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DEPARTMENT OF JUSTICE

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September 5, 2007

William Harbaugh
Department of Economics
1228 University of Oregon
Eugene, OR 97403

Re: Petition for Public Records Disclosure Order
University of Oregon Records (Petitions 7.5 and 7.51)

Dear Mr. Harbaugh:

This letter is the Attorney General's order on your petitions (labeled 7.5 and 7.51) for disclosure of records under the Oregon Public Records Law. We received the petition via email on August 22, 2007.[1] The petition asks the Attorney General to direct the University of Oregon (UO) to make available a report by Francis Dyke prepared in mid 2006, and relating to how UO colleges and departments were allocating and spending funds from the Underrepresented Minority Recruitment Plan (UMRP). For convenience, we will refer to this report as the Dyke report. You asked, in the alternative, for specified summary information, described below.

On August 27, 2007, we received a second petition related to the Dyke report and the summary information.[2]

For the reasons that follow, we respectfully deny both petitions.

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[1] We appreciate your extending the time within which the law would other wise have obligated us to issue an order to September 5, 2007.

[2] In the August 27 petition also requested that the Attorney General "explain the procedures that [his] office has used to deal with the conflict of interest inherent in having the Attorney General deal with a public records petition involving a subordinate Special Assistant Attorney General." This echoes a request made in your August 20 petition. Because this is an inquiry regarding Department of Justice policies or procedures in a public records order, rather than a petition for issuance of an order within the Attorney General's authority, it is unnecessary and inappropriate to respond to that inquiry in this order. We will, however, respond to your questions in separate correspondence.

History of the request

Information that you have provided us shows that you sent your original request for a copy of the Dyke report to Linda Brady at UO on May 27, 2007. The original request was for "information related to the UMRP, specifically for the report prepared by Francis Dyke in mid 2006, regarding how UO colleges and departments were allocating and spending UMRP funds, and for information collected in association with that request." You also offered that, if the report was not available in written form, you would be satisfied to receive "[s]ummary data of average tenure-track faculty startup funds, including UMRP funds, by UO EEOC job group, gender, and EEOC protected minority status for the years 2002-present." (Email, Harbaugh to Brady, May 27, 2007).

On June 23, 2007, you forwarded a copy of your request to Melinda Grier, UO General Counsel, asking her to respond. On July 2, 2007, you petitioned the Attorney General for a public records order requiring UO to produce the records you requested. The Attorney General denied your petition on the ground that UO was entitled to a reasonable time to respond to your request and had not refused to produce the report. Public Records Order, July 10, 2007 (Harbaugh).

On August 23, 2007, UO informed you that the Dyke report that you requested does not exist. At the same time, UO provided you with a spreadsheet dated April 25, 2006, reporting information related to the UMRP. (Email, Whalen to Harbaugh, August 23, 2007).

On August 26, 2007,[3] you again wrote to the Attorney General stating that you found it "highly unlikely" that the spread sheet provided was the only "document or email relating to the public records" you requested. You asked the Attorney General to order UO to release the documents.

Dyke report

Since we received your latest petition for a Public Records Order on August 27, 2007, we have spoken with Ms. Grier again. Ms. Grier assures us that Francis Dyke did not prepare a report such as the one you describe. The spread sheet provided to you was prepared by a UO employee who works for Ms. Dyke. The spreadsheet, while not precisely what you requested, is the document that UO found that was most nearly responsive to your request.

You have indicated that you do not believe that UO does not have a Dyke report and have asked the Attorney General to order UO to produce the report. The Attorney General has no practical way of contradicting – and no way to prove or disprove – UO's claim that the report does not exist. In the absence of specific information to the contrary, we assume that public officials, including those at UO, are men and women of good faith, committed to obeying the law. In this case, no facts support your suspicion that UO representatives are lying about the existence of the Dyke report.

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[3] We received this communication on August 27, 2007.

Therefore, we deny your petition for a Public Records Order compelling the disclosure of this document.

Summary information

We have also asked Ms. Grier whether UO has a record containing the summary information that you suggested as an acceptable alternative. She has told us that no such record exists. The Public Records Law does not impose a requirement on public bodies to create records. ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL at 13 (2005). Accordingly, we deny your petition.

Emails and other documents

In your most recent petition to the Attorney General, you expressed interest in receiving email or other documents related to your request. It does not appear that you have asked UO for this particular information. Therefore, your petition for a Public Records Order is denied as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS
c: Melinda Grier, General Counsel, University of Oregon