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March 22, 1996

Alan Pittman
EUGENE WEEKLY
1251 Lincoln
Eugene, OR 97401

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

Dear Mr. Pittman:

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 15, 1996, asks the Attorney General to direct the University of Oregon to make available "any and all records relating to the UO's (state's) settlement of the sexual harassment case of *David Reed v. Gerry Mosely and the University of Oregon* (#16-95-08552). For the reasons that follow, we respectfully deny your petition.

In general, a public body such as the University of Oregon may not enter into a settlement agreement that, by its terms, requires the agreement to be kept confidential. ORS 30.402(1). However, a court may order the terms and conditions of a settlement or compromise to which a public body is a party to be confidential upon written findings "that specific privacy interests of a private individual outweigh the public's interest in the terms of the settlement or compromise." ORS 30.402(2).

In *Reed v. Mosely*, the court found:

> Releasing the details of the settlement would not be conducive to the pursuit of [plaintiff's] educational goals. Therefore, pursuant to ORS 30.402(2), the Court finds that the specific privacy interest of the plaintiff far out-weigh the public's interest in the terms of the settlement as read into the record, therefore
>
> IT IS HEREBY ORDERED that the terms of the settlement recited herein shall remain confidential, and the record will be sealed until further order of the Court.

Order Sealing Transcript, dated March 20, 1996, nunc pro tunc to January 29, 1996 (copy enclosed).

ORS 192.502(8) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." A settlement agreement made confidential by the court pursuant to ORS 30.402(2) is "confidential or privileged under Oregon law" and, therefore, exempt from disclosure under the Public Records Law. ORS 192.502(8).

In light of the court order in this case, we conclude that the records you seek are exempt from disclosure under ORS 192.502(8). This includes both the specific terms and conditions of the settlement and any records that may tend to disclose the terms of the settlement, such as canceled checks or disbursement records. For these reasons, we deny your petition to compel disclosure.[1/]

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

ESH:KLK:AV/jpl:JGG0D6A5
Enclosure
c: Peter N. Swan
Assistant to the President for Legal Affairs
University of Oregon

[1/] In your petition, you requested that "the AG disclose any ex parte communications with the UO regarding this records request before a final determination is made." The Administrative Procedures Act (APA), ORS 183.310 to 183.550, requires ex parte communications on a fact in issue to be disclosed on the record. A petition for a public records order is not subject to the APA, and no analogous requirement is included in the Public Records Law, ORS 192.410 to ORS 192.505.

Moreover, the Attorney General is required to contact the public body whose records have been requested and the public body is required to transmit to the Attorney General the record that is the subject of the petition and a statement of the public body's reasons that the record should not be disclosed. ORS 192.470(2). In order to fulfill his responsibilities under that statute, the Attorney General's standard practice upon receipt of a petition for a public records order is to discuss with the affected agency the content of the requested record and the agency's reasons for not disclosing it. Upon learning from Peter Swan, the University's Assistant to the President for Legal Affairs, that the court had entered an order sealing the terms of the settlement, we contacted the court to obtain a copy of that order.