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January 5, 2010

SENT VIA E-MAIL

Dr. 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:

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. We received your petition on December 22, 2009.[1] The petition asks the Attorney General to direct the University of Oregon (UO) to make available "supporting evidence for [General Counsel Melinda Grier's] memo concerning US09/10-7." For the reasons that follow, we respectfully deny your petition.

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. A custodian of public records must provide "proper and reasonable opportunities for inspection and examination." *See* ORS 192.430.

According to your petition, your request for the above-mentioned records was sent to the UO on December 17, 2009. UO has confirmed they received that request via email at 4:55 p.m., and it provided you with its initial response acknowledging receipt of your request on December 22, 2009 at 3:58 p.m. You asked our office to order UO to release the records on December 22, 2009 at 4:43 p.m.

[1] Thank you for allowing us until January 5, 2010 to issue this order.

Your petition for a public records order refers to a prior request for these records made by UO Senate President Peter Gilkey on November 28, 2009. According to your petition, Professor Gilkey made this request on your behalf. Nevertheless, the November 28, 2009 request was Professor Gilkey's request, not your request, and Professor Gilkey has not petitioned our office or otherwise complained to us about any delays in responding to his request.[2] Moreover, UO informs us that Professor Gilkey has agreed to receive records responsive to his request in January. We cannot conclude that you have standing to petition with respect to Professor Gilkey's request, and therefore deny your petition to the extent that it is based on that request.

With respect to your own request, we have no trouble concluding that your petition was premature when it was filed with our office approximately three business days after your request was made.

However, we acknowledge that nineteen calendar days, and eleven business days, have now passed from the date of your request. UO estimated that responding to Professor Gilkey's request would cost $14.79, *see* correspondence archived at http://www.uoregon.edu/~uosenate/dirsen090/Gilkey-c10Dec09.html (accessed January 5, 2010). Based on this estimate, your petition surmises that providing the records to you should not be burdensome.[3]

Consequently, we have asked UO why disclosure should not have been complete before this order issued. UO informs us that an estimate of its costs to respond to your request is being prepared and will be sent to you today. Upon receipt of payment of its estimated costs, the UO will then commence review and preparation of documents responsive to your request, to the extent that work is different than work necessary to respond to Professor Gilkey's request. In the process of preparing a response to Professor Gilkey's request, UO discovered that it had significantly underestimated the work that would be required to disclose the documents. Based on UO's description of the records at issue, we are satisfied that disclosure of the records entails a significant amount of work.

Moreover, the elapsed time between your request and the date of this order spans both the Christmas and the New Year state holidays. Employees often take additional vacation time around this period. The specific UO employee assigned to review the records in question was out of the office during the week of December 28, a period encompassing four of the eleven business days that have elapsed since your request.

We conclude that the time that has elapsed between your December 17, 2009 request and the date of this order does not amount to a violation of UO's statutory obligation to provide

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[2] In fact, Professor Gilkey specifically asked UO to appropriately redact the information, noting that he did not want to know who made the records requests that are discussed in the information. *See* correspondence archived at http://www.uoregon.edu/~uosenate/dirsen090/Gilkey4Dec09.html (accessed January 5, 2010).

[3] ORS 192.440(4)(b) prevents public bodies from including in their fees "the cost of time spent by an attorney for the public body in determining the application of the [Public Records Law]." Thus, a low fee estimate does not necessarily correlate to a correspondingly insignificant burden on the public body.

"proper and reasonable opportunities for inspection" of its records. That conclusion is based on the amount of work actually required to respond to this request, the other work UO staff must perform, and the intervening holidays. We respectfully deny your petition as premature.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Melinda Grier, UO
Doug Park, UO