HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

September 17, 2004

Ross P. James
P.O. Box 1184
Wilsonville, OR 97070

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

Dear Mr. James:

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 August 31, 2004,[1] asks the Attorney General to direct Portland State University ("PSU") to make available numerous records set out below. For the reasons that follow, we respectfully deny your petition.

We spoke with Wendy Endress, PSU Dean of Students, about your petition. Your petition relates to requests you made to PSU on October 13, 2003, to which PSU responded by letter dated December 1, 2003, and on November 26, 2003, to which PSU responded by letter dated December 5, 2003. Because those requests and your petition are quite lengthy, we initially review several facets of the Public Records Law germane to your petition prior to addressing individual records that are the subject of your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420.[2] If a state agency denies any person the right to inspect or obtain a copy of a public record, that person may petition the Attorney General to determine if the requested record was properly withheld. ORS 192.450. However, if the agency has not denied the person's request, the Attorney General does not have authority to order disclosure. ORS 192.450. In both its December 1st and 5th letters to

[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond.
[2] You have filed a tort claims notice against PSU alleging, among other things, that PSU failed to provide you with various records that you would have used to impeach witnesses in your suspension hearing. You also provide a tort claims notice at the end of your petition to this office. ORS 192.420(2) requires you to submit the request for records related to the tort claims notice to the Attorney General in writing. You have not done so.

you, PSU noted several instances in which your requests were not sufficiently clear to permit staff to search for records. To the extent that you did not seek to clarify your requests, so that PSU lacked the ability to search for or identify responsive records, PSU's correspondence cannot be said to constitute a denial of your requests.[3]

The Public Records Law does not require public agencies to *create* public records. "Public bodies are not required to create a record to disclose the 'reasoning' behind their actions, or other 'knowledge' their staff might have. Nor does the Public Records Law require public bodies to explain or answer questions about their public records." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) (AG'S MANUAL) at 6. Therefore, to the extent that your petition relates to requests that PSU create records or explain its reasoning, the petition is denied.

A state agency has authority to assess fees "reasonably established to reimburse it for its actual cost in making [requested] records available." ORS 192.440(3). Also, a state agency may "preliminarily estimate charges for responding to a records request and require prepayment of the estimated charges before acting on the request." AG'S MANUAL at 14. In a letter dated December 5, 2003, PSU provided you with an estimated fee to respond to your November 26, 2003 request. According to Dean Endress, you have not paid this fee. Therefore, to the extent that PSU has not responded to your November 26th request, it has not denied that request.[4]

A person may petition the Attorney General if he believes that there has been an unreasonable denial of his request for a fee waiver or fee reduction. ORS 192.440(5). Your petition sets forth arguments as to why PSU should waive the estimated fee set out in its December 5th letter. Dean Endress told us that you have not asked PSU to waive or reduce its fee. Because you have not requested a fee waiver or reduction from PSU, we deny your petition for a fee waiver as premature.

Finally, some exemptions from public disclosure stated in the Public Records Law, including all those in ORS 192.501, require a public body to balance the interest in confidentiality against the public interest in disclosure in the particular instance raised by a particular request. Your petition states that you are seeking records to "preserve my right to litigate" and to "more adequately inform the public." In relation to the latter purpose, the petition states your intent to "lobby, litigate, and publicly comment on PSU actions which

---

[3] While your petition states that it is meant to be "a continuing request," the Public Records Law does not require a public body to treat a request in this manner. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at A-1 ("Persons seeking to inspect or to obtain copies of records of a public body on a continuing basis may be required to make a new request for records after the public body has responded to a request for records currently in the public body's possession").

[4] Your petition states that FERPA prohibits PSU from charging you for copies of your education records. That statement is incorrect. 34 CFR §99.11(a) permits educational institutions to charge fees for copying a student's education record. However, PSU may not charge a fee for searching for or retrieving your education records. 34 CFR §99.11(b). Therefore, federal law requires PSU to reduce the fee set out in PSU's December 5, 2003, to the extent that it includes a fee to search for your education records. Dean Endress has told us that PSU will review the estimated fee and inform you of any reduction required to maintain compliance with FERPA.

directly affect the citizens of Oregon" and to make any disclosed records available to others via the internet. However, given your admitted personal interest in your interactions with PSU, your request appears to have as its predominate focus a private, as opposed to public, interest. Moreover, we note that the public has an interest in the confidentiality of the records in question.[5] The interests in confidentiality against which the interest in disclosure is to be weighed vary from category to category of your request. From your petition, we cannot ascertain a public interest that would be served in the disclosure of the records that you have requested.

The remainder of this order is keyed to the "records requested" portion of your petition.

