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DEPARTMENT OF JUSTICE

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March 17, 2005

Mr. Taalib-Din Madyun
5324 North Missouri
Portland, OR 97217

Re: *Petition for Public Records Disclosure Order*:
Office of Affirmative Action, Portland State University

Dear Mr. Madyun:

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 March 10, 2005, asks the Attorney General to order the Office of Affirmative Action at Portland State University (PSU) to make available: "1. *Clarification of Report* requested from Bert Christopherson on January 19, 2005 [and] 2. *Report and Recommendation* sent to Ben Rawlins in February 2005." For the reasons that follow, 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 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). Your petition states that you requested the identified records on March 3, 2005, and that your request was denied.

The first record identified in your petition is a January 19, 2005 letter from Ben Rawlins, the lawyer for the Oregon University System, to Burt Christopherson, the Director of Affirmative Action/Equal Opportunity at PSU. We spoke with Mr. Christopherson and Ginger Shaw, Assistant to Mr. Rawlins, about your petition for this record. Both told us that they had no record or recollection of you requesting the January 19th letter on March 3rd. However, Ms. Shaw told us that she had previously disclosed the letter to you. In light of this prior disclosure, Mr. Christopherson has agreed to provide you with a second copy of the letter.[1] Therefore, your petition as it relates to this record is denied as moot.

[1] We note that the Attorney General has no authority to order a state agency to disclose records prior to the agency receiving and denying a request. ORS 192.450(1).

The second record identified in your petition was sent to Mr. Rawlins by Mr. Christopherson at Mr. Rawlins' request, in relation to providing legal advice to the Oregon University System Chancellor, George Pernsteiner, about your appeal of the decision of Michael Reardon, Provost and Cognizant Executive Officer, to deny your grievance. As such, the record is protected by the attorney-client privilege. ORS 40.225.[2] Chancellor Pernsteiner has confirmed that the Oregon University System does not wish to waive the privilege applicable to this record. Therefore, the record is exempt from disclosure under ORS 192.502(9), which exempts public records made confidential or privileged by Oregon law.

For these reasons, we respectfully deny your petition to compel disclosure.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS15251
c: George Pernsteiner, OUS Chancellor
Burt Christopherson, PSU

[2] A client has "a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client * * * [b]etween the client or the client's representative and the client's lawyer or a representative of the lawyer." ORS 40.225(2)(a).