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August 8, 2006

William T. Harbaugh
Department of Economics
University of Oregon
Eugene, OR 97403-1285

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 192.410 to 192.505. Your petition, which we received on August 2, 2006, asks the Attorney General to order the University of Oregon to make available copies of the "University of Oregon Affirmative Action Plans in effect for the years 1996 to 2003."[1] For the following reasons, 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. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of any 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). The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1).

In your petition you state that Melinda Grier of the University Counsel's office has informed you that the University has been unable to locate records responsive to your request for the years between 1996 and 2003. We have conferred with Ms. Grier and confirmed that University staff has made repeated but unsuccessful attempts to locate these documents,

[1] We note that you originally emailed your petition to Assistant Attorney General Christine Chute, with a copy to University of Oregon General Counsel Melinda Grier, on July 31, 2006. AAG Chute forwarded the petition to the Attorney General's office, where it was received on August 2, 2006. Accordingly, we treat your petition as having been filed on August 2. *See* ORS 192.450(1) (public records order must issue within seven days from the day "the Attorney General receives the petition").

reviewing files in the Affirmative Action Office, the General Counsel's Office, the President's Office and in the University Archives. They have also contacted former staff who worked in the Affirmative Action Office. The plans made available to you are the only records that have been located and appear to be the only records that are in the University's custody.

You have asked, in the alternative, that the University "provide an explanation for why [the Affirmative Action Plans] have not been maintained as required under OAR, and of [the University's] efforts to locate these plans." Although the Public Records Law does not require an agency to provide such an explanation, the University has described their efforts to locate the records as set out above. *See* Public Records Order, May 26, 2005, Andrade (Public Records Law does not require a public body to create a record to respond to questions about agency response to public records request). Our authority under the Public Records Law is limited to ordering disclosure of public records in the agency's custody. In this case, the University has stated its willingness to produce the records, but has determined that the records are not available.

We conclude that given these circumstances the University of Oregon has not denied your public records request. As a result, this office lacks authority to order disclosure, and we therefore deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

cc: Melinda Grier, University of Oregon

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