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April 11, 1997

Bob Keefer
The Register-Guard
975 High Street
PO Box 10188
Eugene, OR 97440-2188

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

Dear Mr. Keefer:

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 April 4, 1997, asks the Attorney General to direct the University of Oregon (University) to make available the following records:

> All e-mail to or from Neill Archer Roan, executive director of the Oregon Bach Festival, concerning finances or operations of the Oregon Bach Festival, dated between Oct. 1, 1996 and today.

You made the above request to University President Dave Frohnmayer on March 5, 1997. Your petition also asks the Attorney General to direct the University to waives its fees for making the records available to you. For the reasons that follow, we respectfully deny your petition.

Jan Oliver, Assistant Vice President for Institutional Affairs, informs us that the University has not denied your records request. Ms. Oliver is overseeing the University's efforts to comply with your request, which require a review of e-mail messages stored on one of the University's servers and a review of e-mail messages stored on the hard drives of two computers used by Dr. Roan. Ms. Oliver informs us that she plans to provide you with a revised estimate of the costs of responding to your request when she has determined how

many e-mail messages must be read in order to ascertain which messages are within the scope of your request.

It is reasonable for an agency to review its records and consult with counsel before responding to a public records disclosure request. Moreover, an agency is not deemed to have denied a request merely because the agency fails to comply with a deadline imposed by the requester. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 15.

Absent a denial of a records request by a state agency, the Attorney General has no authority to order disclosure. *See* ORS 192.450. Because the University has not denied your request for the records, your petition to order disclosure is premature. Accordingly, we deny your petition to order disclosure.

Your petition also requests the Attorney General to order the University to waive its fees for making the requested records available to you, based on your assertion that your request is in the public interest. Ms. Oliver informs us that the University has not made a final decision concerning a possible waiver or reduction of its fees. After the University determines the full extent of the efforts needed to comply with your request, Ms. Oliver will consider your request for a waiver or reduction of its fees. Because the University has not made a final decision concerning your request for a waiver or reduction of fees, your petition to the Attorney General to order a waiver of fees is premature. Accordingly, we deny your petition to order the University to waive its fees.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

ESH:SSB:AV/JAA0236C
c: Dave Frohnmayer (UO)
Jan Oliver (UO)
Pete Swan (UO)