1. The "clear and convincing evidence" that Ross P. James, by his presence at PSU, was a "substantial threat to health, safety, or property" giving rise to an order of suspension on 30 September 2003 – # 7 in November 26th request.

PSU's December 5th letter states that PSU disclosed the formal student conduct complaint that was the basis of your student conduct hearing. In addition, Dean Endress told us that you were provided with copies of all materials introduced into evidence in the hearing. She also told us that these are the records held by PSU that are responsive to your request. Therefore, your petition for such records is denied as moot.

2. The evidence for reversal of the suspension – # 8 in your November 26th request.

As specified in its December 5th letter, PSU denied your request. Dean Endress told us that PSU reversed your suspension based upon advice received from its attorney. ORS 192.502(9) exempts from disclosure records "prohibited, restricted or made confidential or privileged under Oregon law." ORS 40.225 makes privileged communication between a client and its attorney. *See* Public Records Order, July 6, 1982, Zaits; Public Records Order, October 21, 1988, Best. To the extent that PSU relied on written legal advice in reversing your suspension, those records are exempt from disclosure. Therefore, your petition for them is denied.

3. Records of all research conducted by Christine Cress on October 21, 2002, including calendars, notes, journals, work product and all other evidence – # 11[6] in your November 26th request.

PSU partially denied your request. ORS 192.501(14) exempts from disclosure "writings prepared by * * * faculty of public educational institutions, in connection with research, until publicly released * * *." This exemption applies even if preliminary results have been published if the underlying data will be used for further research and publication. *See* Public Records

---

[5] For example, the attorney-client privilege is designed to help assure the free flow of information from a client to the client's attorney. That interest exists even when, as here, the client is a public organization.

[6] We note that your November 26th request referred to research conducted between October 21, 2002 and an unknown date. Because PSU treated your request as a request for research conducted since October 21, 2002, this petition does also.

Order, June 19, 1995, Speede. Therefore, to the extent that Professor Cress' research has been preliminarily released, but she will continue to use the data for further research and publication, PSU is not required to disclose these records. In its December 1st letter, PSU agreed to disclose records responsive to your request "to the extent the research has been publicly released." This response is consistent with the requirements of the Public Records Law. Therefore, your petition as it relates to these records is denied.[7]

4. Records of all complaints by any person, to any person about Ross P. James, including the name and address of the complainant, all evidence in support of such complaints, and the disposition of each complaint[8] – # 46 in your October 13th request and #s 2, 4, 5, 7, 9, 12, and 15 in your November 26th request.

In its letters of December 1st and 5th, PSU states that the requested records (i) were already provided to you, (ii) were available for you to pick up at the Office of Student Affairs, or (iii) would be disclosed to you once you paid the estimated fee stated in the December 5th letter. Our current best evidence is that PSU has not denied your request for these records. Therefore, your petition as it relates to them is denied.

5. Records of assistance offered by PSU faculty or staff members, or administrators, to any student in courses attended by Ross P. James, to include attempts at resolution of complaints – # 14 in your November 26th request.

PSU denied this request in its December 5th letter. Since these records relate to other students, to the extent that they constitute student records, ORS 192.496(4) prohibits disclosure. Student records are defined as education records which include "records, files, documents and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational * * * institution or by a person acting for such * * * institution." 20 USC §1232g(a)(4)(A). Records of assistance to students contain information directly related to those students and are maintained by PSU. They are, thus, student education records prohibited from disclosure. Dean Endress has told us that, to the extent it is possible for PSU to redact the personally identifiable information about students other than you, PSU will disclose the redacted records.[9] Because such records are not your own education records, PSU is within its authority in charging a fee to recoup its actual costs of providing the records to you. Therefore, your petition for these records is denied.

6. Name, rank, title, tenure status, date of appointment and salary of each member of the PSU Graduate School of Education, Department of Educational Policy, Foundations, and Administration ("Department") faculty and administration, to include Phyllis Edmundson, from January 2000 to the present. Name, rank, title, tenure status, date of appointment and salary of

---

[7] In regard to the public interest balancing required by ORS 192.501(14), *see* page 2 *supra*.

[8] Because petition item # 17 (all records of any investigation into any complaint made against Ross P. James at any time by any person alleging any misconduct) is duplicative of petition item # 4, this section of our Order addresses both items.

[9] If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

Daniel Bernstine, Rod Diman, Douglas Samuels, Wendy Endress, Michelle Toppe, and Joseph Poracsky – # 16 in your November 26th request.

Request #16 of November 26th did not ask for tenure status or date of appointment for either Department faculty and administration or the specifically named persons. To the extent that your petition identifies records not yet requested of PSU, it is denied as premature. PSU's December 5th letter states that the requested records were either already provided to you or were available for you to pick up at the Office of Student Affairs. Because there has been no denial by PSU, your petition for the requested records is denied.

