

OPEN FORUM ON RECORDS MINUTES

March 19, 2009
2:30 pm

308 Bowen-Thompson Student Union

Panelists: Jill Carr, Assistant Vice President of Student Affairs and Dean of Students; Steve Charter, Head of the Center for Archival Collections and University Archivist; Sean Fitzgerald, Assistant to the President; Matt Haschak, Director of Security and Networking, ITS; Barbara Waddell, Executive Assistant for Operations and Personnel, Office of the Provost.

Hosts: Kim Fleshman, Co-Chair, Administrative Staff Council; Beverly Stearns, Co-Chair, Administrative Staff Council; Faith Olson, Chair, Classified Staff Council; Ellen Williams, Chair, Faculty Senate

OPENING REMARKS

Fleshman opened the meeting and introduced Williams, who was the moderator. About fifty people attended. The topics were publicized in advance. The video is available at <http://wbgustream.bgsu.edu/bgsu/dvss/PubRecForum.html>.

TOPIC 1: Identifying and handling sensitive information: How to distinguish between records and different types of information (e.g., public information, limited information, restricted information) and how to handle.

Fitzgerald encouraged persons with questions to call the Office of General Counsel. He explained that records were either public or not under the Ohio Open Records Law ("Sunshine Law"), which with some exceptions presumes that records are public. Other laws guarantee privacy, for example, the Federal Educational Records and Privacy Act (FERPA), which protects student records. He said that the University has policies on records and urged persons to call the office if they had questions.

An audience member from the library asked how this related to their professional ethics, which, for example, say that the identities of users should not be revealed. Fitzgerald said that, unless there is a law protecting a record, it's presumed to be public.

TOPIC 2: How to maintain records related to classroom performance: Identify issues of control and security (e.g., when records are lost, potential for identity theft). Identify ownership (e.g., University, faculty, student.) Balancing academic freedom with effectively serving students with preventing FERPA violation.

Carr said she would address FERPA as it pertained to student disciplinary records as separate from other student records. She said that, if a student violated a policy, that is protected although it would have to be produced with a subpoena. There are other exceptions: If parents certify that the student is a dependent for federal income tax purposes, they have access to the student's information. Students themselves can sign a release form. Another class of exceptions is alcohol and drug violations. FERPA was amended in 1998 to allow universities to inform parents of these. BGSU does so on the second alcohol violation and on all drug violations. Another exception is legitimate educational interest. If a person has a need to know something about a student, they should call the Dean of Students' office.

An audience member asked if health records were protected by FERPA. Fitzgerald said that they were protected by the Health Information Protection Act and that there was a HIPA release form.

Fitzgerald said that personnel records were public but educational records were not. What about information on alumni? Fitzgerald said that “directory information” was public. Schools may disclose, without consent, information such as a student’s name, address, telephone number, date and place of birth, and dates of attendance. Fitzgerald speculated that alumni information was probably not a protected, educational record although it might be if the student had filed to withhold directory information while a student, which they may do. Waddell said that the form to withhold information was available through the Registrar’s Office. [See <http://www.bgsu.edu/downloads/academics/file5597.pdf>. [For information on FERPA, see <http://www.ed.gov/policy/gen/guid/fpcos/ferpa/index.html>.] Williams asked about parents calling to inquire about their son or daughter’s attendance. Waddell said that enrollment is regarded as directory information. Students’ schedules and grades are not.

Williams asked how long faculty needed to keep grades. Charter said that grade appeals had to be started by the end of the fifth week of the following semester. Incompletes need to be removed by the first day of March, August and November for the preceding term. He advised not keeping grades beyond that. [For grading policies, see http://www.bgsu.edu/catalog/Acad_policies/Acad_policies15.html.] Fitzgerald said you had to use common sense. If you need records to perform some function, like writing letters of recommendation, you may keep them. An audience member asked if the University owned the records on an office computer. Fitzgerald said they are not necessarily educational or public records; they could be personal records and private.

Williams asked, if a faculty member kept grades and social security numbers on a portable memory device and lost it, what is the faculty member’s responsibility. Haschak said they should notify ITS. ITS will determine what was lost and the appropriate course of action. He referred to Ohio’s Security Breach Notification Act, which requires notification of the victim within forty-five days of a potential unauthorized disclosure. [See http://www.jonesday.com/pubs/pubs_detail.aspx?pubID=3129.] Fitzgerald said the purpose of the act was to avoid compromising identity. He said that it would be hard to imagine why sensitive information would be on a personal device and that it would be hard to balance the convenience of an individual with a substantial cost to the University.

Haschak said that ITS can install encryption software if one needed to keep sensitive information. ITS policies are available at <http://www.bgsu.edu/offices/cio/page32228.html>. He said that their office in Hayes Hall had a free data destruction service, which is available to wipe data from hardware, including personal home computers. Just because data has been deleted does not mean that it cannot be retrieved. Their data destruction service will prevent that.

TOPIC 3: What should or should not be maintained in a personnel file? Identify issues with medical records, documentation of performance problems, evaluation. Clarify offices of record vs. contracting offices.

Waddell said that the Provost’s Office keeps the official record for faculty. She said that they have a retention schedule, and three years after a faculty member’s departure the records were sent to archives. The Office of Human Resources is the official repository for non-faculty records. Medical records should not go into a general personal file. Human Resources notifies individuals if an open records request has been made regarding them.

TOPIC 4: What constitutes a public records request? Under what circumstances and whose authority are records released?

Charter referred to the home page of the Center for Archival Collections at <http://www.bgsu.edu/colleges/library/cac/page39987.html>. Much information is available there including the Records Retention Schedule. He said it was their responsibility to collect the historical records for the University. He said that they review the files they receive to remove confidential records; he said that they did not want to disclose something that was not public. Fitzgerald said that in response to an open records request they had the responsibility to redact private information. Charter said that the CAC would help to determine what should be transferred to them. He said that the salary book was available at the Reserve Desk and previous years’ books are in the archives. Waddell said that departments and colleges should have their own retention schedules.

TOPIC 5: Electronic communication and records retention. Identify issues related to email, text messages on cell phones, electronic conduct of business, where, how, and for how long electronic communication is retained.

Fitzgerald said that the issue was not the medium but the content. If you send a text message that is an official record, you are responsible for it. Williams asked what belonged to a faculty member on an office computer. Fitzgerald said that there were different concepts of privacy as they relate to the University and its interests. The University has the right to see what is on its hardware. This is different from an outsider asking to see what is there; that would have to be handled as an open records request.

An audience member asked if an employee who was being investigated for visiting a pornographic site would be notified. Fitzgerald said that depends. Would an employee be punished for accidentally visiting such a site? Ferguson, Assistant Vice President for Human Resources, said that it was very easy to tell if the visit was accidental or intentional. Can colleges do their own investigations? Haschak said that ITS had the best resources for conducting investigations; care had to be taken not to taint the evidence. Waddell advised against individual units doing their own investigations.

An audience member said that they were getting a lot of open record requests for bid and construction documents; Fitzgerald said to call the Office of General Counsel. An audience member asked about writing grant applications, which ask for benefit amounts on individual participants; salaries could be calculated by anyone reading the application. Ferguson suggested using the average percentage costs.

FINAL REMARKS

Carr said that FERPA had a “health and safety” clause, which would allow the University to contact a parent if they felt that there was a risk. She said that, if a student was disruptive, to call the Dean of Students.

Charter noted that record retention schedules applied to electronic records too.

ADJOURNMENT

Williams thanked the participants and the audience and adjourned the meeting at 4:15.

Respectfully submitted,

Rich Hebein, Secretary