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June 23, 2026

via email only

Lukyan Terdal
lukyan@pdx.edu

Krista Stearns
Associate General Counsel
Portland State University
krista6@pdx.edu

Re: Petition of Lukyan Terdal concerning Portland State University's response to a request for student email records

Dear Mr. Terdal and Ms. Stearns:

Lukyan Terdal, a student at Portland State University (PSU), petitions this office to order PSU to produce copies of records he has already been permitted to review. On August 13, 2025, Mr. Terdal submitted a request through PSU's online public records portal for email messages of three PSU employees sent or received between January 1 and August 25, 2025, and containing the term "Lukyan" or "Terdal." On August 20, 2025, PSU's public records officer responded that the responsive records were his own confidential education records, that they were "not public records," and offered to facilitate his review of them under the Family Educational Rights and Privacy Act (FERPA).

On September 24, 2025, PSU provided Mr. Terdal with access to approximately 740 pages of responsive records through a secure online folder, redacted to remove other students' personally identifiable information. The folder allowed Mr. Terdal to inspect and read the records but not to download or print them, and PSU kept it open to him for several months. Mr. Terdal asked PSU to provide him savable, printable copies. PSU declined, explaining that a student's FERPA right is a right to review education records, not to receive copies. Mr. Terdal petitioned this office on May 26, 2026, seeking an order that PSU provide him copies of the records it had made available for his review.

DISCUSSION

With narrow exceptions not present here, any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by a public body is

a public record. ORS 192.311(5)(a).¹ PSU is a public body, and emails of its employees referring to a student are writings it retains in the conduct of its business. Petitioner relies on OAR 581-021-0280 for the same conclusion; PSU correctly responds that the rule is a Department of Education regulation governing elementary and secondary education and does not reach a public university. But the conclusion does not depend on that rule. The emails responsive to petitioner's request are public records under ORS 192.311(5)(a). Counsel for PSU does not dispute this point.

That these emails may be confidential education records does not change this. Confidentiality goes to whether a record is exempt from disclosure, not to whether it is a public record in the first place. Student education records are ordinarily subject to an exemption under ORS 192.355(8), which provides that records whose disclosure is prohibited by federal law are exempt under Oregon law. Here the relevant federal law is the Family Educational Rights and Privacy Act (FERPA). *Petition of Gutierrez*, MCDA PRO 19-26 (2019) (analyzing FERPA-protected PSU student records as exempt under ORS 192.355(8)).

PSU's August 20, 2025 response advised petitioner that the responsive records "are not public records," that "the public records process is not the process to review confidential education records," and offered instead to facilitate a FERPA review. This redirection makes sense. In most cases the FERPA process is friendlier for a student than the public records process because it is free. I do not see the bad faith that petitioner implies in PSU's initial response; to the contrary, I see PSU attempting to direct a requestor to the path of least resistance to get what PSU believed they were seeking.

However, as a legal matter, the premise of the comment that the emails were "not public records" was in error. The records are public records, and PSU denied the request under ORS chapter 192 by stating otherwise. PSU has now stated that it will proceed with preparing a fee estimate to review the responsive records for applicable exemptions, to separate exempt from nonexempt material, and to make nonexempt material available in the form requested, subject to any fee the law authorizes.

Once it issues an estimate: petitioner may pay it or may request a public interest fee waiver under ORS 192.324(5), an unreasonable denial of which he may bring to this office under ORS 192.324(6).²

¹ Records that are truly "not public records" are few and far between. See, for example, ORS 353.260(6) (establishing that certain teacher personnel records "shall not be deemed a public record for the purposes of ORS 192.314.")

² *In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005) ("a waiver or reduction of fees for the furnishing of a public record is 'in the public interest because making the record available primarily benefits the public' as provided in ORS 192.440(4) when the furnishing of the record has utility — indeed, its greatest utility — to the community or society as a whole.")

ORDER

The petition is granted. PSU shall promptly provide petitioner with either a fee estimate to proceed with the public records request, or otherwise complete its response to the request under ORS 192.329.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 

Adam Gibbs

General Counsel

Notice to Public Agency. Pursuant to ORS 192.411, 192.415, and 192.431(3), your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless of whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue, within seven days, formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

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