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February 21, 2006

Rachel Bachman
Sports/Enterprise Reporter
The Oregonian
1320 SW Broadway
Portland, OR 97201

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

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 February 6, 2006, asks the Attorney General to order the University of Oregon (UO) to "immediately release unredacted copies of the employment contracts between the UO and Bill Moos, Ernie Kent and Mike Bellotti."[1] The individuals are, respectively, Athletic Director, Head Coach of the men's basketball team, and Head Coach of the football team. For the reasons that follow, we 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.

Representatives of the UO released each of the requested contracts. The UO withheld, by redaction, portions of each of the contracts.

In your petition challenging the UO's partial denial of your request, you assert that "the UO relies on the personal privacy exemption" and then argue that the exemption does not support the UO's position. ORS 192.502(2) exempts from mandatory disclosure specified "information of a personal nature. . . ." Detailed analysis of that exemption, including consideration of some of the contentions set out in your petition, would be required if the UO in fact relied on ORS 192.502(2). However, the UO does not rely on that exemption.[2]

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[1] We appreciate your agreement to extend the deadline for this order.

[2] In this order, we do not express any opinion on the hypothetical question of whether the personal privacy exemption would or would not support redaction of the portions of the contracts in question. Nevertheless, we do

Instead, analysis of your petition must begin with ORS 351.065, a statute to which your petition makes no implied or explicit reference. Subsection (1) of that statute authorizes the State Board of Higher Education to "adopt rules . . . by or through the institutional executives of each institution governing access to personnel records . . . ." ORS 351.065(5) states:

> Any category of personnel records specifically designated as confidential pursuant to valid rules or orders pursuant to this section *shall not be deemed a public record for the purposes of ORS 192.420.*

(Emphasis added). The Public Records Law, ORS 192.410 to 192.505, applies to "public records" as that term is defined in ORS 192.420(4)(a). ORS 351.065(5) expressly places the "personnel records" described therein outside of the class of records described in ORS 192.420(4)(a). Therefore, the UO is not compelled by the Public Records Law to disclose information that is "specifically designated as confidential pursuant to valid rules or orders pursuant to" ORS 351.065.

Pursuant to administrative rules, the UO has specifically designated certain records as "confidential." OAR 571-030-0015(2) states:

> Personal records, as defined in OAR 571-030-0010, are hereby designated as confidential in order to protect privacy rights in an adequate educational environment. Access to personal records shall be restricted as hereinafter set forth in OAR 571-030-0025 . . . .

Under its rules, the UO is generally free to make "personal records" available to the faculty member to whom the records relate. OAR 571-030-0025(2). However, with exceptions not relevant here, the UO is not authorized to disclose such records to others. In pertinent part, subsection (3) of the same rule states:

> Personal records may not be released to any other person or agency without the faculty member's written consent . . . .

The UO's rules concerning faculty records must "conform to" the administrative rules of the State Board of Higher Education. OAR 571-030-0005. In other words, according to the UO's rules, the UO lacks authority to exclude from the reach of the Public Records Law records that the State Board of Higher Education has not excluded by its rules. OAR 580-022-0090 is one of the Board's rules. In pertinent part, it states:

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note that our interpretation of the personal privacy exemption makes a distinction consistent with the result of our conclusion in this order:

> We applied [the privacy exemption analysis] to public employee salary information. With respect to an employee's gross pay, we concluded that the employee did not have a reasonable expectation that such information would not be subject to public scrutiny because of the public's interest in knowing the amount that a public employee is compensated for his or her services. However, the amount of voluntary payroll deductions from an employee's paycheck are (sic) exempt from disclosure under this exemption. The public does not have a legitimate interest in knowing how a public employee spends that paycheck.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2005) at 66.

> (1) Appropriate information about the faculty member may be released on request and without the faculty member's consent. Such information shall be limited to:
>
> * * *
>
> (c) Salary information and the record of terms or conditions of employment;
>
> * * *

Read together, then, the question raised by your petition is whether the redacted information is "salary information and the record of terms or conditions of employment," or whether, instead, the redacted information is a "personal" record. To the extent that the information is "salary information" or a "record of terms or conditions of employment," then no barrier to its release exists. OAR 580-022-0090(1)(c). But if, instead, the redacted information is specifically designated as a personnel record,[3] then ORS 351.065(5) prohibits its release.

The Board's rules do not define the expressions "salary information" or "record of terms or conditions of employment." OAR 571-030-0010, however, provides definitions for the UO:

> * * *
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> (3) "Salary Information" shall include the rate of pay and terms and conditions of employment.
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> (4) "Personal Records" are all other records containing information concerning an academic staff member, apart from those identified above.
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> Personal records include but are not limited to: Information kept by the University, college, or school, department or division concerning a specifically identifiable faculty member and *furnished by the staff member or by others at the University's, college's or school's, department's or division's, or at the staff member's request.* Personal records include but are not limited to: information as to discipline, counseling, membership activity, other behavioral records, professional preparation and experience, professional performance (e.g., assignment and work-load, quality of teaching -- including records tabulated from students' classroom survey evaluations -- research, and service to the institution), personnel data relating to such matters as promotions, tenure, leaves, retirement credits and the like, and professional activities external to the institution, including but not limited to, awards, recognition, research activity, or travel.

(Emphasis added).

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[3] ORS 351.065(5) refers to "personnel records." Administrative rules adopted in part on authority of that statute by the Board of Higher Education and the UO, respectively, refer to "personal records." We conclude that for purposes of your petition, the substitution of "personal" for "personnel" has no legal significance. *See* ORS 351.065(6)(defining "personnel records" to include "other personal records").

We have examined each of the redactions and consulted with Ms. Grier about them. To the extent that the redactions document requests by the respective contractors to receive payments at a particular time of the month or year, or on a particular schedule, then we conclude that the redactions are aptly described as "personal records" and thus are not "public records" for purposes of the Public Records Law. Such records are "personal records" because the information therein was furnished by the respective contractors to the UO. We sustain those redactions. *Accord,* Public Records Order, March 26, 2003, Randy. We deny your petition as it pertains to disclosure of information stating the timing of payments due the three employees.

The contracts also contain statements about choices made by the employees concerning the distribution of payments between accounts, each of which is subject to the employee's control. For example, various provisions require that stated percentages of given payments be paid "directly to employee" and the remainders paid into the employee's "Deferred Compensation Account." According to Ms. Grier, these provisions simply express information furnished by the employee. Such selections are analogous to the choices made by public employees about voluntary deductions from their paychecks. *See* Public Records Order, March 27, 1992, Leighty/Ralston (under personal privacy exemption of ORS 192.502(2), there is no legitimate public interest in knowing how public employee spends paycheck). As such, they are personal records, not "salary information" or "terms and conditions of employment." We sustain those redactions. *Accord,* Randy PRO. We deny your petition as it pertains to disclosure of information about the allocation between accounts of payments due the three employees.

The UO has determined that it will provide you with newly redacted versions of the three contracts. To the extent that your petition sought disclosure of information that the UO originally redacted but has now agreed to disclose to you, we deny your petition as moot. As to the remaining redactions, we deny your petition for the reason that the materials you seek are not public records for purposes of the Public Records Law.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS16994
c: Melinda Grier, Counsel, University of Oregon