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

August 15, 2006

Ted Kramer
Editor, the Observer
1406 Fifth Street
La Grande, OR 97850

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

Dear Mr. Kramer:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on August 3, 2006, asks the Attorney General to order Eastern Oregon University (EOU) to provide you with copies of documents pertaining to any complaints filed by EOU students or staff against Robert L. Davis, currently director of undergraduate studies and previously a professor, over the course of his employment at EOU. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any "public record" of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1).

On or about July 26, 2006, EOU Associate Vice President for University Advancement Tim Seydel responded to a request for records made by Bill Rautenstrauch, a reporter with The Observer. Your petition states that Mr. Seydel denied the newspaper's request for records on the basis that "personnel files are not subject to public disclosure." Mr. Seydel told us that he was first asked if there were any similar complaints of a sexual nature regarding Dr. Davis other than those made by two individuals identified in allegations contained in a recent tort claim. He told your reporter that to his knowledge there were no similar complaints. Mr. Seydel told us that your reporter then asked for Mr. Davis' personnel file, redacted as your August 3 letter indicates. This clarification of events does not affect the core fact EOU has denied your request for records

of complaints by students or staff of a sexual nature against Dr. Davis and has denied your request for a copy of his personnel file.

Under ORS 351.065(5), "personnel records" designated as confidential pursuant to rules of the Board of Higher Education are not public records under ORS 192.420. This means that such records are not subject to disclosure under the Public Records Law.

ORS 351.065(6) defines "personnel records" as records containing information concerning a faculty member kept by a university, including "other personal records of individual persons." OAR 580-022-0065(1) defines "personal records" as including records "containing information kept by the institution * * * concerning a faculty member and furnished by the faculty member or by others, including, but not limited to, information as to discipline, counseling * * * other behavioral records, professional preparation and experience, [or] professional performance * * *." The records you have requested for which EOU denied disclosure are "personal records" as defined by this administrative rule, and, under OAR 580-022-0090, they are subject to "restricted access." This means that they may be disclosed only to subject faculty or institutional personnel having "a demonstrably legitimate need to review the records," absent the faculty member's consent, "a valid subpoena or other court order or process or as required by state statute, federal law or valid federal or state rules, regulations or orders." OAR 580-022-0095.

As already noted, ORS 351.065(5) provides that any category of personnel records designated as confidential pursuant to Board of Higher Education rules are not public records for purposes of ORS 192.420. Because records regarding complaints of a sexual nature against Mr. Davis constitute confidential personnel records, they are not "public records" under the Oregon Public Records Law. For this reason, the Attorney General does not have jurisdiction to order their disclosure. Therefore, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

cc: Tim Seydel, EOU
Ben Rawlins, OUS

AGS18328