Maryland State Board of Law Examiners

FEBRUARY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

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MPT 1

Representative Good Answer No. 1

MEMORANDUM

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin - Defense of housing discrimination claim

1. The statute does not protect against marital status and there is nothing to indicate that there was discrimination based on familial status.

Section 3602 of the United States Fair Housing Act defines "Familial Status" as one or more individuals (who have not attained the age of 18) being domiciled with a parent or another person having legal custody of such individuals. In this case, the opposing party is Mr. Turner, a single parent with three children under the ages of 18. Section 3604(a) states that it shall be unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

Mr. Turner claims that our client, Mr. Larkin, discriminated him based on his familial status after a brief text conversation. The court in Karns v. U.S. Department of Housing and Urban Development called on a three-part burden-shifting test set forth in McDonnell Douglas Corp. V. Green for evaluating claims for discrimination under the 42 U.S.C 3604(a).

First, the plaintiffs bear the initial burden of proving a prima facie case of housing discrimination under the preponderance of evidence. To establish this, the plaintiffs must show: (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (2) that they were denied housing, or the landlord refused to negotiate with them, and (4) that the dwelling remained available.

If the plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden will shift to the defendant, who will have to give legitimate nondiscriminatory reasons for the challenged policies.

Finally, if the defendant can satisfy that burden, the plaintiff has the opportunity to prove by a preponderance of evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Under the first element of the test, proving a prima facie cause of housing discrimination under the preponderance of evidence, Turner will be successful. Turner is a member of a protected class, given that he is a single father with three children under the age of 18. "Applied for" includes inquiries into the availability of the dwelling (Karns v. U.S. Department of Housing and Urban Development), which Mr. Turner did when he texted the phone number on the advertisement. "Qualified to rent" means that an individual meets facts such as the minimum credit score, rental and eviction history, minimum monthly income, etc. (Karns v. U.S. Department of Housing and Urban Development). Turner was qualified to rent the dwelling, given that he works as a data analysis with sufficient income, has a good rental history, and good credit. Mr. Turner was denied housing as evidenced by Mr. Larkins lack of communication. And, the dwelling remained available for at least two months after Mr. Turner inquired into it.

Therefore, the burden will now shift to our client to show that he had a legitimate, nondiscriminatory reason, and he will be successful in doing so.

Mr. Larkin states that his refusal to rent to Mr. Turner has nothing to do with his familial status, but rather his marital status. The Fair Housing Act does not include marital status among its protected classifications (Kerns v. U.S. Department of Housing and Urban Development). In the text exchange, Mr. Larkin only inquired about Mr. Turners marital status. After he was informed that Mr. Turner was widowed, Mr. Larkin asked about how many other people would be living in the apartment, and made no distinction between minors or adults. Mr. Turner provided the information on the children voluntarily, not because Mr. Larkin asked. In contrast to Kerns, there is no evidence to demonstrate that Mr. Larkin would have acted any differently had the individuals been friends of Mr. Turner rather than his children. In fact, in our interview with Mr. Larkin, he states that he has refused to rent the apartment to four single people in the past because he prefers to rent to married couples.

Therefore, Mr. Larkin has sufficient nondiscriminatory reasons for refusing to rent the apartment to Mr. Turner.

Given that Mr. Larkin satisfied the burden under element two, the burden will now shift back to Mr. Turner to show that by preponderance of the evidence, the nondiscriminatory reasoning given by Mr. Larkin are simply pretext for discrimination.

In Kerns, the case turned on the fact that the plaintiff had put out a second inquiry for the same apartment under the guise that he was single rather than married. After doing so, the landlord in that case willingly showed the apartment. There is no such evidence here.

There is nothing to indicate that, had Mr. Turner not mentioned his children, Mr. Larkin would have rented the apartment to him. As a matter of fact, Mr. Larkin stated in his interview that he often rents to married couples with children, and is currently doing so in the same building in which Mr. Turner inquired. And, as stated above, Mr. Larkin has turned down single people before.

