



RMP-9, Guidelines for Access to University Personnel Records by Governmental Agencies

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GUIDELINES FOR ACCESS TO UNIVERSITY PERSONNEL RECORDS BY GOVERNMENTAL AGENCIES

I. Introduction.

All University records about individuals are classified as (1) "confidential academic review records" (peer review records), (2) "confidential records," (3) "personal records," or (4) "non-personal records." Access rights by individuals and entities vary according to the type of record. Comprehensive requirements for access to all types of University records are contained in Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information." The purpose of these guidelines is to supplement that document by specifying the rights of Federal, state, and local government officials to access the four categories of University personnel records. Included in these guidelines are the provisions of the two legal agreements between the University and the U.S. Department of Labor (DOL), and the State of California Department of Fair Employment and Housing (DFEH) pertaining to access to confidential academic review (peer review records) during investigations of discrimination complaints or compliance reviews.

For additional information on access to and the privacy of personnel information refer to:

Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information," dated December 10, 1985;

Academic Personnel Manual Section 160, "Maintenance of, Access to, and Opportunity to Request Amendment of Academic Personnel Records," revised July 5, 1984;* and

Staff Personnel Policy 605, "Staff Personnel Records," dated September 1, 1981.**

*All references to this policy apply to academic personnel except as otherwise provided by a Memorandum of Understanding

**Staff Personnel Policy 605 does not apply to staff employees covered by a Memorandum of Understanding

II. Access by Governmental Agencies to Confidential Academic Review (Peer Review) Records.

This section does not apply to access to peer review records by the U.S. Department of Labor (DOL) or the State of California Department of Fair Employment and Housing (DFEH) relating to complaints of discrimination or compliance reviews. See Sections III and IV.

If a representative of a governmental agency other than DOL or DFEH requests access to material in University personnel records which includes items that are "confidential academic review records" (peer review records) pursuant to Academic Personnel Manual Section 160-20-b(1) (Appendix A), such request must be in written form. In response to the written request, the requester should be informed that:

The University of California is in full support of (name of agency)'s need and duty to acquire information pertinent to carrying out its

functions. University policies concerning confidential academic peer review records, however, specify that such records are confidential documents. This designation of confidentiality is essential to the University's academic personnel process to secure candid evaluations of individuals under review. The University provides safeguards in the review process to assure that the confidentiality does not cloak unfairness to individuals or result in abuse.

With respect to academic peer review personnel records, our policies take into account the need to protect individual rights of privacy. Furthermore, our academic personnel policies provide that subject individuals may receive, on request, a comprehensive summary of the substance of the confidential documents in their files, edited to withhold disclosure of the identity of persons who have supplied evaluations of the subject individuals with the understanding that the identity of the evaluator will be held in confidence.

In light of the above policies, and provided that your agency has a statutory right to review these records and shall maintain their confidentiality, the University is prepared to make available for your authorized representative on-site review of academic personnel files relevant to your review.

In applying the general policies regarding use of confidential academic documents in the personnel process, and in order to balance the need to protect the confidentiality of certain records against the legitimate needs of access by governmental agencies, you should abide by the following guidelines dealing with representatives of governmental agencies who have requested material from peer review records:

1. You should allow the governmental agent to view on-site the complete files which are relevant to the governmental review, but only after the names of evaluators and any identifying particulars have been removed.
2. If the governmental agent asks to remove copies of or make and remove notes about peer review documents from the physical custody of your campus or Laboratory, the following officers should be consulted prior to response:
 - a. the Senior Vice President-Academic Affairs, and
 - b. General Counsel.

III. Access by the U.S. Department of Labor to Confidential Academic Review (Peer Review) Records Relating to Complaints of Discrimination or to Compliance Reviews as Required by Consent Decree.*

If a representative of the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), requests access to material in University records which includes items the University characterizes as confidential pursuant to Academic Personnel Manual Section 160-20-b(1) (academic peer review records), the following procedures, as set forth in the Consent Decree, should be followed:

- "1. The University shall provide OFCCP access for inspection and copying of such books, records, accounts, and other materials which OFCCP determines to be relevant and necessary whenever it is reviewing the University's compliance with Executive Order 11246, as amended, and the rules, regulations and orders issued pursuant thereto (hereinafter Executive Order 11246 or the Executive Order). The University shall allow OFCCP to remove copies of said books, records, accounts, other materials, and notes there from off campus or from any other place at which they are maintained.**
- "2. OFCCP will remove copies of books, records, accounts, and other University materials off campus where it concludes that said materials are necessary to its Executive Order review. However, where such books, records, accounts, or other materials concern the following, and are and have been maintained in confidence by the University, prior to making copies, the OFCCP investigator (EOS) will justify his/her decision to the appropriate OFCCP Area Office Director:
 - "a. Letters of evaluation or other statements pertaining to any individual received by the University in the academic peer review process with the understanding that the letter or statement will be held in confidence;
 - "b. Letters from the chairperson (or equivalent officer) in the

academic peer review process setting forth a departmental recommendation; and,

*An agreement between the University of California and the U.S. Department of Labor dated October 3, 1980 pertaining to the latter's access to University academic peer review records. The full text of the Consent Decree is available from the Office of the General Counsel.

