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May 19, 2010

Phillip Broyles
6428 SE 97th Ave #1
Portland, OR 97266

Re: Petition for Public Records Disclosure Order:
Portland State University Records

Dear Mr. Broyles:

On May 5, 2010, we received your petition seeking an order compelling Portland State University (PSU) to disclose certain records to you under Oregon's Public Records Law, ORS 192.410 to 192.505. Specifically you are asking for "contact information including names, phone numbers, home address and emails" of students in particular classes. You also ask that we order PSU to provide you with the *curriculum vitae* of one Kristine Munholland.

The Public Records Law confers upon "any person" the right to inspect any public record of a public body in Oregon, subject only to express exemptions and limitations. ORS 192.420. A person denied the right to inspect records of a public body may petition the Attorney General to review the denial. ORS 192.450(1). To the extent that PSU has denied your request, we conclude that the requested records are exempt from disclosure and deny it on that basis. To the extent that PSU has agreed to provide you with the requested information, we deny your petition as moot.

PSU has provided you with the *curriculum vitae* of Kristine Munholland. PSU has also provided you with the names and university email addresses of all students in the School of Social Work, except to the extent that the affected students specifically requested confidential treatment of that information. To the extent that PSU has provided you with the information you are seeking, or is willing to provide that information, your petition must be denied because you have not been denied to right to inspect PSU's records. ORS 192.450(1).

In addition to withholding all contact information of students who requested confidential treatment, PSU has declined to provide you with any student telephone numbers or addresses. PSU has also declined to provide you with information about the identities of the students in the

specific classes you inquire about. Recognizing that it had previously agreed to do more, PSU has agreed to return the $171.50 you originally paid in connection with your request. PSU asserts that the information it is withholding is exempt from disclosure under ORS 192.502(2) and under the federal Family Educational Rights and Privacy Act (FERPA), which is incorporated into the Public Records Law by ORS 192.502(8). We uphold PSU's determinations.

With respect to the contact information of students who specifically requested confidential treatment of that information, FERPA requires PSU to honor that request. 34 CFR § 99.37(a)(2). Consequently, federal law prohibits the disclosure of the information. ORS 192.502(8) exempts from disclosure "[a]ny public records or information the disclosure of which is prohibited by federal law or regulations."

FERPA also prohibits disclosure of any information that has not been designated as "directory information" without the prior consent of the affected student, except in circumstances not relevant to your request. *See* 34 CFR § 99.31, including subsection (11). PSU has not designated information about students' class selections as directory information. *See* OAR 577-030-0010(2) (defining "directory information"). Consequently, PSU's refusal to provide you with information about students in particular classes is consistent with ORS 192.502(8).

We conclude that ORS 192.502(2) justifies PSU's refusal to provide you with the addresses and telephone numbers of its students. That exemption applies to

> 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.

We conclude that all of the elements of this exemption are met.

The first requirement is that the information must be "of a personal nature." The Oregon Supreme Court has stated that an individual's contact information is "personal" in nature, *Jordan v. Motor Vehicles Division*, 308 Or, 433, 441 (1989), so we have no trouble concluding that the addresses and telephone numbers withheld are "personal."

Second, disclosure of the information must constitute "an unreasonable invasion of privacy." *Id.* at 442. Disclosure constitutes an unreasonable invasion of privacy if "an ordinary reasonable person would deem [it] to be highly offensive." *Id.* In general, our office has concluded that addresses and telephone numbers are not exempt because their disclosure would not constitute an unreasonable invasion of privacy. ATTORNEY GENERAL'S PUBLIC RECORDS & MEETINGS MANUAL (2008) ("MANUAL") at 69. However, "situations may exist in which disclosure * * * would be highly offensive." *Id.* By statute, "[t]he party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion

of privacy." However, it is incumbent on the public body to first make a threshold showing that disclosure would constitute an unreasonable invasion of privacy. *Jordan*, 308 Or at 443 (Noting that "both requirements for threshold entitlement to the exemption [were] established" and thus the public body could "refus[e] disclosure until a showing is made either involving a public interest or that the disclosure would not constitute an unreasonable invasion of privacy.")

PSU concluded that, under the circumstances of your request, disclosure of address and telephone numbers would constitute an unreasonable invasion of students' privacy:

> Since [previously agreeing to provide the requested information], significant concerns have been raised about this proposed release of information. Several individuals in the School of Social Work have stated that release of such personal information makes them fearful for the personal safety of students and that such disclosure would constitute an unreasonable invasion of students' privacy. These concerns are based, at least in part, on the fact that you were suspended from the School of Social Work due to the pattern of inappropriate, intimidating and abusive behaviors that you have demonstrated toward faculty members and your lack of self-awareness regarding your own behavior and its effect on others." Your conduct escalated to the point that the School of Social Work sought assistance and protection from Campus Public Safety. In addition, numerous students have complained about your conduct and expressed concerns for their safety as a result of your conduct.

Letter dated February 22, 2010. We believe that this explanation constitutes a sufficient threshold showing that disclosure of address and telephone numbers would unreasonably invade student privacy. PSU's concerns are specifically tied to you and your conduct. They relate to complaints and concerns expressed by multiple individuals. PSU notes that involvement by the Campus Public Safety office was deemed appropriate in response to your behavior.