Given the above facts and analysis applied to the burden-shifting test, Mr. Turner will be unsuccessful in bringing a claim for discrimination under the fair housing act because Mr. Larkin will be able to show that his reluctance to rent to apartment stemmed from Mr.

Turner's marital status, a nonprotected class, versus the familial status.

2. Mr. Larkin will be able to successfully show that another reason why he denied Mr. Turner the apartment was due to the number of individuals living in the apartment, not Mr. Turner's familial status.

Mr. Turner could argue that Mr. Larkins occupancy policies may be facially neutral, but they in fact have a disparate impact on familial status. In Baker v. Garcia, the court used a three-part disparate-impact analysis used by the 15th circuit. Under this test, the Plaintiff must (1) make prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect, (2) if the plaintiff makes this prima facie showing, the burden will then shift to the defendant to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests, and

(3)if the defendant meets the burden, the burden will shift back to the plaintiff, who may then prevail only if they are able to show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

<u>Prima Facie Case</u>

The court in Garcia found that the policy, which is similar to Mr. Larkins, clearly impacts families with minor child more than it does the general population. Mr. Turner can successfully say the same here. The court in Garcia further stated that it would impact those with minor children more because minor children often share rooms, and that families with minor children tend to have larger households than those who don't have minor children. Again, Mr. Turner could successfully raise the same argument.

Given the above facts, Mr. Turner will be able to show that he has a Prima Facie Case.

<u>Nondiscriminatory reason</u>

Because Mr. Turner is able to show a prima facie case, the burden will now shift to Mr. Larkin to show that he has a nondiscriminatory reason for his policy. Mr. Larkin states that his occupancy policy is due to the fact that there are many young people in the neighborhood, and he has had problems in the past with people cramming four people into two-bedroom apartments in order to keep costs down. Therefore, for a two-bedroom apartment he enacted a policy to rent to at most three people. This is very similar to the reasoning given in Garcia, and the court found that there had been a substantial, legitimate, nondiscriminatory reason for the policy. Therefore, Mr. Larkin has successfully shown a nondiscriminatory reason for his rental policy.

Overbreadth and Less Restrictive Means

Given that Mr. Larkin can successfully show that there is a nondiscriminatory reason for the policy, the burden will shift back to Mr. Turner to show that the policy is overbroad or that there is a less restive means to achieve Mr. Larkin's goal of avoiding cramming.

Overbroad:

Under section 15 of the Centalia Municipal Housing Code, the number of individuals in a dwelling is restricted based on square footage of the apartment. In Garcia, the plaintiff's case turned on the fact that the restriction being imposed by the landlord was much greater than that of the code. The fifteenth circuit has had that a "significant mismatch" between the occupancy limits set by the municipal code and those set by a landlord is evidence that the landlord's limit is overbroad (Baker v. Garcia Realty Inc.). The court also stated that while there is no mathematical formula, the case law indicates that, for example, a mismatch would occur when the code allows four but the landlord only allows two.

Here, Mr. Lakin states that for a two-bedroom apartment, he would not rent it to more than three people. He states that this is because it is a small apartment, only 500 square feet. Under the Centralia Municipal Housing Code, an apartment that is between 451-700 square feet should not be occupied by more than four people. This indicates that Mr.

Larkins three-person rule is not overbroad.

Less Restrictive means:

In Garcia, the plaintiffs were able to show that the information collected in the rental application would allow the rental company to differentiate between a group of college students and a family with minor children and therefore Garcia could have used less restrictive means. Here, Mr. Larkin had no such application and there was no such discrimination between the children vs. any other young adults. Further, Mr. Larkin has explained that the apartments overall size was the main reason for the three-person limit, not familial status.

Mr. Larkin will successfully show that his policy is nondiscriminatory, and not overboard, with no less restrictive means available, and therefore Mr. Turner will not have a disparate impact claim.

