DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

July 2, 1987

Jim Redden
Willamette Week
2 NW 2nd
Portland, Oregon 97222

Re: Petition for Public Records Disclosure Order

Dear Mr. Redden:

This letter responds to your June 22, 1987, petition for a public records order. The Attorney General's office received your petition on June 25, 1987. For the reasons set forth below, your petition is denied.

Your petition asks us to order Portland State University to make available to you records of "Portland State University's investigation into allegations of racism against Student Body President Mike Erickson and/or Vice President Dan Swift." The information you seek constitutes student records that, under federal law, the university is prohibited from disclosing and that are, therefore, exempt from disclosure under Oregon's Public Records Law.

The federal Family Educational Rights and Privacy Act of 1974, as amended, sets forth a general policy concerning the privacy of student records. 20 USC § 1232g(a)(4)(A) defines "education records" in pertinent part as

> "those records, files, documents, and other materials which --
>
> "(i) contain information directly related to a student; and
>
> "(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution."

That definition contains several exceptions that do not apply here. 34 CFR § 99.3 (1986), part of the Secretary of Education's regulations implementing the quoted statute, defines "education records" similarly. 20 USC § 1232g prohibits disclosure of "education records," except to specified individuals, agencies, or organizations (among which you are not included) without consent of the parent, or the student if that student has attained 18 years of age, or upon judicial order. See Letter of Advice dated October 1, 1982, to Richard S. Jones, Executive Secretary, Teacher Standards and Practices Commission (OP-5239) n 1.

ORS 351.070(2)(e), which the 1979 Oregon legislature adopted to bring Oregon law into conformity with federal law governing student records, see OP-5239, supra, at 6, provides in pertinent part:

> "[E]xcept for directory information, records containing information kept by the institution, division or department concerning a student and furnished by the student or by the institution, division or department, including, but not limited to, information concerning discipline, counseling, membership activity, academic performance or other personal matters, shall not be available to public inspection or disclosure for any purpose except with the written consent of the student who is the subject of the record or upon order of a court of competent jurisdiction or, in an emergency, to appropriate persons if such information is necessary to protect the health or safety of the student or other persons."

The Board of Higher Education's administrative rules define "personal records" as

> "records containing information kept by the institution, division, or department concerning a student and furnished by the student or by others at the student's or the institution's, division's or department's request, including, but not limited to, record of grades attained, information concerning discipline, counseling, membership activity, employment performance, and other individual student behavioral records."

OAR 580-13-010(1). Except for narrow exceptions that do not apply here, "personal records" may not be released without the student's written consent or upon receipt of a subpoena or other court order or process. OAR 580-13-035(1).

If the records you request constitute "education records" as defined by federal law or student records subject to ORS 351.070 and OAR 580-13-010 and -035, the university may not release them. Accordingly, they would be exempt from disclosure under the Public Records Law. ORS 192.496(4), 192.500(2)(g), (h).

All of the records you seek fit squarely within the definitions of "education records" in 20 USC § 1232g(a)(4)(A) and 34 CFR § 99.3 (1986). They contain information directly related to a student, and are maintained by the university. For the same reasons, those records constitute "personal records" within the meaning of OAR 580-13-010(1). Neither you nor the organization you represent is among the individuals, agencies, and organizations to which the university may release those records without the student's written consent or a court order. We must, therefore, deny your petition. You may, of course, directly ask Mr. Erickson and Mr. Swift for their written consent to disclose those records.

Because of our resolution of your petition, we need not and do not discuss the other Public Records Law provisions cited by the university in denying your request for disclosure.

Respectfully submitted,

WILLIAM F. GARY
Deputy Attorney General

WFG:cm
cc: Orcilia Forbes, Vice President for Student Affairs
James E. Mountain, Jr., Special Counsel
James M. Mattis, Assistant Attorney General
Richard Wasserman, Assistant Attorney General

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RECEIVED
JUN 25 1987
ATTORNEY GENERAL
SALEM, OREGON

APPENDIX "B"

Petition for Attorney General's or District Attorney's Review

A petition to the Attorney General or district attorney requesting him or her to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

June 22 (date)

I (we), Jim Redden, Willamette Week (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____ (name of governmental body) and its employes to (make available for inspection) (produce a copy or copies of) the following records:

1. Portland State University's investigation into allegations

(Name or description of record)

x2. of racism against Student Body President Mike Erickson and/or

(~~Name or description of record~~)

Vice President Dan Swift.

I (we) asked to inspect and/or copy these records on May 26, 1987 (date) at 724 SW Harrison, Portland (address). The request was denied by the following person(s):

1. Orcilia Forbes, Vice President for Student Affairs

(Name of public officer or employe; title or position, if known)

2. _____

(Name of public officer or employe; title or position, if known)

_____

(Signature(s))

This form should be delivered or mailed to the Attorney General's office, in Salem (Justice Building, Salem, Oregon 97310); or the district attorney's office in the county courthouse.

Allegations of racism on the part of Erickson and/or Swift have been widely reported in the Vanguard student newspaper, as have reports that the administration is investigating the allegations. To date, the administration will not disclosure the results of its investigation. Our request to review the records of the investigation was denied in a letter dated June 11, 1987 (attached). It is our contention that none of the exemptions cited in the letter apply in this situation.

Jim Redden
Willamette Week
2 NW 2nd
Portland, Oregon 97222

VICE PRESIDENT
FOR
STUDENT AFFAIRS

PORTLAND
STATE
UNIVERSITY
P.O. BOX 751
PORTLAND, OREGON
97207
503/229-4422

June 11, 1987

Jim Redden
Willamette Week
2 Northwest Second
Portland, OR 97201

Dear Mr. Redden:

This letter is in response to your letter of May 26, 1987 to President Sicuro in which you request that the University provide you with certain records. President Sicuro has asked that I respond to you directly on behalf of the University.

After consultation with University legal advisors, I have decided to deny your request. I am advised that the information which you are requesting is exempt from public disclosure under ORS 192.500(2) (a), (b), (c), (g), and (h) and ORS 192.496(4).

Very truly yours,

Orcilia Forbes

Orcilia Z. Forbes
Vice President for Student Affairs

OZF:sr