

## Freedom of Information

### Purpose

The purpose of this policy is to help guide the University's compliance with the Arkansas Freedom of Information Act (FOIA or Act) and with Board of Trustees Policy 270.1. This policy summarizes the University's responsibilities under the open records and open meetings provisions of the Act, and outlines campus procedures for compliance with the Act. The procedures outlined in this policy are designed to be consistent with the letter and spirit of the FOIA; however, in the event of any conflict, any statutory requirements shall take precedence, and this policy is not intended and shall not be interpreted to create additional rights or obligations beyond those created by law.

### Part 1: **Public Records**

#### **Process Overview**

To help ensure that the information requested is clearly specified, all FOIA requests to the University should be made in writing.

To ensure the most efficient response and compliance with FOIA, all **news media** FOIA requests should be made to the designated coordinator of FOIA requests for the campus in the Office of University Relations (Campus Coordinator) or to the FOIA coordinator for Athletics or the University of Arkansas Police Department (UAPD), for records maintained by those units.

All **other (non-media)** FOIA requests should be directed to the Campus Coordinator and the FOIA coordinator for the relevant school, college or unit, as designated in Appendix A to this policy.

Any University employee who receives a request for public records under the FOIA shall promptly furnish the request to the appropriate FOIA coordinator for the school, college or unit. FOIA coordinators will immediately furnish FOIA requests to the Campus Coordinator. The FOIA coordinator(s) involved will notify the appropriate custodian of the records as set forth in Appendix A and will assist the custodian in complying with the request. The FOIA coordinator and the custodian shall consult with the Campus Coordinator and the Office of the General Counsel in order to ensure that requests are handled in a manner that is consistent with this policy and all applicable legal requirements.

If a verbal FOIA request is made, then the recipient of the request will first ask the requesting party to put the request in writing. If the requestor declines to do so, the recipient of the verbal request will then put the request in writing as he or she understands it. FOIA coordinators will acknowledge receipt of requests consistent with the Arkansas Freedom of Information Act. Additionally, to the extent possible, FOIA coordinators will make a good faith effort to keep requestors apprised of the status of requests throughout the process.

Because of the volume, complexity, and diffusion of records across campus, and in order to ensure that responses are in compliance with governing law, a coordinated process of responding to FOIA requests is essential. Accordingly, responses by the University should be furnished by

the designated FOIA coordinators, or representatives of the Office of the General Counsel.

The Campus Coordinator will keep an accurate record of all FOIA requests received, including the name and contact information of each requestor, the date on which the request is received, the date on which the University responds, and any other information demonstrating the compliance by the campus for each FOIA request.

#### **Section 1.01. Definition of Public Records.**

All records maintained at the University that are required by law to be kept or are otherwise kept and that constitute a record of the performance or lack of performance of official functions are generally considered to be "public records" under the law. The FOIA is applicable to data compilations in any format, including papers, email, 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 and FOIA Coordinators to facilitate requests and responses, as set forth in **Appendix A**.

#### **Section 1.03. Requests for Records.**

(a) Any citizen of the State of Arkansas may request records pursuant to the FOIA. Such requests should be made, in writing, to the Campus Coordinator or the FOIA coordinator for the relevant records or unit as designated in Appendix A.

(b) A University employee who receives a misdirected request shall promptly forward it to the Campus Coordinator and shall so notify the requester.

(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 Campus Coordinator or the FOIA Coordinator shall certify that fact to the requester in writing and 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 UAPD.

(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. 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 listed in Appendix B to this policy, and updated from time to time, which shall reflect the actual costs of reproduction, including costs of medium of reproduction, supplies, equipment and maintenance. 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. The University may also charge the actual costs of mailing, faxing or transmitting the record by other electronic means. Payment for all copying shall be made at the Treasurer's Office.

(d) Except for certain special requests provided by law, the costs of existing personnel time associated with searching for, retrieving, reviewing or copying records shall not be charged.

However, in the event it should become necessary to engage additional personnel to comply with a request, such costs may be charged. Any unit which believes that additional assistance may be necessary to comply with a request should consult with the Campus Coordinator and the General Counsel's office.

(e) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

#### 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) **Education Records** As defined under the Federal Family Educational Rights and Privacy Act (FERPA), except to the extent disclosure is consistent with FERPA. Education records are defined by FERPA as records that are directly related to a student and maintained by the University or a party acting for the University. There are exceptions to the definition, as well as certain provisions under which student education records may be disclosed without the student's consent. Note that education records which may be considered directory information under FERPA may be subject to a directory hold placed by a student and therefore exempt from FOIA.

(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 routine police records that are not investigative in nature. Note that additional exemptions apply to law enforcement records, such as driver's license numbers and information directly identifying a sex crime victim.

(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 education records, may fall within other exemptions and therefore be protected from disclosure on that basis. Most records relating to current or former employees are personnel records, whether or not they are 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) By statute, home addresses of nonelected employees are exempt from disclosure. The following personnel records have also been deemed exempt by court ruling or attorney general opinion: social security numbers, unlisted phone numbers, personal email addresses, religious affiliation, marital status and similar family information, welfare payments, payroll deductions, insurance coverage, credit union statements and similar personal financial records, and test scores on promotional exams.

(2) In contrast, the following records have been deemed open to the public: lists of names 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. Evaluation/job performance 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 an 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 services, books or 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.

(j) **Computer Software.** By statute, public records exclude software acquired by purchase, lease or license.

(k) **Computer Security Information.** By statute, measures, procedures, instructions or related data used to cause a computer or computer system or network to perform security functions are exempt from disclosure.

(l) **Banking information.** By attorney general's opinion, individual banking information is exempt from disclosure.