Given the above analysis, Mr. Larkin will successfully defend himself from both a claim of discrimination based on familial status in violation of the fair housing act, as well as a claim of disparate impact for his occupancy policy.

Representative Good Answer No. 2

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin - Defense of housing discrimination claim

MEMORANDUM

Our client, Landlord (LL) Peter Larkin, is being sued in a housing discrimination claim brought by Martin Turner. Turner filed administrative complaint with HUD claiming that

Larkin violated the FHA by refusing to rent because of Turner's familial status. The matter has been assigned to an administrative law judge. There are two key claims that Turner will likely assert, and that we should be prepared to defend. First, Turner may claim that Larkin violated 42 USC § 3604(a) by engaging in discriminatory conduct when he told

declined to negotiate with Turner after learning that he is a single father. Second, Turner may claim that Larkin's policy, while facially neutral, had a disparate impact on Turner because of his familial status. This memorandum analyzes the legal and factual

arguments we should raise in Larkin's defense, identifies what legal and factual arguments Turner may raise in his own defense, and evaluates the likelihood of success of Larkin's arguments.

1. Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence, but Larkin may succeed in showing that his policy is not pretext for discrimination.

Turner may claim that Larkin violated 42 USC § 3604(a) by engaging in discriminatory conduct when he told declined to negotiate with Turner after learning that he is a single father. Larkin's defense would be that he has a longstanding preference for renting to married couples. The issue here is whether Turner can establish a claim for discrimination based on familial status, or if Larkin can show that his policy of refusing to rent to single people is not merely pretext for discrimination. Under 42 USC § 3604, it is illegal to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. Under 42 USC § 3602, familial status is defined as one or more

individuals who are not yet 18 domiciled with a parent. *McDonnell Douglas Corp. v, Green, 411 US 792 (1973*) (herein after, *Green*), established a three-part burden shifting test for evaluating claims of discrimination under 42 USC § 3602. Plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To do this, Plaintiffs must show that (1) they are a member of a protected class, (2) they applied for and were qualified to rent the dwelling, (3) they were denied housing or LL refused to negotiate with them, and (4) that the dwelling remained available.

A. Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence.

Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence. First, he is a member of a protected class, as he is a single parent with 3 minor children. Under 42 USC § 3602, familial status is defined as one or more individuals who are not yet 18 domiciled with a parent. Second, he applied for and was likely qualified to rent the dwelling. Under *Green*, "applied for" includes inquiring into availability, and "qualified to rent" means the person meets minimum factors such as credit score, rental and eviction history, minimum monthly income, LL and professional

references, and criminal background. The text exchange between Turner and Larkin shows that Turner inquired into the apartment's availability, and therefore "applied" for it under the standards set by *Green*. Additionally, Turner is a data analyst with good rental history and good credit, which suggests that he was likely qualified to rent the apartment. Third, Larkin effectively refused to negotiate with Turner when he said "I'll get back to you," and then never followed up. Finally, by Larkin's admission, the apartment remained available for several months after Turner's inquiry. Because his claim meets all four elements established in *Green*, Turner can likely prove a prima facie case of housing discrimination by a preponderance of the evidence.

B. Larkin may succeed in showing that his policy is not pretext for discrimination.

Under *Green*, once a plaintiff has proved a prima facie case of housing discrimination by a preponderance of the evidence, a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate, non-discriminatory reasons for the challenged policies. If the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Larkin can potentially succeed in articulating legitimate, non-discriminatory reasons for refusing to rent to unmarried people, and in showing by a preponderance of the evidence that these reasons are not merely pretext for discrimination, but Turner also has a fair shot at succeeding here. In *Karns v. HUD (15h Cir. 2006)*, the LL refused to rent to a single woman with two minor children. The LL claimed that she refused because she was concerned about Karns' finances and that Karns was unmarried. She qualified this claim with a text exchange where the LL learns that Karns is a single mother and then declines to negotiate, stating "I need to pay my mortgage." The Court ultimately found in favor of Karns, stating

that the LL's refusal to rent, based on only the knowledge that Karns was a single mother, showed that the LL assessed Karn's ability to pay rent based on her familial status and not on her financial situation.

