

**Freedom of Information**

This policy implements the Arkansas Freedom of Information Act ("FOIA"), Ark. Code Ann. 25-19-101--25-19-107 (1992), which requires that certain records and meetings of governmental entities be open to the public.

**Part 1: Records**

Section 1.01. Definition. All records maintained at the University that constitute a record of the performance or lack of performance of official functions are "public records." The FOIA is applicable to data compilations in any format, including papers, microfilm, microfiche, computer disks and tapes, and audio and video recordings.

Section 1.02. Custodian. For purposes of this policy, the Chancellor is the custodian of all records maintained at the University. Because institutional records are not maintained in a central location on campus, the Chancellor has designated various administrators as custodians of particular records, as set forth in Appendix A.

**Section 1.03. Requests.**

(a) Any citizen of the State of Arkansas may request records pursuant to the FOIA. Such requests shall be made, in writing, to the administrator designated in Appendix A as custodian of the records or, if no administrator is designated, to the Office of the Chancellor. Provided, however, that all requests by the news media shall be made, in writing, to the Office of University Relations.

(b) A University employee who receives a misdirected request shall promptly forward it to the proper administrator or office and shall so notify the requester. The time for responding to the request shall begin to run when the proper administrator or office receives the request.

(c) A request shall identify the records in question with sufficient specificity to enable the custodian or other University employee familiar with the subject matter to locate the records with a reasonable amount of effort.

**Section 1.04. Response to Requests.**

(a) Virtually all records maintained at the University are either in active use or storage. If that is the case with respect to the requested records, the custodian shall certify that fact to the requester in writing, using the form provided in Appendix B or a substantially similar form, and shall set a date and time within three working days at which time the custodian shall (i) make available for inspection and copying those records subject to disclosure, and/or (ii) advise the requester that particular records are exempt by law from disclosure, do not exist, or cannot be located.

(b) Upon receiving a request for personnel records, employee evaluation records, or job performance records, the custodian shall determine within twenty-four hours of the receipt of the request whether the records or a portion thereof are exempt from disclosure and make efforts to the fullest extent possible to notify the person making request and the subject of the records of that decision. The custodian, the requester, or the subject of the records may immediately seek an opinion from the Attorney General as to whether the records or a portion thereof are exempt

from disclosure. In the event of such review by the Attorney General, the custodian shall not disclose the records until an opinion is issued. Should the custodian disagree with an Attorney General's opinion that the records or a portion thereof are subject to disclosure, he or she shall promptly advise the requester of that decision and state the reasons therefor.

(c) If the custodian has any question as to whether a requested record is subject to disclosure, he or she shall immediately seek advice from the Office of the General Counsel. The final decision as to disclosure of records rests with the Chancellor.

(d) If the requested records appear to be related to an ongoing law enforcement investigation by the campus police, the custodian shall refer the request to University Police department.

(e) Any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt by law from disclosure.

(f) The custodian is under no obligation to create a new record by compiling and collecting information in the manner specified by the requester. Moreover, the custodian is not required to search records for particular information.

#### Section 1.05. Inspection and Copying.

(a) The custodian shall permit the inspection of records subject to disclosure during regular business hours, at a time and in a manner that does not interfere with normal office operations. If a record is maintained in more than one format, it shall be made available in the format specified by the requester. The custodian shall provide the requester reasonable comforts and facilities for such inspection.

(b) The requester may copy any records made available for inspection under paragraph (a) of this section, but may not remove such records from the office of the custodian. Such copying may be done by hand or with the requester's own equipment.

(c) For the convenience of the requester, the custodian shall, on application, furnish copies of the records within a reasonably prompt period of time. However, the custodian shall not provide copies of any copyrighted records without the express authorization of the copyright owner. The cost for photocopies shall be \$0.25 per page, and the cost for copying microfilm or microfiche shall be \$0.50 per page. Reasonable copying charges for records in other formats shall be established by the Vice Chancellor for Finance and Administration and shall be uniformly applied throughout the University. Payment for all copying shall be made at the Treasurer's Office.

Section 1.06. Exemptions. The FOIA and other statutes exempt certain public records from disclosure. The records listed in this section are exempt and may not be made available for inspection and copying, except as provided herein. The list includes exemptions with particular application to the University but is not inclusive.

(a) State Income Tax Records. This exemption is not limited to income tax returns and thus includes payroll records that show the amount of tax withheld.

(b) Medical Records. Test results, doctor's evaluations, and similar records related to the treatment or diagnosis of an individual's medical condition are exempt.

(c) Scholastic Records. This exemption applies to individual education or academic records. Also, the Federal Family Educational Rights and Privacy Act ("FERPA"), also known as the "Buckley Amendment," protects education records from disclosure unless the affected student consents. Education records are defined by FERPA as any information recorded in any way which is directly related to a student and maintained by the University or a person acting for the

University. There are exceptions to the definition, as well as narrow provisions under which student education records may be disclosed without the student's consent. The University's student education records policy is set forth in Universitywide Administrative Memorandum 515.1.