7. All student directory data for each student in all courses attended by Ross P. James – # 17 in your November 26th request.

Request # 17 of November 26th did not ask for students' major fields of study, grade level, enrollment status, activities and sports participated in or most recent school attended, nor did it identify requested information as "directory data." Also, it was limited to only those students in courses within the School of Education. To the extent that your petition identifies records not yet requested of PSU, it is denied as premature.

Student email addresses are exempt from disclosure under ORS 192.501(30), and Dean Endress has told us that PSU's list of directory information does not include the following items included in your November 26th request: major fields of study, grade level, activities and sports participated in, and most recent educational agency or institution attended. Therefore with respect to these items of information, your petition is denied.[10]

With respect to the remainder of request # 17, PSU's December 5th letter states that the requested records were either already provided to you or were available for you to pick up at the Office of Student Affairs. Because there has been no denial by PSU, your petition for the requested records is denied as premature.

8. Records of all PSU courses in which Robin Voetterl participated as a student, instructor, or otherwise during the period of January 2000 to the present, including, but not limited to name, course number, dates, meeting times and places.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

9. Required readings, instructional materials, books, articles, handouts, lecture notes, graphic presentations, calendars, schedules, syllabi, course assignments, research papers, journals, notes, examinations, attendance logs and records, sign-in-sheets, student information forms, grades, and all other instructional materials and records for all courses attended by Ross P. James[11] – #s 18[12]

---

[10] In regard to the public interest balancing required by ORS 192.501(30), *see* page 2 *supra*.

[11] Addressed in our response to petition item # 9 are the records in petition item #s 34 (Goals and content of each course, per the Policy Statement) and 35 (Instructor's expectations and grading method, per the Policy Statement, for each course attended by Ross P. James).

and 23[13] in your November 26th request and possibly #s 22[14], 23[15], 24[16], 25[17] and 47[18] in your October 13th request.

PSU has not denied request # 18; its December 5th letter states that the requested records were either already provided to you or were available for you to pick up at the Office of Student Affairs.

With respect to request # 23, if tests will be used again, they are exempt from disclosure. ORS 192.501(4); Public Records Order, February 28, 2002, Perry. Also, to the extent that the requested records constitute student education records, they are subject to disclosure once personally identifiable information about students other than you is redacted. Dean Endress told us that PSU agrees to provide the requested records, except for tests that will be used again, with personally identifiable information about other students redacted from those records that constitute student education records of students other than you. This response is consistent with the requirements of ORS 192.496(4). Therefore, to the extent that your petition relates to these records from your November 26th request, your petition is denied.[19]

As reflected in PSU's December 1st letter, it denied your request for the items listed from your October 13th request because, due to lack of specificity, PSU was unable to identify the records being requested. Because your request did not provide PSU with information sufficient to identify responsive records, there are no records for PSU to disclose. Therefore, your petition, to the extent it relates to the identified portions of your December 1st request, is denied.

10. Student directory information for all normally admitted doctoral and post-doctoral students in the Graduate School of Education from January 2000 to December 2004 and the degrees they are/were seeking and have received – # 19 in your November 26th request.

Your November 26th request asked only for the names and degrees of admitted PhD students in the Department. In its December 5th letter, PSU agreed to provide those records to you upon receipt of its estimated fee. Therefore, your petition for those records is denied as premature. To the extent that you have petitioned for records not requested of PSU, your petition is also denied as premature.

11. Student directory information for all students enrolled in classes attended by Ross P. James who possess a master's degree – # 20 in your November 26th request.

---

[12] Required readings, instructional materials, texts, articles, handouts, lecture notes, graphic presentations, calendars, schedules, syllabi.
[13] Course assignments, research papers, notes, tests, attendance logs and records, student information forms, grades.
[14] Goals and content of courses.
[15] Instructor's expectations and grading methods.
[16] Materials of the course(s).
[17] Standards of academic performance defined by instructors.
[18] Standards for graduate level work.
[19] In regard to the public interest balancing required by ORS 192.501(4), *see* page 2 *supra*.

Your November 26th request asked only for names and addresses of students holding master's degrees and did not include classes outside the School of Education. In its December 5th letter, PSU agreed to provide those records to you upon receipt of its estimated fee. Therefore, your petition for those records is denied as premature. To the extent you have petitioned for records not requested of PSU, your petition is also denied as premature.

12. Complaints to any person, at any time, against any member of the faculty, staff, or administration of the Department, the Office of Student Affairs ("OSA"), the Office of Affirmative Action ("OAA") or the Office of the President, including all evidence, evidence of attempts at resolution, disposition, and the name and address of each complainant – # 21 in your November 26th request.

