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RMP-9, Guidelines for Access to University Personnel Records by Governmental Agencies - Maintenance, Access, Opportunity to Request Amendment

July 1, 1987

APPENDIX A

ACADEMIC PERSONNEL RECORDS APM - 160
 Maintenance of, Access to, and
 Opportunity to Request Amendment of

160-20 Access to Academic Personnel Records (continued)

b. Definition of Types of Information Maintained by the University About Academic Employees

(1) "Confidential academic review records" is that information which contains:

- (a) A letter of evaluation or other statement pertaining to an individual received by the University with the understanding that the letter or statement will be held in confidence and that the individual will not be given access to it (and any other documents which would disclose the identities of those who have provided such letters or statements).
- (b) A letter from the chairperson (or equivalent officer) setting forth a departmental recommendation in connection with an academic personnel action concerning the individual, such as appointment, promotion, merit increase, appraisal, reappointment, nonreappointment, or terminal appointment. (The Chancellor may provide that under departmental policy such a letter may be disclosed to the individual [without disclosure of the identities of persons who were the sources of confidential documents].)
- (c) Reports, recommendations, and other related documents from administrative officers and campus ad hoc and standing committees concerning evaluations of the individual under applicable University criteria in connection with an academic personnel action, such as appointment, promotion, merit increase, appraisal, reappointment, nonreappointment, or terminal appointment.

August 20, 1984

DISCLOSURE AGREEMENT

- A. The California Department of Fair Employment and Housing (hereinafter "DFEH") is responsible for investigating charges of employment discrimination filed with the Department. In the course of investigating such charges, DFEH often asks to inspect or obtain copies of certain information pertaining to the complainant in the custody of an affected employer in order to determine if there is merit to the charge. When investigating a charge brought against the University of California (hereinafter "University"), DFEH at times desires to inspect and copy personnel records which include academic review records for University academic employees or candidates. These academic review records are deemed confidential by the University. These academic review records are those listed in Academic Personnel Manual section 160-20-b-1 (Rev. 7/5/84). (Appendix A of this Agreement.) Both parties recognize that in

conducting its investigation DFEH has the legal right of access to University records, subject to certain legal limitations and restrictions. This Agreement sets forth the parties' understanding regarding DFEH's access to such records.

The University recognizes that DFEH has a statutory obligation to complete its investigation within one year of the date the complaint is filed. DFEH recognizes that the University needs sufficient advance notice in order to prepare certain documents for discovery pursuant to the terms of this Agreement. Therefore, the parties to this Agreement agree to the timetables specified as a general guide. These timetables shall not preclude earlier compliance or different timetables agreed upon between the parties in any individual case.

B. Access to Records.

- B-1. Whenever DFEH investigates a charge of discrimination brought by an academic employee or candidate about whom the University maintains academic personnel records which are confidential pursuant to University policy, DFEH may review all relevant existing University personnel records of the charging party which are not confidential academic review records. If a comprehensive summary of confidential academic review records exists, the summary shall be included in the records reviewed. DFEH may also request copies of the records pursuant to Section D-1 of this Agreement without prior on-site review.
- B-2. If DFEH then determines that access to relevant existing University personnel records of non-charging parties which are not confidential academic review records is necessary for the conduct of the investigation for purposes of comparison, DFEH shall explain in writing the basis for its request to the Academic Vice Chancellor of the affected campus. The University will afford DFEH the opportunity to inspect those records on site within twenty (20) days of receipt of the written request of DFEH. If comprehensive summaries of confidential academic review records exist, the summaries shall be included in the records reviewed.
- B-3. If after review of records under B-1 or D-1 of this Agreement DFEH determines that access to the academic review records of the charging party which are deemed confidential by the University is necessary for the conduct of the investigation, DFEH shall explain in writing the basis for its request to the Academic Vice Chancellor of the affected campus. In response to such a request, if the University has previously provided DFEH with the comprehensive summary of the charging party under D-1, the University shall allow DFEH to review the original confidential academic review records, or copies thereof, with the names and identifying particulars of reviewers deleted, on site in order to authenticate the accuracy of the summaries within twenty (20) days of DFEH's request.

If a comprehensive summary of confidential academic review records for the charging party does not exist or does not cover confidential academic review records applicable to the period of the complaint, the University shall first prepare and provide DFEH with a comprehensive summary of the requested records, setting forth the substance of those records, except for information which would reveal the sources of the records and as specified in Academic Personnel Manual section 160-20-c-2 (Rev. 7/5/84). (Appendix A of this Agreement.) The University shall not consider such summary confidential. DFEH agrees to allow the University up to four (4) weeks from the written request to prepare the comprehensive summary of the requested records of the charging party.

