HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

February 27, 2008

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

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

Dear Mr. Harbaugh:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records law, ORS 182.410 to 192.505. We received your petition via email on February 20, 2008. The petition asks the Attorney General to order the University of Oregon (UO) to release copies of two groups of records: (1) documents, reports, memoranda, or letters pertaining to the tax-exempt status of the proposed bonds for the construction of an arena at the University and (2) emails sent to and from Ms. Melinda Grier at any state email address containing all the words "tax exempt bonds" or all the words "tax arbitrage" from January 1, 2007 to the present. You requested the documents from the University via email on February 12, 2008.[1] Because the University had not acknowledged your request as of February 20, you asked us to treat that as a constructive denial. On February 20, 2008, the University did respond to your February 12, 2008 request. We respectfully deny your petition for the reasons that follow.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. When a public body receives a public records request, two requirements apply. First, the public

[1] Your initial public records request asked both the University and the Oregon University System to send the described documents to you. Oregon University System sent you a preliminary response acknowledging your request on February 20, 2008. On February 20, 2008, you confirmed with our office that your petition for a public records disclosure order relates only to the University of Oregon.

body must acknowledge receipt of the request "as soon as practicable and without unreasonable delay." ORS 192.440(2). Second, if the public body has any of the requested records, it must provide the requestor "an opportunity to inspect or copy the public record." ORS 192.440(1).

The petition avers that the University did not respond in any way to your public records request. We spoke with the University on February 22, 2008, and learned that it had responded to your February 12, 2008 request on February 20, 2008. The substance of the University's initial response complies with ORS 192.440(2)(d) in that it informed you that the University "is custodian of at least some of the requested records you have requested [and that a]n estimate of the time and fees for preparing the records for disclosure will be provided to you within a reasonable time."

Your February 20, 2008 petition invites us to declare the UO's failure as of that date to reply to your February 12, 2008 request as a constructive denial of you public records request. As noted above, on the same day that you petitioned for an order requiring the UO to acknowledge your request, the UO did comply with the obligation imposed on it by ORS 192.440(2)(d). Under these circumstances, there is nothing for us to order the UO to do; your petition as to this allegation of your petition is denied as moot.

Your February 20, 2008 petition, however, may reasonably be read as a claim that the UO denied you an obligation to inspect or copy public records responsive to your February 12, 2008 request. And the petition also seeks an order compelling the UO to waive copying charges for the requested records.

Once a public body complies with ORS 192.440(2) by acknowledging receipt of a request, it must comply with ORS 192.440(1). A public body is permitted a reasonable period of time in which to respond to the request for records. The reasonableness of the time required to respond will depend upon the circumstances surrounding the request. *See* Public Records Order, November 15, 2005, Paben (citing circumstances leading to delayed response); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) at 10-11 (same).

The University has determined that it is the custodian of some of the documents that you requested. It informs us, however, that it has not been able to determine whether it is in possession of all of the requested records. Given the size of your request and the short elapse of time between your request and your petition, we do not find that the University's failure to fulfill your request as of today amounts to a denial as a matter of law. *See* Public Records Order, September 24, 2007, Harbaugh (the volume of records requested is considered when determining whether the timeliness of a response is reasonable).

In addition, the University provided you with general fee information when it responded to your initial request. The UO's initial response also states that the

University will provide you with a cost estimate within a reasonable time. It is our understanding that the University has neither granted nor denied your request for a fee waiver. In the absence of a denial, we are without power to order a waiver.

We respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS21294
cc: Melinda Grier