Your November 26th request did not ask for records related to staff of the Department or complaints filed against persons in the Offices of Student Affairs, Affirmative Action or the President; because you have not requested those records from PSU, your petition for them is denied as premature. Because PSU does not have an obligation to respond to your request for these records until it receives payment of its estimated fee, your petition is denied as premature. There are specific restrictions on the release of records of the type that you requested in relation to faculty members and students. We provide the following for your information.

In its letter of December 5th, PSU denied your November 26th request. ORS 351.065(5) provides that any personnel records "designated as confidential pursuant to valid rules or orders pursuant to this section shall not be deemed a public record for the purposes of ORS 192.420." The Board of Higher Education delegated to each President responsibility to develop university-specific rules regarding faculty records. OAR 580-022-0060(1). Those rules provide that personal records of faculty include any information regarding faculty discipline or professional performance. OAR 580-022-0065(1). Information in a faculty member's personal record file, other than certain information not relevant to this public records request, is personal and "subject to restricted access." OAR 580-022-0090(2). Personal records designated as subject to restricted access are only available to the faculty member and institutional personnel. "These records may not be released to any other person * * * without the faculty member's written consent, unless on receipt of a valid subpoena or other court order or process or as required by state statute, federal law or valid federal or state rules, regulations or orders." OAR 580-022-0095(1).

PSU promulgated OAR 577-040-0020(2), which is identical to OAR 580-022-0095(1) except that it also permits release "upon a finding by the President of the University that the public interest in maintaining individual rights to privacy in an adequate educational environment would not suffer by disclosure of such personal records."

The records you seek fall squarely within the personnel records designated as confidential by PSU and the Board of Higher Education. They do not constitute public records subject to disclosure. ORS 351.065(5). In addition, any complaint filed by a student would constitute one of that student's education records which are exempt from disclosure under ORS 192.496(4).

13. Complaints made by faculty, staff or administration of the Department to any person, including evidence supporting the complaint, attempts at informal resolution, disposition and the name and address of each complainant – # 22 in your November 26th request.

Your November 26th request only covered faculty and administration, and requested the name and address of the person *against whom* a complaint was filed. To the extent that your petition asks for additional information, it is denied as premature.

While PSU denied your request in its letter of December 5th, this denial was made in error. Dean Endress has told us that PSU has not yet searched for, identified, or reviewed records responsive to your request because it is awaiting receipt of payment of its estimated fee. As already stated, PSU is within its authority under the Public Records Law in delaying processing your request until it receives payment. *See* page 2, *supra*. Because PSU, in fact, has not denied your request, we deny your petition as premature.

14. Student evaluations for each course taught by an instructor who ever taught a course attended by Ross P. James and all others – # 24 in your November 26 request.

Your November 26th request addressed only evaluations in courses attended by you in the School of Education. To the extent that your petition asks for additional records, it is denied as premature. PSU's December 5th letter states that it will disclose the requested records to you upon receipt of its estimated fee. Because PSU has not denied your request, your petition is denied as premature.

15. Letters, e-mails, reports, notes, phone messages, meeting notes, evaluations, journals, assignments, papers, exams and other records related to Ross P. James created or maintained by Bill Greenfield, Phyllis Edmundson, Carmen Armenti, Christine Cress, Ramin Farahmandpur, Carolyn Carr, Samuel Henry, Robin Voetterl, Roy Hales, Pat Scott, the OSA, OAA, Office of the President, members of the Student Conduct Committee ("SCC"), the Appeals Committee and all others – # 25 in your November 26th request.

Your November 26th request did not include evaluations, journals, assignments, papers, or exams and also did not include the Office of the President, the SCC or the Appeals Committee. To the extent that your petition asks for records not previously requested of PSU, it is denied as premature.

PSU's December 5th letter states that PSU will disclose the requested records "to the extent other provisions of the Public Records Law do not apply." Dean Endress has told us that PSU has not begun to process your request because it has not received payment of its estimated fee. With one exception, PSU is under no obligation to process your request until it receives payment. *See* page 2, *supra*. The exception is in regard to your education records, as to which federal law imposes certain restrictions. *See* footnote 4, *supra*. Dean Endress has told us that PSU will disclose to you your education records that are responsive to your request. However, to comply with FERPA, PSU will redact from those records any information which constitutes the education record of another student. ORS 192.496(4); 34 CFR §99.12(a).

Because PSU has not denied your request, we deny your petition as premature.

16. Records of an investigation by Michelle Toppe, PSU's judicial officer, or other persons within the OSA prior to October 2003 of allegations by any person that Ross P. James violated the Code of Student Conduct and Responsibility.