If DFEH then requests, the University shall allow DFEH an opportunity to review the original confidential academic review records, or copies thereof, with names and identifying particulars of reviewers deleted, on site in order to authenticate the accuracy of the summaries upon twenty (20) days' notice by DFEH of its request for said review.

- B-4. If after review of records under B-2 or D-2 of this Agreement DFEH determines that access to the academic review records on non-charging parties which are deemed confidential by the University is necessary for the conduct of DFEH's investigation for purposes of comparison, the DFEH consultant shall notify his/her District or Regional Administrator and the Academic Vice Chancellor of the affected campus. The District or Regional Administrator of the DFEH office involved shall explain in

writing to the Academic Vice Chancellor the basis for the request and that access is in conformity with DFEH criteria used by consultants in such investigations.

In response to such a request, the University, if comprehensive summaries of confidential academic review records for comparable non-charging parties do not exist or do not cover confidential review records applicable to the period of the complaint, shall first prepare and provide DFEH with comprehensive summaries of the requested records, setting forth the substance of those records, except for information which would reveal the sources of the records and as specified in Academic Personnel Manual section 160-20-c-2 (Rev. 7/5/84). (Appendix A of this Agreement.) The University shall not consider such summaries confidential as to the party to whom the summary pertains. DFEH agrees to allow the University up to eight (8) weeks from the written explanation by the District or Regional Administrator of the DFEH office involved to prepare the comprehensive summaries of the requested records of the comparable non-charging parties.

If DFEH then requests, the University shall provide DFEH with an opportunity to review the original confidential academic review records, or copies thereof, with names and identifying particulars of reviewers deleted, on site in order to authenticate the accuracy of the summaries upon twenty (20) days' notice by DFEH of its request for said review.

B-5. If after review of records under B-3 or B-4 of this Agreement DFEH then determines that information about reviewers is necessary for the conduct of its investigation, the District or Regional Administrator shall state in writing its need or the information. Within ten (10) days of receipt of DFEH's statement of need the Academic Vice Chancellor or designee shall consult with DFEH. Within five (5) working days of the consultation, the University will provide the information requested about, but not the names of, reviewers (e.g., gender, ethnicity, discipline). Nothing in this paragraph shall be interpreted to prevent DFEH and University from modifying the scope of the original request by agreement during the required consultation.

B-6. Finally, if the District or Regional Administrator of the DFEH office involved provides a written statement why access to the academic review records in unredacted form is necessary to the investigation and, that the result is in conformity with DFEH criteria used by consultants in such investigations, the Academic Vice Chancellor or designee shall consult with the District or Regional Administrator within ten (10) days of receipt of DFEH's statement. Within five (5) working days of the consultation, the University will afford DFEH the opportunity to review the original confidential academic review records in unredacted form on site. Nothing in this paragraph shall be interpreted to prevent DFEH and University from modifying the scope of the original request by agreement during the consultation.

The University reserves the right to raise legal objections to DFEH's request to review the documents specified in paragraph B-6 on the grounds that the information requested is not reasonably relevant to the matter under investigation or on such other bases as might be available under applicable law. Written notice of refusal to provide access to any part of the documents specified in B-6 shall be provided by the University to DFEH within five (5) working days of the consultation specified above, setting forth the reasons for such refusal.

C. Notes. The DFEH consultant shall be permitted to take notes of conversations as well as documents reviewed at the on-site review. In the event that the consultant takes notes, such notes will be regarded as information obtained under a promise of confidentiality, pursuant to the provisions of paragraph E-1 of this Agreement.

D. Removal of Copies of Records.

D-1. The University shall provide copies of all relevant existing University personnel records of the charging party which are not confidential academic review records within ten (10) days of DFEH's request. If a comprehensive summary of confidential academic review records exists at the time of DFEH's request, it shall be included in the copies of records provided to DFEH. If a comprehensive summary is prepared by the University pursuant to paragraph B-3 of this Agreement, the University shall provide the comprehensive summary immediately upon completion of the comprehensive summary.

D-2. If DFEH determines that copies of existing University personnel records of non-charging parties which are not confidential academic review records are necessary for the conduct of the investigation for purposes of comparison subsequent to DFEH's review of those records on site pursuant to paragraph B-2 of this Agreement, DFEH shall explain in writing the basis for its request to the Academic Vice Chancellor of the affected campus. The University will provide the requested records within ten (10) days of DFEH's request. If comprehensive summaries of confidential academic review records exist at the time of DFEH's request, they shall be included in the copies of records provided to DFEH. If comprehensive summaries are prepared by the University pursuant to paragraph B-4 of the Agreement, the University shall provide the comprehensive summaries immediately upon completion of the comprehensive summaries.

