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DEPARTMENT OF JUSTICE

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April 5, 1990

Steve C. Baldwin
Harrang, Long, Watkinson, Arnold & Laird, P.C.
400 South Park Building
101 East Broadway
Eugene, OR 97401

Re: Petition for Public Records Disclosure Order; Oregon Health Sciences University Records

Dear Mr. Baldwin:

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. Your petition, which we received on March 30, asks the Attorney General to order the Oregon Health Sciences University (OHSU) to disclose various records relating to OHSU's requests for proposals concerning home parenteral care in 1986 and 1989. Your client, Mr. Richard Reedal, previously requested these records by a February 21, 1990, letter to Ms. Anya Averill, OHSU Contracts Manager for Fiscal Services. Before that date, Ms. Averill had disclosed most of the requested records. Through a March 12 letter to Mr. Reedal, however, Mr. Averill confirmed having disclosed some records, and explained the basis for refusing to disclose others. For the reasons that follow, we respectfully deny your petition.

First, you seek a "complete copy of the RFP submission from HNS (Home Nutritional Support) for the Home Parenteral Care contract issued by OHSU in 1986." As Ms. Averill explained to Mr. Reedal, OHSU no longer possesses those records. Therefore, we cannot order disclosure.

Second, you again seek disclosure of "[c]opies of all RFP submissions for OHSU's 1989 Home Parenteral Care RFP." As you acknowledge in your petition, these are the same documents that were the subject of our December 7, 1989, public records order directed to you. Your client already has received the nonexempt portions of those documents. For the reasons stated in our December 7, 1989, order, the remaining parts are exempt from disclosure. You have offered no reason for us to depart from that decision.

Third, you ask for the "original copies of Home Parenteral Care Committee member's scoring for each question in the RFP submissions." As Ms. Averill explained to Mr. Reedal, those documents were discarded.[1] Ms. Averill has, however, provided Mr. Reedal with the entirety of the information contained in those original scoring sheets. We have determined from our discussions with Ms. Averill that at a committee meeting, she collected the individual anonymous scoring sheets from the committee members. She then recorded the individual responses on a separate sheet, and averaged and totalled them for each vendor. Later, upon returning to her office, she followed the same process to verify her initial calculations. After doing so, she threw away the individual committee members' score sheets. We also have determined that none of the individual members retained a copy of the member's original scoring sheet. Thus, although OHSU is unable to provide the precise documents at issue, it has disclosed fully the information contained in those documents. We can direct OHSU to do no more.

Fourth, you ask for a "copy of the scoring instruction given members of the Home Parenteral Care Committee." As Ms. Averill informed Mr. Reedal in her March 12 letter, no separate written scoring instructions were distributed. Ms. Averill did provide Mr. Reedal with a sample of the scoring sheet used. That sheet is relatively straightforward and in essence contains its own instructions. No other relevant document exists. Accordingly, OHSU has satisfied your client's request to the fullest extent possible.

Fifth, you seek "[c]opies of all responses from vendors to OHSU's December 15, 1989, letter asking for additional prices and 'comments' for future RFP." Ms. Averill made available to Mr. Reedal all of the requested documents other than the pricing information contained in those records. All vendors (other than Home Parenteral Care, Inc., Mr. Reedal's company) asked that the pricing information be withheld from disclosure

as trade secrets. Ms. Averill honored those requests. For essentially the same reasons stated in our December 7, 1989, public records order concerning the initial 1989 RFP submissions, that information is exempt from disclosure.

Sixth, you ask for a "copy of any instruction for scoring the new price submissions given to the Home Parenteral Committee." In her March 12 letter to Mr. Reedal, Ms. Averill explained that no written instructions were given to the committee. She set forth the mathematical formula, approved by the committee, used to score the submissions. From our discussions with Ms. Averill, we find that Ms. Averill performed the actual calculations, which the committee reviewed. We have enclosed a copy of a document, entitled "Pricing Formula," which describes in detail the formula applied.

Finally, you ask for the "original copies of each Committee member's scoring of the new price submissions." As Ms. Averill told Mr. Reedal in her March 12 letter, and as we stated immediately above, the committee did not actually perform the initial calculations. No records that satisfy your request have ever existed.

In sum, OHSU has made available to Mr. Reedal all existing, nonexempt public records that fall within the scope of his original request. Therefore, we respectfully deny your petition.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:RDW:JMM/8630a
Enclosure
cc: Anya Averill, Contracts Manager
Fiscal Services
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(See Footnote on Page 4)

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[1] You have asked us to "review * * * the Agency's claim that the documents responsive to Request No. 3 'were not retained.'" From our discussions with Ms. Averill, we find that the documents in fact no longer exist. Whether any OHSU personnel violated any law in discarding the documents is beyond the proper scope of a public records disclosure order. However, we are in the process of obtaining and reviewing copies of the relevant record retention schedules developed pursuant to ORS 192.105(1) and (2), to determine whether discarding the documents was authorized, and thus not in violation of ORS 162.305.