To the extent that the identified records relate to those in #s 2 and 4 your November 26th request, PSU's letter of December 5th states that they are either available for you to pick up at the Office of Student Affairs or PSU will disclose them to you upon payment of its estimated fee. Therefore your petition for these records is denied. To the extent that the identified records are outside the scope of the specified items in your November 26th request, after conferring with Dean Endress we are not aware of your having made a request to PSU for these records. Therefore, any petition for such records is denied as premature.

17. *See* # 4 above.

18. Names, addresses and dates of appointment of each member of the SCC during the period when the complaints against Ross P. James were adjudicated. All records regarding Ross P. James created or acquired by SCC members. Attendance records of all SCC members at all meetings where Ross P. James was discussed.[20]

Conferring with Dean Endress, we have been unable to identify a prior request to PSU for these records. To the extent that the identified records correspond to any of those requested in your October 13th or November 26th request, you need to clarify your request to PSU so that it may respond. Because it is not clear that you have requested these records from PSU, your petition for them is denied as premature.

19. *See* # 18 above.

20. Recommendations of the SCC to the Judicial Officer regarding the complaints against Ross P. James.

Conferring with Dean Endress, we have been unable to identify a prior request to PSU for these records. To the extent that the identified records correspond to any of those requested in your October 13th or November 26th request, you need to clarify your request to PSU so that it may respond. Because it is not clear that you have requested these records from PSU, your petition for them is denied as premature.

21. Academic and other transcripts and exhibits for Ross P. James – #s 1, 2 and 6 in your November 26th request.

PSU's letter of December 5th states that either these records are available for you to pick up at the Office of Student Affairs or PSU will make them available to you upon receipt of its

---

[20] Our response to petition item # 18 also applies to petition item # 19 (All documents present to or considered by the SCC when it disposed of complaints against Ross P. James.).

estimated fee. Dean Endress told us that she is not sure about the identity of the "exhibits" to which you refer but that, to the extent they were part of the hearing record, PSU has already provided them to you. Because PSU has not denied your request, your petition for these records is denied.

22. Names and addresses of all persons who have been granted access to any part of the education and/or conduct record of Ross P. James at any time[21] – # 43 in your October 13th request.

PSU's December 1st letter denied this request, stating that it is not obligated to *create* a responsive record. Dean Endress has told us that PSU agrees to disclose your education records, upon receipt of its estimated fee (*see* footnote 4 *supra*). Consistent with FERPA, those records will list the name and address of any person, excepting a PSU official, to whom they were disclosed, along with the person's legitimate interest in the disclosed records, and the date of disclosure. 20 USC §1232g(b)(4)(A); 34 CFR §99.32(d)(2). Also consistent with FERPA, those records will list the names, addresses and legitimate interests of the person(s) to whom PSU has authorized their redisclosure. 20 USC §1232g(b)(4)(B); 34 CFR §99.33(b); 34 CFR §99.31 and 99.32(b).

FERPA does not require PSU to keep a record of disclosures of your education records to PSU officials who have a legitimate educational interest in your education records. 20 USC §1232g(b)(1)(A); 34 CFR §99.31(a)(1). Neither does FERPA require that PSU keep a record of disclosures of your directory information. 20 USC §1232g(b)(1) and (2); 34 CFR §99.31(11).

23. Name and address of the Vice Provost for Student Affairs' designee.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

24. Each revision of the Student Conduct Code since January 2000.[22]

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

25. Each revision of PSU's grading policy since January 2000.[23]

---

[21] Our response to petition item # 22 also applies to petition items # 28 (Names and addresses of all persons to whom student records and/or conduct records of Ross P. James have been disclosed and redisclosed, and the dates of each disclosure/redisclosure and copies of all records disclosed) and # 29 (Records of each request for access to, and each disclosure of personally identifiable education records, including directory information, of Ross P. James including the names and addresses of the requestors and receivers of the information, their legitimate interest in the records, the names and addresses of each person to whom redisclosure was or could be made and their legitimate interest in the records and evidence that the recipients received a FERPA notification.).

[22] Our response to petition item # 24 applies to petition item # 51 (PSU's Code of Student Conduct and Responsibility, including each revision from January 2000 to December 2003).

[23] Our response to petition item # 25 applies to petition item # 50 (All documents related to PSU's grading policies, including each revision from January 2000 to December 2003.)

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

26. Standards of academic performance and conduct for each course Ross P. James attended[24] – #s 18, 25 and 47 of your October 13th request.

PSU informed you that it could not identify records that would be responsive to your requests based on the descriptions you provided. *See* PSU's December 1st letter (requesting clarification of requests). If you are seeking standards included in the instructional materials, handouts and syllabi for each course you attended (*see* # 18 in your November 26th request), PSU has agreed to provide those records, making your petition moot. If you are seeking other records, you need to clarify your request to PSU. Because PSU has not denied you access to identifiable records, your petition is denied.

