HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

August 6, 1997

Carlton Scott Parrish
4237 NW Douglas Avenue
Corvallis, OR 97330

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

Dear Mr. Parrish:

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 July 30, 1997, asks the Attorney General to direct Oregon State University (the University) to make available a compilation of proposed budget cuts that was prepared by Todd Stark, Director of Information Services at the University.

Caroline Kerl, Legal Advisor to the President of the University, advises us that the document you have requested was prepared in order for University to consider various program options, including possible cuts in program budgets, that may be necessary to deal with a current budget deficit. The University has not yet determined what program changes may be required.

The University has denied your request for this document based on ORS 192.502(1). This section exempts from disclosure:

> Communications within a public body or between public bodies of an advisory nature to the extent they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

To fall under this exemption, the document in question must be (1) a communication within a public body or between public bodies, (2) of an advisory nature preliminary to final agency

action, (3) covering other than purely factual materials and (4) of a nature that the public interest in encouraging frank communication between public officials outweighs the public interest in disclosure. The first three requirements of the statute are met, and the issue is whether the public interest in disclosure is clearly outweighed by the public interest in frank communication between public officials. To meet this requirement the University must show that disclosure would have a chilling effect on frank communications between public officials about matters that are important to the agency's functions.

The University maintains that disclosure of the document would discourage University managers from sharing and discussing the advantages and disadvantages of various options prior to making difficult program decisions. University managers would be reluctant to engage in frank discussions of potentially unpopular decisions if those discussions were made public, especially preliminary to a final decision.

We concur with the University's position. The public's interest in allowing frank exchanges concerning budget options and potential cuts would be substantially undermined if the preliminary recommendations and discussions of managers were disclosed prior to the University's final decisions on these issues. This interest in frank communications among public officials clearly outweighs the interest in disclosure of these communications prior to final agency action.

For the foregoing reasons, we respectfully deny your petition for disclosure of public records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

DS:jh/JAA025A2.W51
cc: Caroline Kerl, OSU