

The Legal and Regulatory Environment: Overview of Resources



**DEVELOPING LEADERSHIP AND
ADMINISTRATIVE EXCELLENCE: A
WORKSHOP FOR NEW ACADEMIC
ADMINISTRATORS**

AUGUST 15, 2017

Office of the General Counsel



- **What we do. . .**
 - Litigation
 - Employment Matters
 - Student Matters
 - Compliance – Research, Athletics, Privacy, Clery
 - Intellectual Property, copyright
 - FOIA
 - Leases and Property Purchases
 - Contracts
- **OGC contacts outside counsel as needed**
 - All bills to the University to pay attorneys are reviewed and approved by OGC.

Office of the General Counsel



- There are other J.D's on campus. They are not the University's attorneys & are not authorized to give you legal advice.
- Ethical duty is to the University, not the individual
- Attorney-client privilege is on behalf of the University

Office of the General Counsel



When to Call:

- Immediately if outside agency or authority shows up
- Any time contacted by a lawyer or receive legal papers
- Early in the process for anything that will need legal review or input
- Any time unsure

Agenda: Common “Headaches”



- **Difficult Faculty Personnel Issues**
- **FOIA**
- **Personnel Files**
- **Contracts**
- **Threat assessment**



Difficult Faculty Issues: Conduct



- Interrupting colleagues' classes
- Criticizing colleagues to students & speculating about personnel actions
- Writing angry and irrational personal letters on department letterhead
- Angry outbursts with staff and students
- Dual employment (unauthorized)
- Providing exams in advance to students
- Refusing to follow standard exam procedures

Difficult Faculty Issues: Conduct



- Hugging/ caressing / touching students
- Commenting on student attractiveness in class / public events
- Unwanted romantic pursuit of students
- Texts / emails / social media comments / jokes of a sexual nature involving students / colleagues
- Sexual advances towards students / colleagues at conferences
- Sexual relationships with students / subordinates
- Racist/homophobic/misogynistic comments

Difficult Faculty Issues: Performance



- Chronic failure to meet grant reporting deadlines
- Repeated mismanagement of grant funds & budgets
- Refusal to keep IT resources updated resulting in malware and research data loss
- Long term lack of grant activity or publications
- Teaching complaints (no-shows, late, disorganized)
- Refusal to comply with Patent Policy

Common Approaches



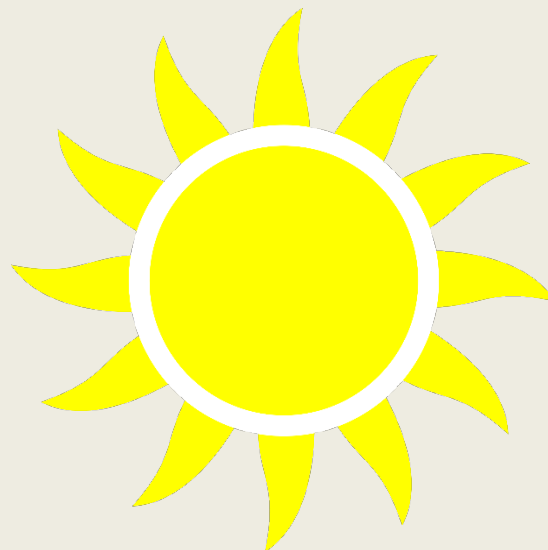
- **Meet with AHR & OGC**
 - Review of relevant documents, communications, & policies
 - Discuss consultation with other relevant administrators/offices
 - Discuss consultation with faculty advisory committee
 - Short term plan to address immediate problem
 - Road map for long term resolution
 - Assistance with grievances/complaints / correspondence
- **Involve other necessary offices**
 - MSUPD, University Physician, Research Integrity Office, CABS

Relevant Faculty Policies



- Post Tenure Review
- Faculty Review
- Discipline and Dismissal of Tenured Faculty for Cause
- Long Term Disability: An Interpretation of the Tenure Rules
- Health Assessment
- Interpretation of the Term “Incompetence” by the UCFT

FOIA



Michigan FOIA



- State law designed to guarantee public access to public records of government bodies at all levels of Michigan government.
- MIFOIA provides that all communications of a public agency or public employee are subject to disclosure unless specifically exempted by the Act.

FOIA: Public Records



- A “writing” . . . prepared, owned, used, in the possession of, or retained by a public body *in the performance of an official function*, from the time it is created.
- A writing includes paper documents, e-mails, computer disks, tapes, videotapes or information stored on any form of electronic or other media.

FOIA: Public Records



- Where a record is kept does not matter for purposes of FOIA
 - Personal emails on a work computer
 - Work emails on a personal computer
 - Documents in your car or home office
- The email address one uses does not matter
- Cell phones
 - Text messages and voicemail messages may be subject to FOIA if they meet the definition of a public record

FOIA: The Basics



- **FOIA Office:**
 - Ellen Armentrout, Assistant General Counsel & FOIA Officer
- **Tight response deadlines**
- **There is an established process & protocol for record gathering and response**

FOIA: Examples of Requests



- **Media Requests**
 - Coaches' contracts and other information related to Athletics
 - Information pertaining to events taking place on campus
- **Attorney Requests**
 - Police records
 - Personnel records
- **Commercial Requests**
 - Information regarding salaries and employment contracts
 - Information regarding contractual arrangements with University vendors
 - Information pertaining to University investments