## Part 2: **Open Meetings**

### Section 2.01. **Meetings Covered.**

(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 campus 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 of the Faculty Senate, the Campus Faculty and the Campus Council 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 Faculty Senate, 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 Faculty Senate, the Campus Faculty, the Campus Council, or each, 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 Faculty Senate, 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 Faculty Senate, 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 Faculty Senate, 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 of the Faculty Senate, the Campus Faculty or the Campus Council may be held to consider the awarding of honorary degrees and to consider any personnel issues in accordance with paragraph (b) of this section. An executive session of the above bodies shall be held to consider any matter pertaining to an individual student, unless the student consents to an

open 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 of the above bodies: the promotion, demotion, disciplining, or termination of an employee, 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 Faculty Senate, the Campus Faculty or 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.

Revised July 9, 2014  
May 6, 1993



## APPENDIX A: CUSTODIANS & COORDINATORS

**Campus FOIA Coordinator.** The FOIA coordinator for the campus designated by the Chancellor per Board of Trustees Policy 270.1 is the Director of Strategic Communications in the Office of University Relations.

**Custodians and Coordinators for Specific Units and Types of Records.** The following chart reflects the administrators who have been designated as custodians of particular records maintained by the University and the coordinators who have been designated to receive, manage and respond to FOIA requests in conjunction with the Campus Coordinator.

| <b>Type of Record</b>                                                 | <b>Designated Custodian</b>                                             | <b>Designated Coordinator</b>                                    |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------------------------|
| 1. Student Records                                                    |                                                                         |                                                                  |
| • Academic                                                            | Registrar                                                               | Registrar                                                        |
| • Academic Dishonesty                                                 | Provost                                                                 | Executive Director,<br>Academic Initiatives and<br>Integrity     |
| • Financial Accounting                                                | Treasurer                                                               | Associate Vice Chancellor<br>for Finance/University<br>Treasurer |
| • Financial Aid                                                       | Director, Student Financial<br>Aid                                      | Director, Student Financial<br>Aid                               |
| • Student Conduct                                                     | Dean of Students                                                        | Director, Office of Student<br>Standards and Conduct             |
| • Center for Educational<br>Access                                    | Dean of Students                                                        | Director, Center for<br>Educational Access                       |
| • Medical, Counseling                                                 | Director, Pat Walker Health<br>Center                                   | Director, Pat Walker Health<br>Center                            |
| • Campus Life and<br>Other Student<br>Services                        | Dean of Students                                                        | Communications Director,<br>Student Affairs                      |
| 2. Financial, Business and<br>Facility Records                        |                                                                         |                                                                  |
| • Audits                                                              | Assoc. Vice Chancellor for<br>Financial Affairs/University<br>Treasurer | Director of Financial<br>Management and Analysis                 |
| • Budgets                                                             | Assoc. Vice Chancellor for<br>Budgets and Financial<br>Planning         | Assoc. Vice Chancellor for<br>Budgets and Financial<br>Planning  |
| • General Accounts<br>Receivable (Invoices<br>Paid to the University) | Assoc. Vice Chancellor<br>Financial Affairs/University<br>Treasurer     | Financial Systems<br>Coordinator, Treasurer's<br>Office          |
| • Investment Records                                                  | Assoc. Vice Chancellor for<br>Financial Affairs/University<br>Treasurer | Director of Cash<br>Management                                   |

|                                                                        |                                                                   |                                                                          |
|------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------|
| • Research Accounting Records                                          | Assoc. Vice Chancellor for Financial Affairs/University Treasurer | Director of Research Accounting                                          |
| • Procurement Records                                                  | Director of Business Services, Business Affairs                   | Director of Procurement                                                  |
| • Accounts Payable (Invoices Paid by the University and Travel claims) | Director of Business Services, Business Affairs                   | Manager Accounts Payable and Travel                                      |
| • Telephone Records                                                    | Director of Risk and Property Management                          | Telephone Service Manager                                                |
| • Other Financial Records                                              | Vice Chancellor for Finance and Administration                    | Associate Vice Chancellor for Financial Affairs and University Treasurer |
| • Construction                                                         | Associate Vice Chancellor for Facilities                          | Director, Business & Support Services, Facilities Management             |
| • Property                                                             | Director of Risk and Property Management                          | Director of Risk and Property Management                                 |
| 3. Academic Program Records                                            |                                                                   |                                                                          |
| • Specific Academic Program                                            | Dean of appropriate school or college                             | Communicator for appropriate school, college or department               |
| • General Academic Affairs                                             | Provost                                                           | FOIA Coordinator, University Relations (as liaison to Provost)           |
|                                                                        |                                                                   |                                                                          |
| 4. Athletics Records                                                   | Director, Intercollegiate Athletics                               | FOIA Coordinator, Athletics                                              |
| 5. Law Enforcement Records                                             | Director of University Police                                     | FOIA Coordinator, UAPD Public Information Officer                        |
| 6. Personnel Records                                                   |                                                                   |                                                                          |
| • Personnel (staff/students)                                           | Assoc. Vice Chancellor for Human Resources *                      | Associate Vice Chancellor for Human Resources                            |
| • Personnel (faculty)                                                  | Dean or department chair of appropriate school, college or unit # | Communicator for appropriate school, college or unit                     |

\* Some staff/student worker personnel records may be maintained by the employee's school, college or unit.

# Some faculty personnel records may be maintained by Human Resources or the Office of the Provost.

## APPENDIX B

Effective July 1, 2014, unless otherwise specified, the photocopying rate for 8.5” by 11” black-and-white copies provided in response to a Freedom of Information Act request is \$.0475 per copy. This rate is subject to being updated from time to time.