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May 10, 2011

Zachary Spier
1685 High Street
Eugene, OR 97401

Re: Petition for Review of Denial of Fee Waiver
University of Oregon Records

Dear Mr. Spier:

This letter is the Attorney General's order on your petition for review of the denial by the University of Oregon (UO) of your request for waiver of fees under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 3, 2011, states that a fee waiver is in the public interest. For the reasons that follow, we respectfully deny your petition.

On April 19 and April 21, 2011, you requested documents related to the ongoing search for an Assistant Dean for Career Services at the UO School of Law. These documents included the resumes and cover letters for all applicants for that position, currently in excess of 70 individuals; copies of documents listing criteria to be used to rank or select candidates; copies of documents listing actual ranking of candidates; records of e-mail and telephone contacts from applicants; and records regarding the advertisement or promotion of this position. In response to your request, the UO indicated its willingness to provide these documents, and estimated that the cost of doing so will be $820.23. You assert that your request is in the public interest and that the fee should be waived because the person selected for this Assistant Dean position will be responsible for providing career services to current law students and thousands of law school alumni. You further assert that the search is in its final stages, that finalists have been identified, and that student input has been solicited as to the final selection. Finally, you appear to agree that some redaction will be required to comply with your request.

We have contacted the University regarding your request. In response, we have been informed that the search is ongoing, that resumes are still being accepted, and that law students are represented on the search committee. There are no finalists, and will not be for some time.

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. The law also

authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" on making records available. ORS 192.440(3). A public body may require pre-payment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL (2011) ("MANUAL") at 15. ORS 192.440(4) authorizes a public body to waive fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." However, even if a public body determines that waiving fees is in the public interest, "the decision to waive or reduce fees is discretionary with the public body, although it must act reasonable." MANUAL at 20. Under ORS 192.440(5), "a person who believes that there has been an unreasonable denial of a fee waiver * * * may petition the Attorney General * * * in the same manner as a person petitions when inspection of a public record is denied."

You assert that your request is in the public interest based on your understanding of the facts, including that the Assistant Dean search is in its final stages. As noted, your understanding is mistaken. Assuming, without deciding, that your request nevertheless serves the public interest sufficiently to permit a waiver under ORS 192.440(5), we cannot say that the UO acted unreasonably in declining to waive its applicable fees.

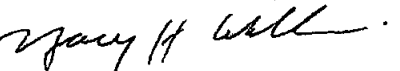
We have identified three factors as generally relevant to assessing the reasonableness of a public body's fee waiver decision: "(1) the character of the public interest in the particular disclosure, (2) the extent to which the fee impedes that public interest, and (3) the extent to which a waiver would burden the public body." MANUAL at 21.

Given the breadth of your request, and considering both that the search is in its early phase, and that law students are intimately involved in the search process, we conclude that the public interest here is attenuated. Qualified applicants who do not wish their interest in the position to be publicly known at this time may be deterred from applying if their application materials become publicly available. UO's interest in having the broadest possible candidate pool from which to make its selection is particularly pronounced at this stage in the process. The public shares this interest with UO.

We acknowledge that the amount of the fee quoted to you is a significant obstacle to public disclosure. But we cannot conclude that the impediment posed by the fee is unreasonable in relation to the attenuated public interest in disclosure we perceive. We also note that law students are active participants on the UO's search committee for this position.

Based on the information provided by you and by the UO, we do not identify any basis on which it can be said that the university acted unreasonably in declining to waive its fees in this case. Accordingly, we deny your petition.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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c: Elizabeth Denecke, UO