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

May 13, 2005

Alan Gustafson
Statesman Journal
280 Church St., NE
Salem, OR 97301

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

Dear Mr. Gustafson:

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 May 6, 2005, asks the Attorney General to order Western Oregon University (WOU) to provide you with copies of documents pertaining to the discipline of Professor Gary Welander and investigation documents or materials supporting the university's sanctions against him. 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).

In a letter dated May 9, 2005, WOU Director of Human Resources, Judy J. Vanderburg, responded to a request for records made by Shawn Day of the Statesman Journal.[1] Ms. Vanderburg provided copies of some of the records requested by Mr. Day, stated that WOU did not have records responsive to other requests, asked for clarification of one request, and denied the remainder. This order addresses the records for which WOU denied disclosure, each of

[1] Your petition states only that the WOU President and other school officials had denied the newspaper's request for records on the basis of them being "confidential personnel records." Ms. Vanderburg told us that her May 9th letter to Mr. Day constitutes WOU's denial of the newspaper's requests.

which was denied on the basis of the record constituting a "personal/personnel record" of either Professor Welander or other faculty.[2]

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 WOU 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 disciplinary action taken against Professor Welander or supporting such discipline 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, your petition is denied.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

HLH;kbc/GEN225868

c: Judy Vanderburg, WOU
Ben Rawlins, OUS

[2] While Ms. Vanderburg's letter also cites the Family Educational Rights and Privacy Act (FERPA) as a basis for refusing to disclose a copy of the complaint(s) filed against Professor Welander, because the record(s) is not subject to disclosure due to its status as a confidential personnel record, we do not address its status under FERPA.