DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

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ATTORNEY GENERAL
SALEM, OREGON

Kerry L. Rydberg
Attorney at Law
Fifth Street Public Market
296 E. 5th Ave., Suite 309
Eugene, Oregon 97401

Myles Brand, President
University of Oregon
Office of the President
Eugene, Oregon 97403-1226

Re: Petition for Public Records Disclosure Order; University of Oregon Records

Dear Mr. Rydberg and President Brand:

This letter is the Attorney General's order on Mr. Rydberg's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition (submitted on behalf of Mr. Robert Wolfe and Mr. Daniel Stotter), which we received on December 26, 1989,[1] asks the Attorney General to order the University of Oregon (university) to disclose unedited versions of documents that the university already has disclosed after deleting names of faculty members who authored the documents or were mentioned therein.[2] These documents concern the existence of hazardous materials on specified university property. For the reasons that follow, we grant the petition.

In deleting faculty members' names, the university has relied on ORS 351.065 and several administrative rules adopted by the Board of Higher Education (board) and the university pursuant to the statute. ORS 351.065(1) empowers the board to adopt rules and specific orders governing access to personnel records that are less than 25 years old. Subsection (6) defines "personnel records" to mean:

> "records containing information kept by the institution, division or department concerning a faculty member and furnished by the faculty member or by others about the faculty member at the member's or at the institution, division or department's request, including, but not limited to, information concerning discipline, membership activity, employment performance or other personal records of individual persons."

ORS 351.065(5) provides:

> "Any category of personnel records specifically designated as confidential pursuant to valid rules or orders pursuant to this section shall not be deemed a public record for the purposes of ORS 192.420."

Thus, if the board, or a university president pursuant to a delegation from the board, specifically designates a category of records as "personnel records," and those records also fall within ORS 351.065(6), those records are not public records subject to the Public Records Law.

Our first (and, in this instance, dispositive) task is to determine whether the records in question constitute "personnel records" under ORS 351.065(6) that the board or university by rule could designate as confidential. That subsection, quoted above, defines "personnel records" in terms broad enough that, read in isolation, could include virtually any document in which a faculty member's name is mentioned. Subsection (6), however, is not an island, and must be read in context with the other portions of ORS 351.065. Other subsections--most notably (3)(a) through (g)--indicate that "personnel records" are a much narrower class of documents. The repeated references in subsections (3)(a) through (g) to the "evaluation" of faculty members show that records relating to the evaluation of

individual identified faculty members, if not the only records that qualify as "personnel records," are at the core of such records. Presumably (although not invariably), such evaluation records would be kept in individual faculty members' files, as opposed to general university files concerning, for instance, property management. Indeed, by law the number of files relating to the evaluation of a faculty member is limited to three. ORS 351.065(3)(a). We need not fully explore the scope of the term "personnel records," or answer how many different types of "personnel records" may exist besides evaluation records. Plainly, however, "personnel records" must relate directly to a faculty member's performance as a faculty member so as to implicate his or her continued relationship with the university. This reading is corroborated by the language of subsection (6), under which "personnel records" contain information "concerning a faculty member" and are "about the faculty member."

The records in question fall outside of ORS 351.065(6). As already noted, those records contain information about hazardous materials on specified university property, and recommendations on proposed courses of action. Although they contain the names of various faculty members, those records are not "about" those individuals in the sense used in ORS 351.065(6). The records do not relate to faculty evaluation, and have not been retained in individual faculty members' files. Nor do they appear to have been generated for the purpose of measuring the employment-related performance of specific named faculty members.

Because the records in question are not "personnel records" under ORS 351.065(6), they may not be designated by board or university rule as confidential under ORS 351.065(5) and thereby excluded from the application of the Public Records Law. As public records subject to that law, the documents are subject to public disclosure unless an exemption applies. ORS 192.420. We find no exemption either in the Public Records Law, or outside of that law and incorporated through ORS 192.502(8), the "catch-all" exemption for records made confidential or privileged by Oregon law outside the Public Records Law.

For these reasons, we direct the university to disclose to Mr. Rydberg unedited versions of the requested documents. The university has seven days from the date of this order in which to comply. ORS 192.450(2).

Sincerely,

JAMES E. MOUNTAIN, JR.
Deputy Attorney General

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[1] We appreciate Mr. Rydberg's courtesy in permitting us to exceed the seven-day statutory deadline for issuance of this order.

[2] We understand that university employees inadvertently provided an unedited version of one of the documents in question -- a February 13, 1989, memorandum -- to Mr. Wolfe. Consequently, the university also has allowed Mr. Stotter access to that document. These individuals' right of access to that document, therefore, is moot.