27. PSU student record rules, including the location of all student records for Ross P. James and the criteria used to determine who constitutes a school official and what constitutes a legitimate educational interest, including all revisions from January 2000 to the present[25] – #s 21 and 35 of your October 13th request.

Because your October 13th request did not ask for rule revisions since January 2000, your petition for such records is denied as premature. According to Dean Endress, PSU does not maintain a record setting out the location of all your student records; therefore your request for such a record is also denied.

With regard to your October 13th request, the Policy Statement on Rights, Freedoms, and Responsibilities of Students, PSU ("Policy Statement") specifically refers to student record rules and SCC rules (OAR chapter 577, division 031). According to Dean Endress, consistent with the Policy Statement, if PSU has not yet provided you a copy of OAR chapter 577, division 031, it has agreed to do so without charge. The terms "school official" and "legitimate educational interest" are defined in OAR 577-030-0010, which, according to Dean Endress, PSU has already provided to you. In addition, PSU's annual FERPA Notice provided to every student defines these terms.[26] With respect to these records, all of which PSU has disclosed or has agreed to disclose to you, we deny your petition.

---

[24] Our response to petition item # 26 applies to petition item #s 34 (Goals and content of each course, per the Policy Statement.), 35 (Instructor's expectations and grading method, per the Policy Statement, for each course attended by Ross P. James), 36 (Standards of academic performance defined by the instructors in each course Ross P. James attended, per the Policy Statement), 38 (Standards for graduate level work for each course attended by Ross P. James, per the Policy Statement), and 43 (Academic and professional standards of PSU, the Graduate School of Education and the Department, per OAR 577-031-0125(5)).

[25] Our response to petition item #27 applies to petition item # 33 (Rules on student records, etc. and all other more specific policies per FERPA and the Policy Statement on Rights, Freedoms, and Responsibilities of Students, PSU).

[26] PSU's FERPA notice states that a "school official" is a "person employed by the University in an administrative, supervisory, academic or research, student staff or support staff position (including enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on a University governance board, or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A

28. *See* # 22 above.

29. *See* # 22 above.

30. Records that Ross P. James was notified according to FERPA before education records, including directory information were disclosed, that he was provided copies of disclosed records and that he had an opportunity for a hearing.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

31. Evidence regarding disposal or destruction of records that are or could be subject to this petition or previous public records requests by Ross P. James, including an inventory of destroyed documents and a description of their contents.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

32. All policies, procedures and notices under 34 CFR §99.7 effective from January 2000 to the present.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

33. *See* # 27 above.

34. *See* #s 9 and 26 above.

35. *See* #s 9 and 26 above.

36. *See* # 26 above.

37. Recognized principles of fairness and due process per the Policy Statement – # 42 in your October 13th request.

PSU informed you that it could not identify records that would be responsive to your request based on the descriptions you provided. *See* PSU's December 1st letter (requesting clarification of requests). Reviewing the University's Policy Statement, we also could not identify this reference. Because PSU cannot identify records responsive to your request, your petition is denied.

38. *See* # 26 above.

---

school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility."

39. All education records for Ross P. James, including any documents containing his handwriting or signature – #s 1 and 3 of your November 26th request.

PSU's December 5th letter agrees to disclose these records to you upon receipt of its estimated fee. Dean Endress has informed us that PSU will either provide you access to these records without cost or will provide you with copies of these records at $0.25 per page, according to your preference. Because PSU has not denied your request, your petition for these records is denied.

40. Formal or informal agreements pertaining to the grades of Ross P. James – # 6 in your November 26th request.

Your November 26th request asked only for formal, not informal, agreements pertaining to your grades. Therefore, to the extent that your petition seeks disclosure of informal agreements, it is denied as premature. With regard to formal agreements, PSU's December 5th letter agrees to disclose these records to you upon receipt of its estimated fee. Dean Endress has informed us that PSU will either provide you access to these records without cost or will provide you with copies of these records at $0.25 per page. Because PSU has not denied your request, your petition for these records is denied.

41. Evidence of physical or sexual assault, rape, sexual harassment, stalking, illegal weapon use or other actions under OAR 577-031-0133(1) by Ross P. James against any person.

To the extent that these records are included within item # 46 of your October 13th request or item # 2, 4 or 15 of your November 26th request, PSU's letters of December 1st and 5th do not deny your requests. Instead, our current best evidence is that (i) PSU has already disclosed the records to you, (ii) the records are available for you to pick up at the Office of Student Affairs, or (iii) PSU has agreed to disclose the records to you upon receipt of its estimated fee. With respect to such records, your petition is denied.