Our conclusion that PSU made a sufficient threshold showing means that the records are exempt from disclosure unless you can either demonstrate that disclosure would not unreasonably invade the privacy of affected students or demonstrate by clear and convincing evidence that the public interest requires disclosure in the particular instance.

With respect to the public interest, you offer five arguments. Essentially, they are as follows: (1) transparency serves a significant public interest by increasing trust of government; (2) due process is fundamental, implying that you have a due process right to this information; (3) if procedures related to your conduct lead to a result other than the result you are seeking, others could lose trust in you and that loss of trust could affect others, including clients; (4) you believe that changes are necessary within the school of social work and assume other students would agree, and (5) you wish to invite students to a public forum to discuss the injustice you perceive has been perpetrated against you. All of these arguments appear to relate more closely to your personal interest in disputing a possible outcome of your appeal proceedings, either within the process or separately, than they do to any particular public interest in the disclosure.

More specifically, the first argument relating to transparency generally is relatively weak in the context of contact information of students who happen to attend a state university. Revealing their contact information would not expose anything significant about the workings of government or any particular governmental decision, and thus does not significantly advance the larger interests generally associated with transparency. Instead, it would provide you with two alternative means of contacting individuals for whatever purposes you wish. As for your second "due process" argument, even on the dubious assumption that you had a "fundamental" right to require PSU to provide you with contact information of people you think might be witnesses on your behalf, PSU actually did provide you with a means of contacting your fellow students in the School of Social Work. Your third argument, describing the possible effect of appeal proceedings on your clients, asks us to assume that an outcome adverse to you would be unjustified, either substantively or as a matter of due process. We have already explained why we do not agree with your due process argument. As for the substance of the decision on appeal, we express no view at all about the appropriate outcome, and will not entertain the assumption that an outcome adverse to you would be unjustified. Finally, your last two arguments relate to your desire to contact your classmates; again, PSU has provided you with a means of doing so, albeit not the means that you would prefer. In short, your arguments do not persuade us that "the public interest by clear and convincing evidence requires disclosure" of the additional contact information you request.

We turn to whether you have provided evidence sufficient to overcome PSU's threshold showing that disclosing the additional contact information would unreasonably invade students' privacy. We conclude that you have not. Specifically, PSU's determination was based on information provided by a number of individuals, including faculty members and students within the School of Social Work. As we understand those concerns, they have been consistent. You contest those concerns by arguing that you are not a threat to anyone, that PSU is not able to document that you are a threat to anyone, and that PSU's actions – including providing you with names and university email addresses for all of the students in the School of Social Work, and failing to have you excluded from campus as a trespasser – belie the claim that you are a threat. You also argue that "The people making accusations about my conduct are the very people who would stand to gain from concealing [the requested] information."

We do not interpret the propriety of PSU's denial to turn on whether you *actually* present a threat to PSU students. Instead, the question is whether students would reasonably regard disclosure to you of their address and telephone numbers as an unreasonable invasion of privacy. Even if you do not actually pose a threat to anyone, the perception, shared by a number of people, that your behavior is frequently "inappropriate, intimidating and abusive" provides ample basis to conclude that providing you addresses and telephone numbers would objectively be regarded as an unreasonable invasion of privacy. As for the fact that PSU provided you with a list of names and email addresses of all students in the School of Social Work, the relatively indirect nature of contact that is possible through email provides a more than sufficient explanation for PSU's decision to treat that information differently than addresses and telephone numbers.

Your argument that the individuals accusing you of bad conduct have something to gain overlooks two facts. First, PSU has provided you with email addresses for all of the students in the School of Social Work. That willingness undercuts your suggestion that the decision to withhold other contact information is based on an improper desire to deprive you of access to students whose support might be undermine the position taken against you. Second, your petition acknowledges that at least three students have expressed concerns about your conduct. You state that you have their contact information. We see no support for your implication that those individual students will somehow benefit from PSU's determination that it will not disclose address and telephone numbers.

So far as we can perceive, your arguments that disclosing additional contact information would not unreasonably invade the privacy of affected students are limited to these attempts to rebut PSU's determinations. You have not provided any affirmative evidence suggesting that disclosure to you would not be highly offensive. Your rebuttals are not persuasive to us.

For the reasons given above, we conclude that the addresses and telephone numbers withheld are "personal," that you have not met your burden of overcoming PSU's threshold showing that their disclosure would constitute an "unreasonable invasion of privacy" in the circumstances, and that you have not demonstrated that the public interest requires disclosure in this instance. In other words, we conclude that the addresses and telephone numbers are exempt from disclosure under ORS 192.502(2). We also conclude that FERPA both prohibits PSU from disclosing the contact information of students who requested that PSU treat such information confidentially, and prohibits PSU from providing you with information about students' class selections without consent as PSU has not designated that information as "directory information." Therefore, ORS 192.502(8) exempts those categories of information from disclosure. Finally, PSU has provided you with Ms. Munholland's *curriculum vitae*, rendering moot that aspect of your petition. In light of those conclusions, we respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Henry Lazenby, PSU General Counsel