**However, nothing in this Consent Decree shall be deemed to in any way limit the University's right under 41 CFR 60-60.4(c) (or its successor) to question the relevance of documents removed off campus or from any other place in which they are maintained, and to seek their return thereunder.

"c. Reports, recommendations, and other related documents from administrative officers and campus ad hoc and standing committee in the academic peer review process concerning evaluations of individuals.

Only if the Area Office Director concurs, will copies of any of the above-listed documents be taken off campus or removed from any other place where they are retained by the University. If the Area Office Director concurs, the University shall be notified by the Area Office Director of the documents to be copied and removed. Copies will then be taken off campus, or from other locations where they are maintained by the University, in accordance with OFCCP's Executive Order compliance assessment needs ...

"4. Where OFCCP takes copies of any of the documents listed in paragraph 2, a-c, above, off campus or from other locations where they are maintained by the University, all copies of such documents (which have not been entered as hearing or trial exhibits) shall be returned to the University within a reasonable period of time after completion, as determined by the Department of Labor, of a compliance review, complaint investigation, other investigation, or administrative or judicial enforcement proceedings.* The University will then maintain said copies for at least ten (10) years unless the parties mutually agree on a shorter period of retention, and will provide them to OFCCP whenever it requests them. When such documents are provided, OFCCP shall maintain and return them in accordance with this Consent Decree."

* The term "completion" includes, but is not limited to, Departmental reviews of such reviews, investigations, or proceedings.

IV. Access by the State of California Department of Fair Employment and Housing to Confidential Academic Review (Peer Review) Records Relating to Complaints of Discrimination as Required by Disclosure Agreement.

If a representative of DFEH requests access to material in University academic peer review personnel records which includes items the University characterizes as confidential pursuant to Academic Personnel Manual Section 160-20-b(1), the procedures set forth in the Disclosure Agreement (Appendix B) should be followed. This agreement concerns disclosure of University records when DFEH is investigating charges of employment discrimination, and details the specific steps to be followed when releasing all types of academic personnel records, including comprehensive summaries of confidential academic review records and actual review records.

V. Access by Governmental Agencies to Academic, Staff, and Other Employee Personnel Records Designated as Confidential (other than Confidential Academic or Peer Review Records).

Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information," Section VII.B.1. provides a complete definition of confidential information which includes, but is not limited by law to, medical, psychological, and investigative information about an individual. See Appendix C. Academic Personnel Manual Section 160-20-b(2) similarly defines confidential information and clarifies that such academic personnel information is generally not part of the peer review file, but is occasionally maintained by the University. Business and Finance Bulletin RMP-8 provides the definition of confidential information for all staff employees.

If a representative of a governmental agency requests access to confidential academic, staff, or other employee personnel information, such request must be in written form and the information should be made available only if the governmental agency has a legal right to such access. Because of the sensitivity of confidential information and the

University's policy of protecting individual rights of privacy, the requester should be informed that:

The University of California is in full support of (name of agency)'s need and duty to acquire information pertinent to carrying out its functions. Our personnel policies specify, however, that certain materials in personnel records are confidential documents, and take into account the rights of access of third parties, as well as the need to protect individual rights of privacy.

In light of these policies and in conformance with the law, the University is prepared to make available for your authorized representative on-site review of confidential personnel files relevant to your review, provided that your agency has a statutory right to review these records and shall maintain their confidentiality.

VI. Access by Governmental Agencies to Academic, Staff, and Other Employee Personnel Records Designated as Non-personal or Personal.

The preceding guidelines have dealt with access to confidential academic review (peer review) records, and the separately defined confidential information about academic, staff, and other employees. Following are guidelines for governmental access to that personnel information which the University considers non-personal or personal in nature.

Business and Finance Bulletin RMP-8, Section VII.B.3, Academic Personnel Manual Section 160-20-b(3) and Staff Personnel Policy 605.18 specify those types of personnel information which the University considers to be non-personal, such as the individual's name, the date of hire, the current position title, the current rate of pay, the organizational unit assignment (including office address and telephone number), and the current job description. These types of records are public records and are available to governmental agencies upon request.

Personal information is defined in Business and Finance Bulletin RMP-8, Section VII.B.4, Academic Personnel Manual Section 160-20-b(4), and Staff Personnel Policy 605.19, as that information which is not confidential (Section V above and Appendix C) or non-personal, and the disclosure of which would constitute an unwarranted invasion of personal privacy of the individual. Examples of the most common types of personal information are included in the referenced section of Business and Finance Bulletin RMP-8. If a representative of a governmental agency requests access to personal information about any employee, it will be made available only if the governmental agency has a statutory right to such access, or if the individual to whom the information pertains has authorized release (Business and Finance Bulletin RMP-8, Section VII.G.3., Academic Personnel Manual Section 160-20-d(3), Staff Personnel Policy 605.22). The governmental agency should agree to not release personal information obtained from the University except to the subject of the information or to authorized individuals.

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

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