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May 26, 1995

Wayne Ford, Co-Chair
Eugene-Springfield
Homeless Action Coalition
458 Blair
Eugene, OR 97402

Re: ***Petition for Public Records Disclosure Order: University of Oregon DOJ File No.: 580-500-ED198-94***

Dear Mr. Ford:

This letter is the Attorney General's order on your two petitions for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petitions, which we received on May 19, 1995, ask the Attorney General to direct the University of Oregon to make available: (1) the plans for rebuilding the Amazon Housing Complex and (2) minutes of the May 16, 1994 meeting of the University of Oregon Family Housing Board. For the reasons that follow, we respectfully deny both of your petitions.

The Oregon Public Records Law grants any person the right to inspect any public record of a public body in Oregon, including the University of Oregon, subject to certain exemptions and limitations. See, generally, ORS 192.420. The law requires a public body to provide access only to records that it possesses, however; it does not require an agency to create a record that does not already exist.

From your petitions, the correspondence that you enclosed and our discussions with University of Oregon administrators, we understand that you and the University have discussed extensively both of your requests. At no time has the University asserted any exemption from the disclosure requirements in the Public Records Law. Rather, the only issue appears to be whether the University possesses the documents that you would like to review.

Your first petition is for the University's "plans for the rebuilding of the Amazon Housing Complex." You attached a letter from Dave Hubin, Executive Assistant to the University President, dated November 17, 1994, in response to your request. Mr. Hubin explained that the "plans" are a consultative process, not diagrams, drawings or blueprints. Mike Eyster, Director of University Housing, has informed us that the planning process has produced a large number of documents. Most recently, the University issued a request for qualification for design/build teams and has received several responses. From your petition and the correspondence you attached, we cannot tell if you wish to review any of the planning process documents developed over the last several years. Many of those are hundreds of pages long. The University has not claimed that any of these documents are exempt from public disclosure requirements. If you do wish to review them, you should contact Mr. Eyster; upon reasonable notice, you may review any of those documents during regular office hours and may request copies of relevant portions.

Your second request pertains to the minutes of the May 16, 1994 meeting of the Family Housing Board. As its name implies, the Family Housing Board was created to advise the University on matters pertaining to family housing. At its May 16, 1994 meeting, the person hired to take notes and prepare minutes of the meeting failed either to prepare minutes or to deliver them to the Family Housing Board. The Board has been unable to make contact with that person. Members of the Board attempted unsuccessfully to reconstruct minutes of that meeting, and in any event you have informed the Board that you would not consider reconstructed minutes to be satisfactory.

For purposes of the Public Records Law, the key fact is that the University, including the Family Housing Board, has no minutes of the May 16, 1994 meeting. Therefore, there is no public record that we could order the University to disclose. We have no authority under the Public Records Law to order the University or the Family Housing Board to create minutes, even if it were possible for them to do so.

Although it appears that there may have been some miscommunication about the nature of the "plans" for rebuilding Amazon that you would like to review, Mr. Eyster has informed us that all of the University's records pertaining to the planning and design process for rebuilding Amazon are available for your review. Because the University has not denied you access to any documents, there is no basis for us to order disclosure. Similarly, as to the minutes of the Family Housing Board meeting, there is no document that the University has refused to disclose.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA01864.W51
c: Mike Eyster