

UO counsel explains handling of records

He says that in hindsight, a student's therapy data would have been handled differently

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The University of Oregon's interim general counsel said that, in hindsight, he would have acted differently before requesting copies of a student's confidential therapy records late last year.

Doug Park told a UO Senate committee on Monday that he was following a legal demand sent to him in August from the woman's attorneys to collect all documents that relate to the then-pending federal civil rights lawsuit against the UO.

"There's no other way we could follow the de-

mand letter without collecting the (therapy) records," Park said to the group of professors, graduate students, UO administrators and others who make up the UO Senate Committee on Sexual- and Gender-Based Violence.

"If I could go back in retrospect, I would have sent (the student's attorneys) a letter or email back, asking, 'Is this really what you mean?'" Park said.

The university previously had asserted that it legally accessed, but did not actually review, the student's records — stored at the UO Counseling and Testing Center — after she told the university in Sep-

tember that she planned to sue.

The 18-year-old student said she was raped by three UO basketball players last year.

She filed a lawsuit in January against the university and head basketball coach Dana Altman for allegedly violating her federal civil rights by recruiting one of the involved players after he had previously been accused of rape at a different college, among other accusations.

The lawsuit also claims that the UO illegally accessed her confidential therapy records in December, and that the student did not authorize the release of her records, violating federal and state privacy laws.

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UO: Some students, professors fear therapy records not secure

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The university's retrieval of the therapy records has upset some students and professors, who say some students already are questioning going to the Counseling and Testing Center on campus for fear that their records would be accessed.

"Students now have a perception that their records are not safe," said Ibrahim Gassama, a UO law professor and member of the committee. "I have seen it in my work, and it is devastating."

The committee is working on a policy that would prohibit attorneys or UO administrators from collecting a student's counseling or therapy records without the student's consent — a policy Park said he was "all for."

Park on Monday distributed to the committee a "litigation hold" that he received on Aug. 6 from Boulder, Colo., attorney John Clune, a high-profile lawyer who is representing the student, along with Eugene attorney Jennifer Middleton.

Park said such a hold required the UO to "produce and secure" all documents relevant to the alleged rape case.

In the emailed letter, Clune requested that the UO "preserve" potentially relevant documents that the UO possesses or controls. He specified a number of "key players" who would have such information — such as certain students, basketball coaches, campus police and athletic department

employees — but did not name employees at the Counseling and Testing Center.

"We have potential court consequences if we fail to obey a litigation hold," Park said. "Our concern was we didn't want to get burned for failing to comply."

The UO previously said in its response to the lawsuit that it legally accessed the therapy records, citing a federal privacy law and a state tort claim law. Additionally, the university said that because the student is asking the UO to pay an unspecified amount for her emotional distress — among other things — caused from the alleged sexual assault, her counseling records are relevant to the lawsuit.

Some members of the committee expressed concern about the UO's interpretation of the litigation hold and how UO employees actually gathered the records.

Jennifer Freyd, a UO psychology professor, criticized how the documents were handled, and electronically scanned, by other UO employees. She said she fears that those employees may have read or inadvertently seen what was in the records.

Park said the two employees in the UO's general counsel office took the records out of a sealed envelope, scanned them, then put them back in a sealed envelope and into a locked drawer.

"Unless my staff were lying to me, and I'm confident they're not, no one in our office saw those files," Park said.