(d) Law Enforcement Records. With the exception of routine police records such as arrest reports, records related to ongoing criminal investigations conducted by the campus police are exempt. Upon an administrative determination by the campus police that no criminal activity has occurred or that the investigation is otherwise at an end, the exemption no longer applies and the records must be disclosed upon request. If the campus police have turned the matter over to the prosecutor's office or another law enforcement agency, the status of the records for FOIA purposes will be determined by that office or agency. The exemption does not apply to arrest reports, dispatch logs, incident reports, shift sheets, accident reports, and other routine police records that are not investigative in nature.

(e) Competitive Advantage. This exemption applies to records which, if disclosed, would give an advantage to competitors or bidders. It protects trade secrets and other proprietary information.

(f) Personnel Records. These records are exempt to the extent that their disclosure would constitute an unwarranted invasion of personal privacy. This exemption must be applied on a case-by-case basis; as a general rule, it includes records that contain intimate details of a person's life which, if disclosed, could subject him or her to embarrassment, harassment, disgrace, or loss of employment or friends. Some personnel records, such as medical or scholastic records, may fall within other exemptions and therefore be protected from disclosure on that basis. Virtually any record relating to individual employees, former employees, or job applicants is a personnel record, whether or not it is kept in a personnel file. However, the University directory listing students, faculty, and staff is not a personnel record for purposes of this exemption. Employee evaluations and job performance records are governed by a separate exemption, as discussed in paragraph (g) of this section.

(1) The following personnel records have been deemed exempt by court ruling or attorney general opinion: social security numbers, religious affiliation, marital status and similar family information, welfare payments, payroll deductions, insurance coverage, credit union statements and similar personal financial records, test scores on promotional exams, and unlisted phone numbers and addresses.

(2) In contrast, the following records have been deemed open to the public: lists of names, addresses, and race of employees; job titles and salary data; job applications and references; employment history; educational background, training and certification; records indicating whether employees had taken vacation time or sick leave; employment contracts terms of a settlement releasing an employee from his contract; and letters of resignation.

(3) Regardless of whether they are open to the public, personnel records are available to the person about whom they are maintained or to that person's designated representative.

(g) Employee Evaluation and Job Performance Records. These records are not available for public inspection unless there has been a final administrative resolution of a proceeding to suspend or terminate an employee, the records formed a basis for the decision, and there is a compelling public interest in disclosure. Records of an employee who has resigned or has been reprimanded, demoted, or placed on probation are exempt, since there has been no termination or suspension of the employee.

(1) The term "evaluation records" includes memoranda, and preliminary materials associated with the evaluation process. Student and peer evaluations of faculty used for purposes of

promotion and tenure are evaluation records.

(2) A "job performance record" is any record that details the performance or lack of performance of employee with regard to a specific incident or incidents. This category includes such records as written reprimands, records of an internal investigation into alleged misconduct, and documents related to a recommendation for dismissal.

(3) Regardless of whether they are open to the public, employee evaluation and job performance records are available to the person about whom they are maintained or to that person's designated representative.

(h) Library Records. Documents or information in any format retained by a University library that identify a patron as having requested, used, or obtained books and other library materials are exempt. Such records may be disclosed only to the patron, a person whom the patron has designated in writing at the time disclosure is sought, or a law enforcement agency or court pursuant to a search warrant.

(i) Personal Privacy. By court decision, records are exempt if they contain sensitive personal information that would be harmful or embarrassing to a reasonable person if disclosed, unless this right to privacy is outweighed by the government's interest in making the information public. A case-by-case determination is required, and any record maintained by the University is potentially affected.

## Part 2: Meetings

### Section 2.01. Meetings Affected.

(a) For purposes of the FOIA, the Board of Trustees of the University of Arkansas is a governing body whose meetings are subject to the FOIA. Nothing in this policy applies to meetings of the Board.

(b) As a matter of University policy, the openness and notice requirements of the FOIA shall be deemed applicable to meetings of the Campus Faculty and the Campus Council, to the extent provided herein. Nothing in this policy precludes other bodies, groups, or organizations on campus from adopting rules and procedures governing their meetings.

### Section 2.02. Notice

(a) Notice of regular meetings shall be furnished at least five working days in advance of the meeting to anyone who has requested such information in accordance with Section 2.04. The time, date, and place of the meeting shall be specified in the notice.

(b) Notice of special or emergency meetings shall be furnished at least two hours in advance of the meeting to news media that have requested such information in accordance with Section 2.04, provided that the news organization is located in Washington County, Arkansas, or, if located elsewhere, regularly covers the meetings. The time, date, and place of the meeting shall be specified in the notice.

