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February 1, 2010

SENT VIA E-MAIL

Professor William T. Harbaugh
538 PLC
1285 University of Oregon
Eugene, OR 97403-1285
(wtharbaugh@gmail.com)

Re: Petition for Public Records Disclosure Order:
University of Oregon Records

Dear Professor Harbaugh:

On January 25, 2010, we received your petition seeking an order requiring the University of Oregon (UO) to disclose certain records under Oregon's Public Records Law, ORS 192.410 to 192.505. Specifically, you are seeking documentation used by UO General Counsel Melinda Grier to draft a memorandum estimating certain costs to UO of complying with the Public Records Law. There is no dispute that the records are subject to public disclosure, at least once exempt materials have been segregated per ORS 192.505. The question before us is whether UO has constructively denied your request by failing to provide access to the records within a reasonable time.

The same documents were requested by Professor Peter Gilkey, then the President of the UO Faculty Senate, on November 28, 2009. Nine business days later, on December 10, 2009, UO estimated the cost of responding to that request at $14.79, indicating that responding to the request was expected to take 15 minutes of work. UO received payment from Professor Gilkey in that amount on the same day. You requested the records on December 17, 2009. On December 22, 2009 you petitioned our office for an order requiring their disclosure. We denied that petition on January 5, 2010 because we found that you did not have standing to petition with respect to Professor Gilkey's request, and that UO had not constructively denied your request for the records. We noted, among other things, that UO had determined that its estimate to Professor Gilkey was inadequate to cover the actual cost of producing the records, and that the work actually required was not insignificant. On the same day, UO sent you a letter estimating the cost of responding to his request at $14.79. On January 6, you re-submitted your request for the records to UO. On January 12, UO again estimated the cost of responding at $14.79. One week later, on January 19, you remitted payment in that amount. Your petition challenging the amount of time UO has taken to complete its review of the requested documents was filed four working-days later on January 25.

UO has not yet completed a review of the documents since receiving your payment on January 19, 2010. As indicated in our January 5, 2006 order, we understand that the work

required to complete the review is unlikely to be insignificant. The documents include memorandums pertaining to the costs incurred in connection with the Public Records Law, Department of Justice billing statements to UO, and spreadsheets that relate to public records requests made of UO.

It is true that the request at issue was identical to the earlier request made by Professor Gilkey. In some circumstances, that could be a factor that would be relevant to assessing whether UO failed to respond to your request within a reasonable time. In this case, however, UO did not work on Professor Gilkey's request, first because it understood from Professor Gilkey that he did not need the records until January, and later because Professor Gilkey withdrew his request.

Considering those unusual circumstances in their totality, we must reach the same conclusion that we would reach in more ordinary circumstances: UO's obligation to do work in response to your request arose on the date you paid UO's estimated fee. See ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) (MANUAL) at 15 ("A public body may require prepayment of its estimated charges before taking further action on a request"). That date was January 19, 2010. Had the fee situation been different (for example, if it was clear that your request would not require different or additional work), or had Professor Gilkey been insistent on prompter attention to his request (in which case UO presumably would have been working on Professor Gilkey's request), we might view things differently. If we are ever faced with such circumstances, we will need to decide those issues. But these facts ultimately do not advance your claim that UO has constructively denied your request.

We also acknowledge that, at the close of business on January 6, 2010, Professor Gilkey's request for the records was pending. At that time, UO had not set aside any time to undertake the work required to make the records available, but its expectation was that the records would be available on January 13, 2010, one week later. This could support an inference that UO viewed one week as a reasonable amount of time to make the records available.

However, the fact that UO personnel expected to have time during one week does not necessarily mean that they will have time in another week. It is not unusual for matters to surface that require immediate attention. Moreover, we note that reviewing the billing statements from our office to UO presents legal questions about the application and scope of the lawyer-client privilege that merit a lawyer's attention.

Overall, the record does not persuade us that UO has constructively denied your request. Your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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