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August 6, 2010

Rich Rosenthal
1228 Rose Lane
Ashland OR 97520

Re: Public Records Request
DOJ File No. 580-400-GA0096-10

Dear Mr. Rosenthal:

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 July 15, 2010, asks the Attorney General to direct Southern Oregon University (SOU) to make available "the Search Committee telephone interview score sheets and any other notes/documentation relating to the selection of the three finalists," for the position of the Director of Athletics at SOU.[1] You were an applicant, but not a finalist for the position, and you indicate that you want to review the records "for professional development purposes."

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186n 8, 538 P2d 373 (1975).

SOU has agreed to make most of the requested information available, provided you are willing to pay the associated costs. To the extent that SOU has agreed to provide you with the requested records, your petition is moot and we deny it on that basis. However, SOU states that it will redact information that would identify any candidate other than you and the three individuals recommended as finalists by the Search Committee. We conclude that the law permits such redactions, and therefore deny your petition with respect to the identifying information SOU states that it will redact.

[1] We appreciate your extending the time within which the law would have otherwise required us to issue an order to August 6, 2010

ORS 192.502(2) conditionally exempts private personal information from the disclosure requirements of the Public Records Law. This provision exempts:

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

This exemption is not intended for the benefit of the public body. Its purpose is to protect the privacy of individuals from unreasonable invasion. *Jordan v. MVD*, 308 Or 433, 440-42 (1989).

The personal privacy exemption applies to information that is "of a personal nature," but only to the extent that disclosure would constitute an unreasonable invasion of privacy. A public body must make a threshold showing that disclosure would unreasonably invade privacy, at which point the burden falls on the person seeking records to demonstrate that disclosure would not constitute an unreasonable invasion of privacy. *Jordan*, 308 Or at 443.

The Oregon Supreme Court has interpreted the term "personal" to mean that the exemption applies to information that is "specific to one individual." *Jordan*, 308 Or at 441. The court referred to the dictionary definition of "personal" in formulating its interpretation: "of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general * * *." *Id. quoting* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1686 (Unabridged 1971). The court concluded that a person's home address, age, weight and residential telephone number are "always personal in the sense of being individual information." *Id.* The name or other identifying information concerning candidates for Director of Athletics at SOU is "personal" in that sense.

Generally, disclosure of a person's name is not an unreasonable invasion of privacy. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) at 68. However, in some contexts, we have concluded that disclosing an individual's name can constitute an unreasonable invasion of privacy. In 1988, for instance, we evaluated a request seeking information about applicants for the position of Chancellor of the Oregon State System of Higher Education (OSSHE). OSSHE agreed to disclose the names, addresses and current employment of the four finalists for the position but declined to provide record information regarding nonfinalist applicants. We concluded that disclosing information that would identify nonfinalist applicants would unreasonably invade the applicants' privacy:

> The information that the OSSHE refused to disclose is also sufficiently "private" for purposes of ORS 192.502(2). Public revelation

> that a person has applied for a position such as chancellor, prior to or in the absence of the person's selection as a finalist, may unreasonably threaten the person's current employment relationship and professional standing.

Public Records Order, August 12, 1988, Dean. Similarly, in a 1988 letter of advice, we concluded that OSSHE could withhold from public disclosure the identities of individuals who are candidates for president of a university. Letter of Advice dated October 13, 1988, to W.T. Lemman, Chancellor (OP-6248).

We think the same is true for nonfinalist candidates for Director of Athletics. That position is, like the position of Chancellor or University President, a high-profile management position within the Oregon University System. A similar committee selection process winnows out a large pool of candidates to identify a small number of finalists. Candidates who are finalists are interviewed in person and their identities made public.

For reasons identical to those expressed in our 1988 order and letter of advice, we conclude that SOU has made the threshold showing required for invoking this exemption. You do not suggest any reason why disclosure of the identities of non-finalist candidates would not be an unreasonable invasion of privacy.

It follows that the records are exempt "unless the public interest by clear and convincing evidence requires disclosure in the particular instance." You state that your intended use of the records is for "professional development" purposes. We have long expressed the view that a personal interest of the requester is not, by itself, indicative of the public's interest. *See* MANUAL at 27. In addition, disclosure could harm the public interest in a number of ways that we noted in our 1988 order:

> Nor are we convinced that the public interest requires disclosure in this particular interest. Release of information regarding nonfinalist applicants for the particular position of chancellor reasonably can be expected to prompt many qualified applicants to refrain from applying. Early release of applicant status any unduly interfere with the work of appropriate selection committees. In short, release of applicant-but-nonfinalist status may disserve the public interest in maintaining an effective chancellor selection process.

We similarly cannot conclude that the public interest clearly requires disclosure of the identities of the nonfinalist candidates for Director of Athletics.

In conclusion, SOU has agreed to disclose most of the information you requested if you are willing to pay the associated fees. Your petition is moot to the extent that SOU has agreed to provide you with the documents. Under ORS 192.502(2), SOU may lawfully redact information identifying the candidates for the Director of Athletics position (apart from you and the three finalists) from the

documents disclosed to you. As a result, we respectfully deny your petition. To the extent that SOU makes redactions you believe are not justified by this order, you are free to petition this office to review them.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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C: Craig Morris, SOU
Cindy Starke, SOU