D-3. If DFEH determines that removal of copies of confidential academic review records relating to the charging party or to non-charging parties which have been reviewed pursuant to paragraphs B-3 and B-4 of this Agreement is necessary to the conduct of its investigation, the District or Regional Administrator shall provide a written statement to the University why removal of copies is necessary to the conduct of the investigation. Within ten (10) days of receipt of DFEH's statement, the Vice Chancellor or his designee shall consult with the District or Regional Administrator. Nothing in this paragraph shall be interpreted to prevent DFEH and University from modifying the scope of the original request by agreement during the required consultation.

If the District or Regional Administrator so consults and affirms the need, the University agrees to provide copies of the requested records of the charging party and comparable non-charging parties as redacted pursuant to paragraphs B-3 and B-4 of this Agreement within five (5) working days.

If the case is forwarded to the DFEH Legal Unit for review for accusation, the University agrees to provide copies of the unredacted records requested within five (5) working days.

D-4. DFEH agrees to the following security measures for copies of records provided pursuant to section D-3:

- a. Copies provided by the University will not be duplicated in any form. DFEH will maintain only the copy provided by the University.
- b. All copies provided by the University will be maintained in a segregated, locked file.
- c. Only consultants, attorneys, and DFEH employees or agents with a specific need to know shall have access to the copies of records provided pursuant to this section.

E. The sequence of access to inspection and/or removal of the academic review records, as described above in sections B, C and D, may be modified in any individual case upon agreement of both parties to this Agreement.

F. Pursuant to this Agreement, the parties hereto shall abide by the following conditions:

F-1. DFEH shall regard the notes taken by any DFEH consultant during the course of a review concerning academic review records and information deemed confidential by the University as well as any conversations concerning those records and information and/or any notes taken about academic review records and information deemed confidential by the University and provided to DFEH to be provided under a promise of confidentiality, and such records information and notes shall be deemed to be received by DFEH as confidential pursuant to, but not limited to, Government Code section 12932, subdivision (b) and DFEH Field Operations Directive No. 38 (6/16/83).

F-2. DFEH shall not release or otherwise disclose records and information provided under a promise of confidentiality or any notes or records relating to such records and information or to conversations concerning such records and information to any person or party requesting to inspect or copy such, except as follows. DFEH agrees that all records, information, and notes or

copies thereof obtained pursuant to this Agreement with a promise of confidentiality and/or deemed confidential by the University and provided to DFEH and which are maintained by DFEH during an investigation are "confidential" as defined by Civil Code section 1798.3, subdivision (a)(4) and are therefore not disclosable to the complainant or third parties during a pending investigation, unless DFEH is ordered to do so by a court of competent jurisdiction. DFEH agrees not to disclose any University academic review information received by DFEH and provided under a promise of confidentiality or notes about such information or notes about conversations concerning such information that remain in DFEH's possession except under the terms of Civil Code section 1798.38. In response to a request for confidential academic review information by the subject of that information, DFEH will provide only the comprehensive summary concerning the subject provided to DFEH pursuant to the terms of this Agreement, unless DFEH is ordered to do so by a court of competent jurisdiction.

- F-3. If DFEH officially ends the investigation of any complaint filed against the University without issuing an accusation, DFEH shall forthwith return to the University all records containing personal and confidential information about all parties including notes relating to said records and information received by DFEH for purposes of its investigation of said complaint pursuant to the terms of this Agreement as well as any copies thereof. The University agrees to retain such records and notes for a period of seven (7) years after return.
- F-4. If DFEH determines that an accusation is warranted, DFEH may, notwithstanding the foregoing provisions, use records designated hereunder as confidential, as well as the matter contained therein, in the accusation and subsequent prosecution of the case. Prior to introducing any of such records into evidence before the Fair Employment and Housing Commission, DFEH shall provide the University with the opportunity to seek a protective order from the Commission. If the Commission denies the protective order, the University shall retain its right to seek a protective order from the appropriate court of law.
- F-5. DFEH agrees to give the University adequate notice of any subpoena or deposition of a confidential reviewer whose name was revealed pursuant to section B-6 of this Agreement to enable the University to seek a protective order.

G. Any discovery issues not specifically covered by the terms of this Agreement are outside the purview of this Agreement.

H. This Agreement is binding on the whole University system and all employees and agents of DFEH.

FOR THE DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING:

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Send comments or questions about this website to [Yvonne Tevis](#).

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