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

January 19, 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*

On January 11, 2010, we received your petition asking the Attorney General to order the University of Oregon (UO) disclose certain records to you under the Oregon Public Records Law, ORS 192.410 to 192.505. Specifically, you asked that the Attorney General order UO to allow you to inspect, without fee, a copy of a record showing when former UO President Dave Frohnmayer signed an affirmative action plan that was labeled "Effective January 1, 2008." Because UO can charge a reasonable fee for facilitating your inspection of the record, and because UO is not required to waive that fee, we respectfully deny your petition.

In your petition, you refer to a previous Public Records Order issued to you on February 26, 2009 denying your request for a waiver of the approximately $10.00 fee established by UO to provide you with a copy of the same record. In denying that petition, the order noted that a number of factors weighed in favor of requiring a waiver. Among those factors was the fact that "inspection is impractical considering that you are overseas." Seizing on that factor, you state that "the most reasonable interpretation of this is that [the Attorney General] believes inspection would not involve a fee."

Your argument reads into our prior order an assumption that inspection should be without cost. But the ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) ("MANUAL") clearly states that agencies can charge fees for inspection of records. MANUAL at 15 (fees can include cost of "supervising a person's inspection of original documents in order to protect the records" as well as the cost of locating and reviewing the records). It still makes sense to consider whether inspection is feasible when deciding whether a fee waiver or reduction decision was reasonable, on the assumption that inspection will often avoid fees that will be

necessarily incurred when copies of records are requested. In this case, given the relatively low cost of making a copy available to you, it is possible that inspection may actually be a more burdensome – and therefore more costly – means of obtaining this record.

Having established that current law allows UO to charge a fee for permitting your inspection of the record, we adhere to our previous decision that UO is not required to waive or reduce the fee for providing you with access to these records. The reasons are essentially identical to those given in our February 26, 2009 order, though naturally the feasibility of inspection is not a relevant factor supporting UO's decision. Your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1832714
c: Doug Park, UO