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April 11, 2016

SENT VIA EMAIL ONLY: WTHARBAUGH@GMAIL.COM

Mr. William T. Harbaugh
Professor of Economics

Re: Petition for Public Records Disclosure Order
Oregon's Public Universities Risk Management and Insurance Trust (PURMIT)
DOJ File No. 137043-GA0060-16

Dear Mr. Harbaugh:

This letter responds to your petition of March 21, 2016, asking the Attorney General to order the Public Universities Risk Management and Insurance Trust (PURMIT) to disclose certain records to you under the Oregon Public Records Law, ORS 192.410 to 192.505. Upon receipt of your petition, this office endeavored to determine what, exactly, PURMIT is, in order to determine whether it is a "state agency" for purposes of ORS 192.450. As explained below, we conclude that it is not a state agency. As a result, we conclude that, under ORS 192.460, your petition should be directed to a District Attorney in any one of the counties in which a PURMIT member university is located.

Relevant Statutes

The provisions of the Oregon Public Records Law relevant to this conclusion are ORS 192.410(5), ORS 192.450(1) and ORS 192.460(1). The second of these three provisions explains the authority of the Attorney General to consider petitions like the one that you filed. In relevant part, it states that "any person denied the right to inspect or to receive a copy of any public record *of a state agency* may petition the Attorney General to review the public record to determine if it may be withheld from public inspection." (Emphasis added.) Under the first of the three provisions, "'State agency' means any state officer, department, board, commission or court created by the Constitution or statutes of this state." The final provision provides that "ORS 192.450 applies to the case of a person denied the right to inspect or to receive a copy of any public record of a public body other than a state agency, except that [t]he district attorney of

the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General."

ORS 352.138 is also relevant to your petition. It provides that "ORS chapter[] * * * 192 * * * appl[ies] to a university with a governing board under the same terms as [it] appl[ies] to public bodies *other than the state*." (Emphasis added.) And ORS 352.129(4)(a) authorizes the same universities to participate in shared services: "Two or more public universities listed in ORS 352.002 may participate in shared services not described in subsection (1) of this section, including but not limited to shared services involving legal services and information technology."

Application to PURMIT

Based on our statutory research, conversations with an attorney for PURMIT, and conversations with representatives of the Higher Education Coordinating Committee (HECC), we have determined the following with regard to PURMIT.

First, PURMIT is not created by any Oregon statute (nor by the Oregon Constitution, of course). Instead, it exists solely as the result of a trust agreement entered between a number of Oregon's public universities. We assume for our purposes that the risk pooling accomplished through PURMIT is authorized by ORS 352.129(4) (answering that question would be beyond the scope of our role under the Oregon Public Records Law), but that statute does not create PURMIT or mandate its creation.

Second, HECC – which is a state agency – does not administer or direct PURMIT. HECC staff, including Executive Director Ben Cannon, informed us that HECC has no role in PURMIT's operation. And we see nothing in ORS 352.129(4) that would require HECC to have such a role.

Third, none of the individual members of PURMIT is a "state agency" because ORS 352.138 expressly provides that the Oregon Public Records Law applies to the universities "under the same terms as [it] appl[ies] to public bodies other than the state." Thus, PURMIT is not subsidiary to, acting for, or comprised of public bodies that are "state agencies" under ORS 192.410(5).

Fourth, it does not appear that PURMIT itself has any physical presence in any Oregon county. It has no administrative offices. The administration of PURMIT is done by a vendor located in Minnesota. But PURMIT ultimately is comprised of public bodies that are located in Oregon. Under the terms of the trust agreement creating PURMIT, each participating university appoints a single trustee, meaning that each university is effectively an equal member of the trust.

Based on the first three of these determinations, we are forced to conclude that PURMIT is not a "state agency" within the meaning of ORS 192.410(5). Consequently, the Attorney

General cannot resolve your petition under ORS 192.450(1). Based on the fourth determination and ORS 192.460(1), it appears that your petition would better be directed to the District Attorney in one of the counties where a PURMIT member university is located.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

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c via email only: James Parker, Davis Wright Tremaine LLP (jamesparker@dwt.com)