JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

March 2, 2010

Daniel Bonham, Executive Director
Fair Contracting Foundation
PO Box 9158
Portland, OR 97207

Dear Mr. Bonham:

On February 22, 2010, we received two petitions from you seeking orders under Oregon's Public Records Law, ORS 192.410 to 192.505, directing the University of Oregon to disclose certain records to you. Specifically, you seek certified payroll records relating to the ongoing Matthew Knight Arena construction project for two time periods: November and December of 2009 (first petition), and January 2010 (second petition). We respectfully deny your petitions.

With regard to your first petition, UO informs us that it has today mailed the requested records to you. As a result, your first petition is moot and we respectfully deny it on that basis.

Your second petition relates to records that you requested via email on February 11, 2010. UO acknowledged that request on February 17, stating that it was the custodian of at least some records responsive to the request, and that an estimate would follow within a reasonable time. On February 26, UO sent you an email indicating that UO does not yet have the certified payroll forms for January, 2010, but that it expects to receive them within the next week or two. Generally, public bodies are not required to disclose records that they do not possess. However, there are some exceptions. *See, for example,* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) at 7, describing a previous order in which we concluded that records not in an agency's possession were nevertheless subject to disclosure. You have not suggested that this case is such an exception, and we are not aware of facts that would compel that conclusion. As a result, we respectfully deny your second petition. If you believe that UO does have custody of these records for purposes of the Public Records Law, you may explain those arguments in a subsequent petition. In light of the fact that UO expects to receive these records in two weeks or less, however, the question may be academic for purposes of applying the Public Records Law.

For the reasons described above, your petitions are respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Doug Park, University of Oregon