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September 21, 2010

Christian Witohl
Senior Editor
The Register Guard
3500 Chad Drive
Eugene, OR 97408

RE: Petition for Public Records Disclosure Order
University of Oregon

Dear Mr. Witohl:

On September 7, 2010, we received your petition seeking an order directing the University of Oregon (UO) to provide you with certain records under the Oregon Public Records Law, ORS 192.410 to 192.505.[1] Specifically, you seek "all records generated or received since July 1, 2009, by (Oregon Bach Festival) Executive Director John Evans concerning the possible replacement of (Helmuth) Rilling as artistic director and the search for a successor."

Your petition states that Register Guard reporter Bob Keefer requested those documents on July 9, 2010, and that the Register Guard has followed up on that request twice since it was made. However, you report that as of the date of your petition, the Register Guard has received no records from UO.

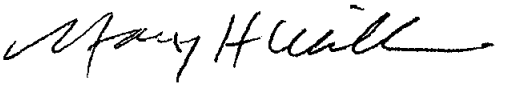
UO does not dispute your account of these events or explain why it had not responded to this aspect of Mr. Keefer's request and the Register Guard's subsequent follow-ups. However, UO explains that it had responded previously to other aspects of Mr. Keefer's request by providing copies of contracts between Mr. Rilling and UO. Moreover, on September 14, 2010, UO Assistant Vice President for Administration Brian Smith sent an email to Mr. Keefer estimating the cost of responding at $1285.84, and

[1] You sent your petition on Saturday, September 4, 2010. September 6 was Labor Day. Consequently, we treat your petition as received on September 7. Thank you for your courtesy in allowing us until September 21 to issue our order.

stating that UO would locate and review responsive documents upon receiving payment of that amount. Further, based on conversations between UO and the Register Guard to narrow the scope of the request, UO ultimately reduced the cost estimate to $1,008.54 (email to Mr. Keefer on September 17, 2010). UO's position is that these responses resolve your pending petition.

UO is correct that it is entitled to establish fees reasonably calculated to reimburse UO for the actual cost of responding to your request. ORS 192.440(4). And UO can require prepayment of its fee before responding to a public records request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) at section I.D.6.b., http://www.doj.state.or.us/public_records/manual/public_records.shtml#d. If the Register Guard neither pays the fee nor establishes that it is entitled to a waiver of the fee, then it is not entitled to the records it has requested. Until this issue regarding fees is resolved, the issue you raise with respect to the lengthy delay in UO's disclosure of these records is not ripe for a decision. Even if we were to agree with the Register Guard, the UO's obligation to disclose the records would be contingent on some resolution of the fee issue. Because we conclude that your petition is unripe, we respectfully deny it.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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c: Brian E. Smith