The text exchange between Larkin and Turner is almost identical to the text exchange in Karns, except that Larkin offered no reason for ending the negotiation. This point weighs in Turner's favor. If the Court were to base their ruling on only that evidence, Turner would likely succeed. However, Larkin has substantial extrinsic evidence supporting his established preference for renting to married people, including the fact that there is currently a married couple with two children renting an apartment from Larkin in the subject building. Even more beneficial to Larkin's claim is the two-year-old text exchange between Larkin and "Jake," an individual trying to rent an apartment for himself and three other single friends. In this exchange, where Larkin refuses to continue rental negotiations after learning that an unmarried person was inquiring, he explicitly states, "I really prefer to rent to married couples," and "I've found that married couples pay their rent on time and are less likely to flake out on me." This text exchange shows that Larkin's policy was established and enforced routinely, and long before Turner ever applied, which strongly supports the claim that the policy as applied to Turner was not merely pretext for discrimination. Based on this evidence, a court may decline to find that Larkin violated 42 USC § 3604(a) by engaging in discriminatory conduct when he told declined to negotiate with Turner after learning that he is a single father.

2. A Court may find that Larkin's policy, while facially neutral, had a disparate impact on Turner because of his familial status.

Larkin's states that he has a policy of only renting the subject apartment to a maximum of three people. Turner may claim that Larkin's policy, while facially neutral, had a disparate impact on Turner because of his familial status. In this type of case, the 15th circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff makes this prima facie showing, the burden shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if the defendant landlord meets the step two burden, the burden shifts back to the plaintiff, who may prevail only if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

A. Turner can likely establish a prima facie case.

Turner can likely establish a prima facie case of disparate impact. In *Baker v. Garcia Realty Inc., (District Court 1996)*, the Court found that a "bedroom plus one" policy clearly impacts families with children more than the general population because minor children tend to share bedrooms and families tend to have larger households. Larkin's policy for this specific apartment, allowing a maximum of three people to reside in this two-bedroom apartment, is essentially a "bedroom plus one" policy. Accordingly, a court would likely find that this policy establishes a prima facie case of disparate impact.

B. Larkin can likely prove that his practice is necessary.

Larkin has a strong likelihood of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. In *Baker*, the Court found that avoiding renting to groups of college students was a substantial, legitimate, nondiscriminatory interest. Larkin's interest here is almost identical. Larkin states that he has had problems with young people cramming four people into a two-bedroom apartment to keep their housing costs down, so his policy is to rent this specific apartment to at most three people. He asserts that the policy is about the total number of people in the apartment, regardless of whether this includes children or adults. Under *Baker*, this is likely considered a substantial, legitimate, nondiscriminatory interest.

C. Turner may fail to show that the policy is overbroad, but would likely succeed in showing that the goals of the policy could be achieved with a less restrictive means.

Turner will likely argue that Larkin's occupancy policy is overbroad because it is more stringent than the requirements of the Centralia Municipal Housing Code. The 15th Cir. has held that in these cases, a significant mismatch between occupancy limits set by a

municipal code and those set by the landlord is evidence that the landlord's limit is overbroad. There is no mathematical formula, but case law suggests that a mismatch exists where the Code restricts occupancy to four people and a landlord restricts it to two. In *Baker*, an 8:4 ratio (code limit to landlord limit) was considered a significant mismatch.

The subject apartment here is 500 square feet, and Larkin restricts it to three people.

Under the Centralia Housing Code § 15 (a), a 500 square foot apartment is legally restricted to housing no more than four people. Case law indicates that this 4:3 ratio is not a significant mismatch. Turner may therefor fail to show that the policy is overbroad.