FOIA: More Recent Examples



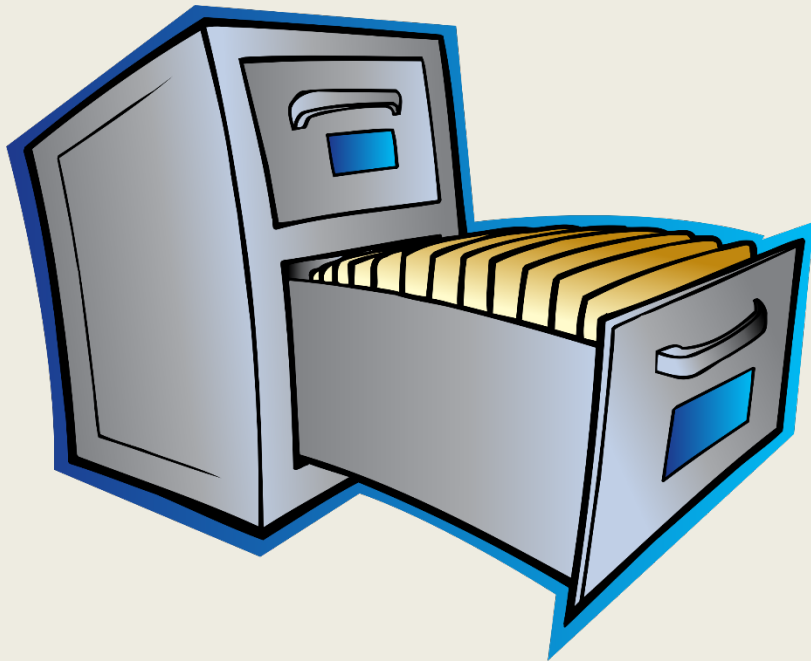
- Recent requests
 - Tenure and promotion files
 - Police reports
 - Animal research and care records
 - Personnel files
 - Faculty and staff emails

FOIA: A Few Points to Remember



- Any document can be requested (and emails are documents!).
- A document must be released unless there is a specific exemption in the statute that allows all or a part of the document to be withheld.
- Financial documents tend to go to the very core purpose of FOIA and are therefore likely to be released.
- If you have any questions, don't hesitate to contact the FOIA Office.

Personnel Files



Personnel Files



- Michigan law defines a "personnel record" to include any "record kept by the employer that identifies the employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action."

Personnel Files



- In other words, any document (including emails) that may affect or be used in connection with a prospective personnel action should be included in the employee's personnel file.
- Loose notes that a supervisor keeps for possible future reference need not be included. However, notes that are used as a basis for a personnel action or a supervisor's memo that is shared with others or that may affect an employment decision must be included.

Personnel Files: What to Include?



- Employee medical information
- Grievance materials
- Annual evaluations/performance documents
- Discipline
- Student complaints
- Complaints from colleagues/staff
- Email correspondence
- Harassment/discrimination investigations



Myth-Busting



Contracts



WHAT ARE THEY?
WHO REVIEWS THEM?
WHY DO I CARE?

What is a contract?



- Assume everything is -
 - Regardless of what it is called (MOU, Letter of Agreement, etc.)
 - Especially if the work has started
- “Meeting of the Minds”



Why get contracts reviewed?

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- To get the deal you think you have made
- To minimize risk
- To be able to get your agreement properly signed (signature authority)

How do I get my contract reviewed?

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- Purchasing
 - Goods and Services
- Office of Sponsored Programs or Business Connect
 - Research
- Office of the General Counsel or Business Connect
 - Service/Testing Agreements –includes consulting



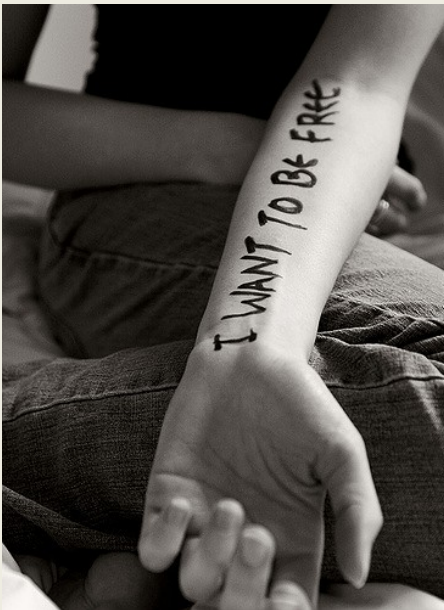
What do I have to do with a Contract?

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Business Terms v. Legal Terms

People involved must also review the contract to make sure it actually describes the deal that they think they are making.

Behavioral Threat Assessment Team (BTAT)



Threat Assessment



- How many of you know who to call if a student or employee:
 - Acts delusional or strange
 - Bullies and intimidates
 - Threatens
 - Pursues options that don't exist
 - Exhibits sudden change in demeanor, grooming habits, etc.
 - Becomes fixated on a person, idea, or grievance
- Who would you tell?



BTAT: Functions



- A multidisciplinary campus team
- Meets to assess referrals
- Identifies potential risks
- Identifies actions that can be taken to potentially mitigate the risk
- Recommends appropriate intervention strategies

BTAT: Process



- All discussions take place within appropriate confidentiality parameters.
- Intervention strategies & unit responses are governed by existing University policies.

BTAT: Contact Information



- Case Manager: Amy Ray
- Phone: (517) 355-2222
- Email: RayA@police.msu.edu
- Online Referral Form: <http://btat.msu.edu>

Handouts



- Policies from the Faculty Handbook
- BTAT document
- Sample faculty letters
- Office of the General Counsel contact information

Contact Information



- Kristine Zayko
- Email: zayko@msu.edu
- Phone: 353-3530
- Office: 494 Administration Building