

January 17, 2008

SENT VIA ELECTRONIC MAIL & REGULAR MAIL

Dr. William Harbaugh
Department of Economics
University of Oregon
538 PLC
1228 University of Oregon
Eugene, OR 97403
(wtharbaugh@gmail.com)

Melinda Grier, General Counsel-SAAG
University of Oregon – Office of the President
1226 University of Oregon
Eugene, OR 97403-1226
(grierm@oregon.uoregon.edu)

Re: Petition for Public Records Disclosure Order:
Oregon University System Records

Dear Dr. Harbaugh and Ms. Grier:

This letter is the Attorney General's order on Dr. Harbaugh's petition asking that we order the University of Oregon (University) to:

1. Make available copies of correspondence between the University and the United States Department of Justice (USDOJ) concerning the University's Under-represented Minority Recruitment Program (UMRP).
2. Waive public records fees with respect to those items and also with respect to supplementary documents that Dr. Harbaugh requested separately.
3. Explain the necessity of redactions to the supplementary documents.

For the reasons that follow, we are compelled to deny the petition.

1. Correspondence between the University and USDOJ

The University has agreed to provide these documents to Dr. Harbaugh. We therefore deny this portion of the petition as moot. We note that Dr. Harbaugh made his request of the University on December 27, 2007 and petitioned our office approximately two weeks later. Under the Public Records law as it existed at the time of Dr. Harbaugh's request, our office generally held that a two week period between a request and a petition was insufficient to find a constructive denial. In light of the University's agreement to provide these documents, we need not consider whether the history between the University and Dr. Harbaugh could warrant a different outcome in this case.

2. Fee waiver requests

We must deny this portion of the petition because it does not appear that Dr. Harbaugh requested fee waivers from the University. Our authority is limited to reviewing denials of fee waiver requests to determine whether the denial is reasonable. ORS 192.440(5). Here, there is no denial for us to review.

On November 18, Dr. Harbaugh did send an email to Ms. Grier expressing the hope that she was not going to charge him "for looking" and asking that she let him know if she was going to do so, to allow Dr. Harbaugh to take appropriate steps. This email did not request a waiver of fees. Moreover, Ms. Grier did let Dr. Harbaugh know that there would be a fee of \$121.00. It does not appear that Dr. Harbaugh took the appropriate step of requesting a waiver of the fee. We cannot order the University to waive its fee in the absence of an unreasonable denial of a waiver request.

With respect to the \$121.00 in estimated fees for the supplementary documents, we note that Dr. Harbaugh's December 27 email was reasonably interpreted by the University as a withdrawal of his request for those documents. If Dr. Harbaugh still wants those records, he should let the University know. If he is interested in a fee waiver, the University has indicated that it will consider a proper waiver request. If such a request is denied, Dr. Harbaugh may petition for review of the reasonableness of the denial.

3. Explanation of redactions to supplementary documents

The correspondence that Dr. Harbaugh is being provided explains why it is necessary to redact the supplementary documents. If Dr. Harbaugh is not satisfied by the explanation contained in the correspondence he is receiving, and if he actually obtains redacted supplementary documents, he will be free to challenge redactions in a separate petition. At that point, the University would be required to explain the basis for redactions to the Attorney General. ORS 192.470(2).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General