(2) requires a public body to "respond as soon as practicable and without unreasonable delay" following a written request for records. In a previous order, we noted that a public records request you made failed to follow UO's published procedure for making such requests. We indicated our expectation that following the procedure would result in prompter response times. Public Records Order, May 20, 2008, Harbaugh. We note that the request that is the subject of your current petition appears to substantially comply with UO's published policy for public records requests. It contains the phrase "public records request" in the subject line, and it includes among its addressees the email address gcounsel@jwj.uoregon.edu. See http://pmr.uoregon.edu/university-of-oregon-public-records-procedure (accessed September 7, 2008). We appreciate your effort to follow the UO's published procedure.

On September 3, 2008, Doug Park responded to your request on behalf of UO. Mr. Park's responsibilities include overseeing the process of reviewing the inbox for gcounsel@jwj.uoregon.edu and responding to public records requests. Mr. Park informs us that the availability of staff assigned to that task, including Mr. Park himself, was significantly reduced during the time between the date of your request and the date of UO's response, with the result that UO's response to you took somewhat longer than usual. Mr. Park indicates that under the circumstances it was not practicable to respond to you more promptly. In light of documents Mr. Park provided demonstrating the University's prompt attention to other recent public records requests made by you, we see no reason to doubt Mr. Park's explanation for the slight delay. In any event, the University has now responded to your request, and we would not find that the delay in responding to you was so lengthy as to be "unreasonable."

The substance of the University's response to your request for records is two-fold. First, documents pertaining generally to stipend expenditures are available for free at the UO website, but the University will compile those for you for a fee if you so direct. Second, UO does not possess any documents that address the allowable use of Mr. Martinez's stipend in particular.

In light of that response, we cannot find that UO has constructively denied your request for records. In fact, UO has offered to provide you with all of the responsive records that it possesses. It will compile them for you, should you wish to pay UO's fees. *See* ORS 192.440(4) (authorizing agencies to charge public records fees). Moreover, UO has indicated that you can avoid those fees but still obtain all of the responsive documents by taking advantage of the UO website. A response indicating that the University does not possess certain kinds of records, while offering to make available the responsive records held by UO, does not deny you any right of inspection. The Attorney General's authority to order an agency to provide records arises when a person is "denied the right to inspect or to receive a copy of any public record of a state agency." ORS 192.450(1). The UO has not denied you're the right to inspect or receive a copy of the records you requested.

With respect to your request that we order UO to waive its fee, we make two observations. First, UO's response indicates that it will provide you with a fee estimate for compiling responsive documents should you so choose to insist on the UO's assignment of personnel to gather the record instead of obtaining the records at no cost to you or to the UO from the UO's website. If you insist on requiring UO to collect the records, then the UO will

grant or deny your request for waiver of the fees. Under the circumstances, UO has not yet denied your request for a waiver. Without a denial of your waiver request, we cannot determine that UO has unreasonably denied the request. *See* ORS 192.440(6) (Attorney General may review the reasonableness of state agency refusals to waive or reduce fees). Second, UO's response indicates that all of the responsive documents in its possession are freely available via UO's website. Under those circumstances, we think it unlikely that failure to waive or reduce fees would be "unreasonable" within the meaning of ORS 192.440(6).[2]

For the foregoing reasons, we must respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Doug Park, University of Oregon

[2] We do not foreclose the possibility that a waiver or reduction may be required, but in the abstract we find it difficult to imagine that the public interest requires UO to waive or reduce a fee that a requestor could entirely avoid.