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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE

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May 20, 2008

SENT VIA E-MAIL & REGULAR MAIL

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

Re: Petition for Public Records Disclosure Order:
Oregon University System Records

Dear Dr. Harbaugh:

This letter is the Attorney General's order on your petition for the disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received your petition on May 12, 2008. The petition asks the Attorney General to direct the University of Oregon to make available:

> [T]ransactions detail reports for all indices dedicated to UO's UMRP programs from 1995 to the present.

Your original request asks that this information be provided in a Microsoft Excel worksheet or other machine-readable format. Your original request also seeks a waiver of fees.

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. A custodian of public records must provide "proper and reasonable opportunities for inspection and examination." ORS 192.430(1). A public body must make available to the public a written procedure for making public record requests that includes the name and address of one or more persons to whom requests may be sent and the amounts of and manner of calculating fees that the public

body charges for responding to such requests. ORS 192.440(7). When a public body receives a written request for public records, the public body shall respond "as soon as practicable and without unreasonable delay." ORS 192.440(2). That response must acknowledge receipt of the request and include one of the six preliminary responses enumerated in the statute. Any person denied the right to inspect or to receive a copy of any public record may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1).

According to materials you submitted with your petition and subsequent communications, your written interaction with the University began on April 23, 2008. In an email of that date addressed to University General Counsel Melinda Grier and also sent to University President Dave Frohnmayer, Linda Brady, and Frances Dyke, you requested the above records. Receiving no response from these addressees, you transmitted your petition to the Attorney General on May 12, 2008.

At the time of your request, pursuant to ORS 192.440(7), the University had published a protocol for submitting public records requests on the University's publicly-accessible Public and Media Relations website, located at http://pmr.uoregon.edu/university-of-oregon-public-records-procedure (accessed May 15, 2008). That protocol directs that public record requests be sent to Douglas Park, the University's Assistant General Counsel, and provides both a mailing and an email address – gcounsel@jwj.uoregon.edu – to which requests may be sent. By email dated January 11, 2008, the University specifically informed you of the existence of this procedure. However, your request was not sent to the designated address.

We conclude that the delayed response to your April 23, 2008 request was not unreasonable. We suggest that, to avoid such delays in the future, you should direct public records requests to the email address indicated in the procedure published by the University. That procedure is explicitly intended to supersede all other methods by which requests are made. If you follow it, we expect that you will receive the statutorily required acknowledgment much more promptly. Mr. Park has informed us that he and his staff regularly cull the designated email address for incoming public records requests.

We do not suggest that the University is free to simply ignore requests that fail to comply with the policy.[1] The University has not told us that it believes otherwise. In this case, Mr. Park explained that your request "fell through the cracks," as Ms. Grier was preparing to leave the

[1] We note that ORS 192.430(2) permits "reasonable rules necessary * * * to prevent interference with the regular discharge of duties of the custodian." The policy directing emailed requests to a particular address is reasonable, and promotes that statutory goal. If a requestor were to repeatedly ignore requests for compliance with that aspect of the policy, we might be willing to entertain an argument that ORS 192.430(2) allows an agency to simply ignore non-compliant requests. We have previously indicated that agencies can insist on compliance with rules requiring written requests. Public Records Order, July 7, 1989, Baker. That is not the case here. In at least two requests made subsequent to the University's May 14, 2008 email asking you to do so, you have included the designated email address in the list of recipients.

office for vacation and was unusually busy at the time of your email.[2] Ms. Grier had not opened your email prior to leaving the office; hence she could not have realized that it was not directed to the correct address.

In the usual course of business, we anticipate that recipients of a public records request who realize that the request has not complied with an agency's public records policy will take some appropriate action. Possibilities include forwarding noncompliant requests to proper channels, returning requests with instructions that the requestor follow the policy, or any other steps reasonably calculated to lead to consideration of the request. But where an agency has made its record request policy publicly available, we do not believe that agency officials have a duty to scrutinize public records requests to insure that requests the officials receive were also directed in accordance with the policy.

In short, we decline your invitation to treat the three week period between request and response as a constructive denial of your records request under these circumstances. Again, we think that some delay is a reasonably expected consequence of your failure to take the simple step of directing emailed records requests to the address specified by the University's published policy. Mr. Park acknowledged your request by email dated May 14, 2008, the date on which he became aware of the request. The University has not exceeded the reasonable time in which it is permitted to respond to your request for records and a waiver of fees. Accordingly, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

DM297030
cc: Doug Park

[2] We recognize that your request was also directed to a number of other high-level University officials. However, it was addressed to Ms. Grier, who is the University official in charge of the office within the University responsible for responding to records requests. Entertaining the unlikely assumption that one or more of them read it and realized that it had not been sent to the proper address, we don't think that your email required any action of them. That is, they could legitimately assume that the matter was in Ms. Grier's hands, just as Ms. Grier could legitimately assume that you had complied with the public records policy in the absence of actual knowledge to the contrary.