(c) Notice under paragraphs (a) and (b) of this section shall be given even though all or part of the meeting is to be held in executive session.

(d) This section does not supersede other notice requirements that may be imposed by the Board of Trustees or the University administration.

Section 2.03. Responsibility for Giving Notice. The Office of University Relations shall provide the notice required under Section 2.02(a) & (b). The chair of the Campus Faculty or the Campus Council, or his or her designee, shall inform the Office of University Relations of the time, place and date of the meeting. Such information shall be furnished in a timely manner to enable the Office of University Relations to meet the deadlines set forth in Section 2.02(a) & (b).

Section 2.04. Procedure for Requesting Notice. Any person or news organization who desires notice under Section 2.02(a) & (b) shall send a request for such notice, in writing, to the Office of University Relations. Such request shall specify whether it applies to the Campus Faculty, the Campus Council, or both, and shall provide the name, address, and telephone number of the person to whom notice is to be furnished.

Section 2.05. Conduct of Meetings.

(a) The right to attend a meeting is subject to the right of the Campus Faculty and the Campus Council to prevent disruption and to conduct their meetings in an orderly manner. Members of the public and the news media may take photographs and make audio and video recordings at meetings, subject to reasonable limitations to prevent disruption.

(b) The right to participate in a meeting is determined by rules of the Campus Faculty, the Campus Council, the University administration, or the Board of Trustees. Nothing in this policy shall be construed as conferring such a right of participation.

(c) Any method of voting employed by the Campus Faculty and the Campus Council shall ensure that those persons in attendance at the meeting are able to ascertain how each member voted on a given matter.

Section 2.05. Executive Sessions.

(a) An executive session may be held to consider the awarding of honorary degrees and to consider the personnel issues in accordance with paragraph (b) of this section. An executive session shall be held to consider any matter pertaining to an individual student, unless the student consents to a meeting. If the student consents to a public meeting, deliberations may be held in executive session.

(b) The following personnel matters may be considered in executive session: the promotion, demotion, disciplining, termination, or conducted in public if the employee or prospective employee requests or if any evidentiary hearing is held, but deliberations may be held in executive session.

(c) If an executive session is permitted or required, the Campus Faculty and the Campus Council shall first convene in public. Any member may move to hold an executive session, with the motion stating the purpose of the session and ground therefor. The members shall then vote on the motion. Upon the conclusion of an executive session, the members shall reconvene in public and formally vote on the matter considered in executive session. The identities of those considered for honorary degrees shall remain confidential, and the identities of the recipients shall be announced only at the direction of the Chancellor. The identity of an employee who was the subject of the executive session shall be disclosed, but the identity of a student who was the subject of such a session shall remain confidential, unless the student consents to the disclosure.

## APPENDIX A: CUSTODIANS

The following chart reflects the administrators who have been designated as custodians of particular records maintained by the University.

<u>Type of Record</u>	<u>Designated Custodian</u>
<b>1. Student Records</b>	
Academic	Registrar
Financial Accounting	Treasurer
Financial Aid	Director/Student Financial Aid
Student Life/Activities	Dean of Students
Medical, Counseling	Director of Health Center
Student Services	Vice Chancellor for Student Affairs
<b>2. Institutional, Financial and Accounting Records</b>	
Audits, Budgets, Invoice	Assoc Vice Chancellor for Financial Affairs
General Accounts Receivable	Treasurer
Investment Records	Treasurer
Purchasing Documents	Director of Purchasing
Telephone Records	Assoc Vice Chancellor for Business Affairs
Other Financial Records	Vice Chancellor for Finance and Administration
<b>3. Academic Program Records</b>	
Specific Academic Program	Dean of appropriate school or college
General Academic Affairs	Vice Chancellor Academic Affairs
<b>4. Miscellaneous</b>	
Athletics	Director, Men's/Women's Athletics
Law Enforcement	University Police
Personnel (staff/students)	Assoc Vice Chancellor for Human Resources
Personnel (faculty)	Dean or department chair of appropriate school, college or department

APPENDIX B: SAMPLE FORM FOR  
RECORDS IN ACTIVE USE OR STORAGE

MEMORANDUM

TO: [Name of Requester]

FROM: [Custodian or Designee]

DATE: \_\_\_\_\_

This memorandum is to acknowledge receipt of your request of [date] to inspect and/or copy records pursuant to the Arkansas Freedom of Information Act ("FOIA").

The records covered by your request are in active use or storage. If the records are subject to disclosure under the FOIA, they will be made available for inspection and copying at this office on [date] at [time]. If all or some of the records are exempt by law from disclosure, do not exist, or cannot be located, you will be so advised at that time.

May 6, 1993