



**ROD UNDERHILL**, District Attorney for Multnomah County

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May 7, 2019

Lynne Terry  
The Lund Report  
P.O. Box 82841  
Portland, Oregon 97282

Jason Davis  
OHSU Legal Department  
3181 S.W. Sam Jackson Park Road  
Portland, Oregon 97239

Re: Petition of Lynne Terry, on behalf of The Lund Report, seeking clinical pay information regarding certain OHSU faculty

Dear Ms. Terry and Mr. Davis:

In her public records petition, dated April 25, 2019, Ms. Terry, on behalf of The Lund Report, asks this office to order Oregon Health & Science University (OHSU) to disclose the full compensation paid to its administrative faculty. Specifically, she requested:

For FY18 and FY17, salaries, incentive payments, one-time payments, benefit contributions and retirement contributions for the associate deans, assistant deans, department chairs and directors of institutes.

OHSU explains that its compensation of faculty members has up to three components that, when combined, form the total compensation package. These are: 1) traditional faculty duties, such as teaching or research; 2) administrative duties, such as serving as a department chair or dean; and 3) provision of patient care. OHSU refers to these, respectively, as the X, Y, and Z components of faculty salary.

Out of the population of faculty identified in petitioner's request roughly a third of them provided patient care and had a "Z" component to their salary. OHSU provided petitioner salary information for all included faculty (78 in 2017; 77 in 2018), but excluded the Z component for the 25-27 faculty who had provided patient care in each year. OHSU asserts that the clinical compensation paid to its medical faculty is exempt by operation of ORS 192.355(21), which exempts certain OHSU-specific records.

For the reasons discussed below, we agree with OHSU and deny the petition.

## DISCUSSION

### A. OHSU Sensitive Records – ORS 192.355(21)

ORS 192.355(21) exempts from disclosure,

Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

In its only opinion interpreting this section, the Court of Appeals concluded that it applies to “records or information pertaining to activities of OHSU that are commercial in nature—including medical and scientific research activities if conducted for commercial purposes or in a commercial manner—where the records or information ordinarily would not be provided to either OHSU’s or its business partners’ competitors.” *In Defense of Animals v. OHSU*, 199 Or App 160, 173 (2005).

On the facts before us there can be little dispute that the Z component of salary is a business or financial record of OHSU and that such information is not customarily provided to business competitors. See, *Id.* (business competitors includes other health care facilities). The only remaining question is whether or not the clinical component of salary is “sensitive” as that term is used in this section. The *In Defense of Animals* court quoted a dictionary definition defining “sensitive” as “intended to be treated with a high degree of discretion.” *Id.*

Trial courts have regularly recognized in various context that salary information is “sensitive.” See, among many others, *Sundermeyer v. Ohio Educ. Ass’n*, 2013 U.S. Dist LEXIS 86206 (S.D. Ohio 2013) (“an individual’s salary is highly sensitive”); *Bromson v. Lehman Management Co.*, 1986 U.S. Dist. LEXIS 28223 (S.D.N.Y. 1986) (“The Court acknowledges the sensitive nature of salary information[.]”) OHSU specifically argues that the Z component is sensitive not out of any privacy concern for the faculty, but because it would place OHSU at a competitive disadvantage in the marketplace for talented physicians. That is, if other hospitals knew how much they would have to pay to lure away particular doctors OHSU would have a more difficult time retaining staff.

The salaries of most public employees in Oregon are readily available under the public records law, but most public employers do not directly compete in the commercial market against private sector firms. OHSU’s unique position is what caused the legislature to enact ORS 192.355(21) and distinguishes commercially competitive payments to certain OHSU medical providers from salaries paid to other public sector employees. The portions of these faculty members’ compensation that do not implicate commercial interests are not exempt, and have already been provided to petitioner.

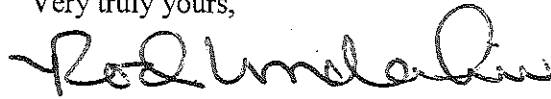
Petitioner advances an argument about the public’s interest in this information but, as OHSU correctly notes, ORS 192.355(21) is an unconditional exemption from disclosure under which we may not assess the public’s interest. Having found that the Z component of faculty salary meets the elements set out in the exemption, this ends the analysis.

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**ORDER**

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is fluid and cursive, with a large initial "R" and "U".

ROD UNDERHILL

District Attorney

Multnomah County, Oregon

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