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June 1, 1988

Myron Hulen
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Roger Edgington
Vice-President for Finance
and Administration
Portland State University
P.O. Box 751
Portland, OR 97207

**Re: Request for Public Records Disclosure Order; Portland State University Records and Portland State University Foundation Records**

Dear Mr. Hulen and Vice-President Edgington:

This letter is the Attorney General's order on a May 24, 1988 petition filed by Mr. Hulen pursuant to the Public Records Act (ORS 192.410 to 192.505). We received the petition on May 25, 1988. For the reasons set forth below, we grant Mr. Hulen's petition in significant parts and deny the petition in one respect.

Mr. Hulen asks the Attorney General to order Portland State University to disclose all PSU and PSU Foundation accounts relating to funds received from the Tax Practitioner's Institute (Institute) and relating to PSU and Foundation expenditures, if any, made from those funds.

With respect to the request for PSU records, PSU agrees to make such records available for inspection by Mr. Hulen to the extent such records are in existence and can be located. PSU makes no claim for exemption from disclosure for these records. Vice-President Edgington reports that the Office of Academic Affairs is in the process of identifying and gathering the PSU records requested by the petitioner and will attempt to complete the process within seven days of this order.

With respect to the request for PSU Foundation records, we previously have determined that PSU Foundation records are, under certain circumstances, public records subject to the Public Records Law. (See, Attorney General Public Records Disclosure Order of April 22, 1988). The question here is whether Foundation records relating to Institute funds also are public records within the meaning of the Public Records Act.

We are informed by Judith Nichols, Executive Director, that any PSU Foundation records relating to Institute funds would be compiled, used, and maintained by PSU in the same manner and for the same purposes as the Foundation accounting records that were the subject of our April 22, 1988 order. Therefore, it is the opinion of the Attorney General that the requested records would be public records within the meaning of the Public Records Act. PSU does not claim any exemption from disclosure of such records, and they would be subject to inspection. However, we are also informed by Ms. Nichols that the computer records reflect that no Foundation account exists regarding the Institute.

Ms. Nichols states that the computer records show the Foundation has never received revenue or funds from the Institute and thus has never made expenditures from those funds. But Ms. Nichols also states that PSU staff can review other Foundation accounting records to determine whether there is any documentation of Foundation deposits and expenditures of Institute funds beyond the computer entries.

Under the Public Records Law, PSU may "establish fee reasonably calculated to reimburse it for its actual cost in making [public] records available [for inspection]." ORS 192.440(2). In this case, PSU calculates the actual cost of record search to be $287.75. This calculation is based on 15 hours of staff time and the schedule of fees adopted by university rule. OAR 577-60-020, as supplemented by PSU rule 3-1487 (temp.) filed and effective 8/11/87. We have interpreted ORS 192.440(2) to permit a public body to "estimate charges for responding to a records request, and require prepayment of the estimated charges before spending time on the request." Attorney General's Public Records and Meetings Manual, at I-2 (1985). Consequently, PSU may require petitioner to prepay the calculated amount of $287.75 before it conducts a search for Foundation records relating to deposits and expenditures of Institute funds.

CONCLUSION

In sum, the Attorney General denies Mr. Hulen's public records petition insofar as it seeks disclosure by PSU of Foundation records that do not exist. However, we grant the petition for disclosure of PSU records of deposits and expenditures of Institute funds; and we grant the petition for disclosure by PSU of any existing Foundation records relating to deposits and expenditures of Institute funds that were prepared, used, or maintained by PSU, provided Mr. Hulen pays for the actual cost of a search for such records.

Respectfully submitted,

James E. Mountain Jr.

JAMES E. MOUNTAIN, Jr.
Special Counsel to the
Attorney General

JEM:cm
cc: W.T. Lemman, Acting
Chancellor of Higher Education
Jerry Casby, Attorney-in-Charge, Education Section
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