Turner would likely succeed in showing that the goals of the policy could be achieved with a less restrictive means. In *Baker*, the Court stated that the landlord's failure to explain why their policy remained in place even after learning that an inquiry was coming from a family and not college students was proof that the landlord could use a less restrictive means of meeting its stated goal of avoiding renting to large groups of college students. The facts are similar here. Larkin has not yet explained why his policy remained in place even after learning that Turner was a single father with kids and not a group of young students. Accordingly, a court would likely find that Turner has met his burden of showing that the goals of the policy could be achieved with a less restrictive means.

MPT 2
Representative Good Answer No. 1

To: Loretta Rodriguez
From: Examinee
Date: February 25th, 2025
Re: Professor Eugene Hagen Record Release

Introduction:

This Memo serves to assess whether record production request by Paul Chen is mandatory in the case regarding Professor Eugene Hagen of UF Law School. This memo will not include a separate statement of facts per your instruction.

Analysis:

To evaluate whether or not compliance is required with Chen's record request, each record must be evaluated individually, as well as the manner in which Chen requested the records outright.

1. Paul Chen conducted a valid record request.

Under Franklin Civil Code 14-1, public records include all documents created, maintained, or held by a public body. Per 14-5(a), any person wishing to inspect public records shall submit written request to the custodian. Additionally, 14-2 conveys the right of every person to inspect the public records of the state, barring exceptions.

Here, Paul Chen properly sent a written request to the custodian of records, and is within his stated right to inspect records not subject to exception. Thus, generally there is a duty to produce records requested. However, each request must be assessed against statutory exceptions and case law to determine the need to produce.

2.The Annual Performance Reviews by the Dean of UF School of Law from 2019 to the present do not need to be produced to Chen as performance reviews are exempt opinion records.

Per 14-2(a)(3), letters or memoranda that are matters of opinion in personnel files are exempted from disclosure under the Franklin Inspection of Public Records Act (IPRA). The court in Fox v. City of Briton, has interpreted matter of opinion within the statute to constitute personnel information of the type generally found in a personnel file including disciplinary reports, performance reviews, promotions, etc. This is consistent with Newton v. Centralia School District which barred a journalist from accessing personnel evaluations under the same rationale. Further, the courts in Pederson v. Koob found that documents exempt under 14-2(a)(3) are exempt as a whole unlike other exemptions which may apply to specific parts of a document.

Here, UF Law School, a public entity, is in possession of the requested annual performance reviews. The reviews contain various opinions and complaints from students, as well as information about Eugene's teaching quality and methods. While the negative comments in the teaching evaluations may be construed as complaints from the public, the court will likely hold that they are an extension of the performance review as their purpose was to collect information for performance review, rather than standalone complaints. Further, performance reviews are exempt as a whole under Pederson, and so the contained student evaluations would remain exempt.

Thus, the performance reviews are subject to exemption by 14-2(a)(3) and will not need to be produced to Chen.

3. The single complaint from the public must be produced to Chen as they are nonexempt public records.

Per 14-2(a)(3), letters or memoranda that are matters of opinion in personnel files are exempted from disclosure under the Franklin Inspection of Public Records Act (IPRA). The court in Fox v. City of Briton, has interpreted matter of opinion within the statute to constitute personnel information of the type generally found in a personnel file including disciplinary reports, performance reviews, promotions, etc. Notably however, the court in Franklin found that the placement of nonexempt opinion information does not exempt that information from requests for production. Additionally, the court in Fox held that complaints from the public are not protected from disclosure as they stem from the very body of persons who has the right to inspect these records, rather than being administrative productions.

Here, Egebe has received one complaint, from Pamela Rodgers, and that record is kept in Eugene's personnel file. The location of the complaint in the personnel file does not protect it from production, and the lack of complaints generally bears no weight on the requirement of production. Portions of the complaint have been paraphrased publicly by Pamels Rodgers in Chen's article "What Is UP with Professor Eugene Hagen", though that publication, despite alleging a substance abused problem, has no bearing on the discoverability of the record.