To the extent that your petition is for other records, after conferring with Dean Endress, we cannot identify a prior request having been made to PSU. With regard to any such records, your petition is denied as premature.

42. Names and addresses of PSU's Compliance Officer(s) and Grievance Counselor(s) defined in OAR 577-032-0020 from August 2003. Records of notification by the Compliance Officer to the President of PSU and the Chancellor of all complaints subject to OAR chapter 577, division 032 made by any person against Ross P. James. Records of investigations of violations of OAR chapter 577, division 032 by Ross P. James. Records or reports and actions recommended by the Compliance Officer to the PSU President relevant to allegations of violations of OAR chapter 577, division 032 by Ross P. James. Records of all applications by the Compliance Officer to the Chancellor for an extension of time permitted to conduct an investigation of allegations of violations of OAR chapter 577, division 032 by Ross P. James. Records of reports sent by the Compliance Officer to the Chancellor of investigatory findings and corrective actions ordered relevant to allegations of violations of OAR chapter 577, division 032 by Ross P. James.

To the extent that these records were included in item # 40, 41 or 45 of your October 13th request or item # 4 of your November 26th request, PSU either (i) already disclosed the records to you, (ii) has agreed to disclose the records to you (upon receipt of its estimated fee in relation to item # 4), or (iii) provided requested information directly in its response letter. With respect to such records, your petition is denied.

To the extent that your petition is for other records, after conferring with Dean Endress, we cannot identify a prior request having been made to PSU. With regard to any such records, your petition is denied as premature.

43. *See* #26 above.

44. Names and addresses of PSU's Judicial Officer(s) from August 2003 to the present.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

45. All records contained in or relating to the conduct record of Ross P. James, other than those provided on December 5, 2003, including various specific items including page 2 of the October 4, 2002 e-mail from Ramin Farahmandpur to Bill Greenfield and a complete and unredacted copy of Michelle Toppe's notes from an October 6, 2003 meeting with Burt Christofferson.

To the extent that your petition asks for records created after December 5, 2003, it relates to records that have not been requested of PSU and therefore is denied as premature. According to Dean Endress, PSU previously disclosed your conduct record to you, in its entirety, making your petition moot as to that record. According to Dean Endress, PSU officials cannot locate page 2 of the October 4, 2002 e-mail message cited in your petition. Because PSU cannot locate the record, your petition is denied as moot.

Michelle Toppe's notes include personal notes for her own process. Those records concern you and as such are your education records. However, FERPA excludes from the definition of education records those records "in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." 20 USC §1232g(a)(4)(B)(i). *See also* 34 CFR §99.3.[27] Thus, you are not entitled to a copy of these notes under FERPA. However, Dean Endress has told us that PSU has agreed to disclose the unredacted notes to you. Therefore, we deny your petition.

46. Names, addresses and dates of appointment of each member of the SCC and the Appeals Board at the time that complaints against Ross P. James were received and adjudicated and attendance logs for each meeting. Records of communication between and among members

[27] Education records do not include "[r]ecords that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."

of these committees and other representatives of PSU concerning Ross P. James from August 2003.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.

47. Records relating to speech prohibited by PSU, including speech, ideas and opinions prohibited, censored, or censured by instructors of any course attended by Ross P. James.

After conferring with Dean Endress, we cannot identify a prior request to PSU for this record. Therefore, your petition is denied as premature.[28]

48. All IMDs referred to by Burt Christofferson in the October 6, 2003 meeting with Ross P. James and Michelle Toppe – # 49 in your October 13th request.

Your October 13th request asked for "all potentially relevant internal management directives." In its December 1st letter, PSU explained that it was unable to discern what you were seeking as "potentially relevant" IMDs and provided you the website where all the IMDs are posted. With regard to your October 13th request, because PSU could not identify records responsive to your request, we deny your petition. To the extent that your petition asks for IMDs not previously requested of PSU, we deny your petition as premature.

49. Records created or acquired before October 8, 2003 as part of the OSA investigation into a complaint against Ross P. James – #s 1, 2, 4 and 25 of your November 26th request.

Dean Endress has told us that PSU has agreed to disclose the records responsive to item #s 1, 2 and 4 in your request following receipt of payment of its estimated fee. The records responsive to item # 25 constitute your education records under FERPA. Dean Endress has informed us that PSU will either provide you access to these records without cost or will provide you with copies of these records at $0.25 per page, according to your preference. Because PSU has not denied your request, your petition for these records is denied.

50. *See* # 25 above.

