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December 30, 2011

SENT VIA EMAIL ONLY

Professor William T. Harbaugh
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Re: Petition for Public Records Disclosure Order
University of Oregon Records
DOJ File No.: 580-500-GA0123-11

Dear Mr. 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 16, 2011.[1] Your petition asks the Attorney General to direct the University of Oregon to provide copies of the following documents and to grant your fee-waiver request:

> "[A]ny resumes or cover letters received by the Athletic Department from applicants for the position currently held by Jamie Moffitt."

You contend that the University's delay in providing a response to your request is unreasonable, essentially constructively denying your request. However, we have spoken with Randy Geller at the University, and he explained that the University has provided you with the resumes and cover letters of those individuals who were considered finalists for the position. Moreover, the University has implemented a policy of waiving the first $200 in fees associated with public requests, for most requesters. The University

[1] We appreciate your extending the time within which the law would have otherwise required us to issue an order to January 10, 2012.

informed us that your request fits the criteria for the fee reduction, and thus your fees have been waived for this request.

After receiving the requested materials for the position finalists, however, you indicated to us you believe you are entitled to inspect the resumes and cover letters of all non-finalists. We have treated this correspondence as a petition of the University's decision to withhold the remaining materials.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. One such exemption is the personal privacy exemption, which provides:

> 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.

ORS 192.502(2). This exemption is not intended for the benefit of the public body. Its purpose is to protect the privacy of individuals from unreasonable invasion. Jordan v. MVD, 308 Or 433, 440-42 (1989).

We have consistently held that a state agency may refuse to provide any information that would identify nonfinalist applicants on the basis that such information would unreasonably invade the applicants' privacy. *See* Letter of Advice, dated October 13, 1988, to W.T. Lemman, Chancellor (OP-6248) ("Public revelation that a person has applied for a position such as chancellor, prior to or in the absence of the person's selection as a finalist, may unreasonably threaten the person's current employment relationship and professional standing.").

We think the same is true for nonfinalist candidates for the position of Senior Associate Athletic Director for Finance and Administration. Nevertheless, if a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

The University has agreed to provide you with the remaining materials you have requested, provided you are willing to pay any associated costs in excess of $200. The University states that it will redact information that would identify any candidate other than the two finalists for the position. We conclude that the law permits such redactions,

and therefore deny your petition with respect to the identifying information the University states it will redact.

In summary, your initial petition for a public records order is denied as moot—the University provided you with the resumes and cover letters of the two finalists, and it waived the fees associated with that request. What we have treated as a second petition concerning your request for information pertaining to nonfinalists, insofar as your request seeks identifying information, the petition is denied. The remainder of the request is moot in light of the University's willingness to provide you with an estimate of the costs to segregate exempt from nonexempt materials and the University's willingness to waive the first $200 in associated costs.

Sincerely,

KEITH S. DUBANEVICH
Chief of Staff and Special Counsel

MHW:smg/3154732-v1
cc: Randy Geller, Deputy General Counsel, UO