Thus, the single complaint from Pamela Rodgers must be produced to Chen.

4.The chart of names of complaining parties does not need to be produced as a record request cannot mandate creation of a public record.

Under IPRA 14-5(b), the Franklin Inspection of Public Records Act shall not be construed to require a public body to create a public record.

Here, Chen requests the production of a chart of anyone (faculty, staff, students, or members of the public) who have made a complaint about Professor Hagen. Various existing information exists that is pertinent to this request, including several complaints from students, and a single complaint from the public. Nonetheless, Dean Williams has attested that no chart exists of the names of these persons. A public body is not required to create a record based on a records request, and so there is no need to create and produce this record. The underlying complaints could be produced as they are not subject to an exemption, but Dean Williams has indicated a priority of protecting as many documents as possible from disclosure.

Thus, the chart of names of complaining parties does not need to be produced.

5.Professor Hagen's record with UF Campus Police Department needs to be produced, with the identity of confidential sources redacted and photograph and written identity of Professor Sykes redacted.

Under IPRA 14-2(a)(4), portions of law enforcement records are exempt from production that reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations. Where portions of a record are exempt and others are not, per 14-6, the custodian shall separate the disclosure and nondisclosure prior to inspection and the nonexempt information shall be made public. Further, in Torres v. Elm City, in reversing the opinion of the lower courts, the Supreme Court held that whether or not an investigation is ongoing is not material to a request for document production. Separation of police records has been evidenced by Wynn v. Franklin Department of Justice, in which a police recording had confidential information redacted. Further, under Dunn v. Brandt, the exemptions to IPRA's mandate of disclosure are narrowly drawn, which can be used as a guiding principle when interpreting specific facts. Further, not previously mentioned when assessing the previous

pieces of evidence is that IPRA, under section 14-1 defines public records as not only documents and writings, but also photographs, recordings, etc.

Here, The UF Campus Police Department have a single record of Professor Hagen; an arrest for possession of marajuana that occurred two weeks ago. The record from the arrest contains two photographs as well as an incident report, with the incident report notably including the time, date, location, and name of a confidential source. Confidential sources must be redacted from public disclosures.

The photographs notably contain Hagen and another professor, Sykes, who was not charged with a crime. Per the stated exception, records regarding parties not charged with a crime are an exception to the record production requirement. The courts have not been clear on whether the entire photo must be redacted, or if the part of the photos including Sykes is a "portion", and can thus be redacted or blacked-out from the photo, with the rest of the photo being disclosed. Per the "narrowly drawn" standard set out in Dunn v.

Brandt, the court may lean towards redacting only Syke's identification from the photos, but allowing the rest of the two photos to be disclosed. This position may also be substantiated by Wynn when portions of an audio recording were redacted while the remainder of the audio recording was left subject to public disclosure. Additionally, any written descriptions of Sykes at the scene must be redacted under the same non-charged-parties provision.

Finally, despite the recent timing of the arrest and ongoing charge by the District Attorney, the ongoing nature of an investigation of case does not preclude production of public documents; the charge prevents Hagen from arguing that the records may not be produced due to containing persons not charged with a crime.

Thus, the custodian will need to redact the information regarding the confidential source from the police report, and redact Sykes identity from the photographs for production as well as the written report. Note that a court may find that the entirety of the photographs are not subject to disclosure.

Conclusion:

Pursuant to the stated purpose of complying with IRPA while protecting as many documents as possible from disclosure, the single public complaint and a redacted version of the police request must be produced, while the annual performance reviews and chart of complaining parties do not need to be produced. Please let me know if I can be of further assistance in this matter.