The following ten items of your petition are keyed to your October 13th request:

1. Federal and state constitutions, statutes, rules and judicial opinions – #s 1-17[29], 20, 27, 36, 37 and 38.

In its December 1st letter, PSU provided the website at which state statutes and administrative rules may be reviewed. More specifically, the Oregon Legislative Assembly

---

[28] To the extent that you are seeking information set out in the academic and performance standards and syllabi of specific courses, PSU has either disclosed the records to you or agreed to do so. (See item #s 9 and 26 above).
[29] Your request for the academic and professional standards of all applicable academic units, departments, schools and colleges (number 18) is addressed above in 26.

makes the Oregon Revised Statutes, as well as both the state and federal constitutions, available at www.leg.state.or.us/ors/; Oregon Administrative Rules are available at www.arcweb.sos.state.or.us/banners/rules.htm, with PSU's administrative rules being located in chapter 577.[30] To the extent that you want PSU to provide you with paper copies of the requested state records, you must specify that request to PSU. Because state statutes and rules are not your education records, since they do not contain information directly related to you and maintained by an educational institution, you do not have a right under FERPA to copies of these records free of charge; PSU would be within its authority to charge you a fee to recoup its actual costs in responding to such a request.

As to federal laws, rules and judicial opinions, Dean Endress has told us that PSU uses and maintains copies of Title IX of the 1972 Educational Amendments, Title VI of the 1964 Civil Rights Act, Section 504 of the 1972 Rehabilitation Act, and FERPA and its implementing regulations, and that PSU will provide copies of these records to you. Because these are not your education records, since they do not contain information directly related to you and maintained by an education institution, you do not have a right under FERPA to copies of these items without cost. Thus, PSU may charge you for its actual costs in responding to your request, and require prepayment of those fees. PSU is not a custodian of the other records cited in your petition.

Dean Endress told us that you have not clarified your request with respect to item #s 11 - 17 as requested by PSU. Because PSU lacks the ability to search for and identify responsive records without the requested clarification, it has not denied your request.

For these reasons, your petition is denied.

2. All policies referred to in the Policy Statement – # 21.

The Policy Statement, by its terms, "articulates the general policies that provide for the academic freedom of students in this University community and forms the basis on which more specific policies such as the SCC, rules on student records, etc. have been formulated and adopted." The Policy Statement is a general statement of the rights and responsibilities of members of the PSU community. You have been provided with copies of the student conduct rules and the student record rules. Your other specific requests for records are dealt with above.

3. #s 22 to 25. *See* 26 and 27 above.

4. Chapter 34 of the Oregon Board of Higher Education Rules – # 26.

---

[30] Your request to PSU was not limited to current state statutes and rules. In regard to your request for "chapter 204 of Oregon Laws 1975," Dean Endress has told us that PSU does not maintain a copy of those laws. Your request also sought several records by citations such as "PSU 1-1982, f & ef. 4-22-82." We've confirmed with Dean Endress that you have not provided clarification as to the records that you are seeking and that PSU is unable to identify any records pursuant to the citations you have provided. Therefore, your petition as to such records is denied.

Because no such record exists, your petition is denied.

5. # 35. *See* 27 above.

6. # 38.

PSU agreed to provide this to you. Dean Endress told us that PSU will send the record to you if it has not done so already.

7. # 43. *See* 22 above.

8. # 47.[31] *See* 26 above.

9. 1969 General Student Affairs Committee Document – # 48.

Dean Endress has told us that PSU will provide this record to you; therefore, your petition is denied.

10. # 49. *See* 48 above.

The final 12 items of your petition are keyed to your November 26th request:

1. #s 1-7; # 8.

While your petition states that PSU has not provided you with all of your education records, Dean Endress told us that PSU has disclosed all responsive records to you. With regard to item # 8, *see* 2 above. In relation to these records, your petition is denied.

2. OAR 577-31-0140 (names and addresses of relevant additional persons) – # 10.

In its December 5th letter, PSU stated that it required clarification of your request to be able to search for and locate responsive records. You have now clarified the request, through your citation to OAR 577-031-0140(4), to include persons the judicial officer feels are relevant to the hearing process. However, Dean Endress has told us that you had not yet provided this clarified request to PSU. For this reason, we deny your petition for such records as premature.

3. # 11. *See* 3 above.

4. # 14. *See* 5 above.

5. #s 16 to 18. *See* 6, 7 and 9 above.

6. # 19. *See* 10 above.

---

[31] Your petition incorrectly identified this item as number 44. However, your explanation indicates that you are really talking about item number 47.

7. # 20. *See* 11 above.

8. # 21. *See* 13 above.

9. # 22. *See* 13 above.

10. # 23. *See* 9 above.

11. # 24. *See* 14 above.

12. # 25. *See* 15 above.

As specified herein, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS14492
c: Wendy Endress, Dean of Students, PSU