Representative Good Answer No. 2

In re University of Franklin

To: Loretta Rodriguez, General Counsel
From: Examinee
Date: February 25, 2025
Re: Professor Eugene Hagen - IPRA Request by Paul Chen - Analysis

Dear Ms. Rodriguez,

As requested, I have analyzed the issues of what the University of Franklin is bound to produce in response to Mr. Chen's public records request.

Broadly, and as you know, every person has a right to inspect public records absent certain documents which fall under statutory exemptions. Franklin Civil Code s 14-2. The University is subject to this disclosure, as well, as a public body and this includes records relating to public employees such as Professor Hagen.

In order to request documents, a person must submit a written request to the custodian.

Franklin Civil Code s 14-5. Here, Mr. Chen submitted a proper written request to the University of Franklin custodian of records on February 24, 2025, seeking documents related to Professor Hagen's employment and criminal records, as well as complaints made to the University about him. Each will be analyzed in turn.

1. The University of Franklin is not bound to produce Professor Hagen's annual performance reviewed completed by the Dean of the UF School of Law from 2019 to the present.

Mr. Chen seeks Professor Hagen's annual performance reviews completed by the Dean of the Law School from 2019 to present. The University is not bound to produce these.

The University has advised that it is in possession of Professor Hagen's last two annual performance reviews. These contain mixed substance, including both opinions and objective material. Dean Williams states that these reviews include reviews that his teaching is strong and he is a popular teacher, but that he hasn't been showing up for faculty or committee meetings or office hours. Dean Williams also referenced poor student course evaluations, but students are not named. Those reviews noted that Professor Hagen has been late for classes and has been moody and erratic in class. He also doesn't respond to students in addition to the aforementioned failure to attend office hours. The annual reviews also include objective information regarding Professor Hagen's classes, quality of his teaching, committees he has served on, what publications he has completed, and the quality of his publications.

The Court in Fox v. City of Brixton considered what was intended to be included in the exemption under section 14-2(a)(3) of the Public Records Act. It was concluded that it was intended to include only the following - "personnel information of the type generally found in a personnel file, i.e. information regarding the employer/employee relationship such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews."

Expressly, this interpretation prevents disclosure of performance reviews. Although there are some matters of opinions and some matters of fact contained, it is unlikely that this will trigger the duty to separate the records. In Pederson v. Koob, the plaintiff sought disclosure of an investigation report pertaining to Kenneth Larson, a livestock inspector for the Franklin Livestock Board. Because the report contained potential disciplinary action, there was evidence to shield disclosure. On appeal, Pederson argued that the facts pertaining to misconduct by a public officer must be disclosed whereas opinions may be properly shielded. The Appeals Court disagreed. Citing Newton v. Centralia School District, the court upheld the contention of the Newton court that the exemption for "letters or memoranda that are matters of opinion in personnel files to include items such as letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion" would be characterized, as a whole, as opinion information.

Subject to this analysis by the Pederson and Newton courts, this indicates that, although the performance reviews of Professor Hagen contain factual information that falls into a more objective category, because they are contained in performance reviews held by his employer, they are characterized, in their entirety, as opinion information and are exempted from disclosure under the IPRA.

2. The University of Franklin is bound to produce any complaints about Professor Hagen submitted by members of the public to the UF School of Law.

Mr. Chen seeks any complaints made by members of the public to the UF School of Law regarding Professor Hagen. The University is bound to produce responsive documents.

The University has received a single complaint from members of the public, though complaints have also been received by students. The one complaint is that of Ms. Pamela Rogers, the mother of a current law student.

She wrote a letter complaining about Professor Hagen and stating that he has a substance abuse problem and should not be teaching.

In Fox v. City of Brixton, the plaintiff made a written request to the City asking to inspect and copy all citizen complaints filed against John Nelson, a police officer. The City attempted to argue that these documents fell into the exempted category of s14-2(a)(3), exempting from disclosure "letters or memoranda that are matters of opinion in personnel files." The Court, subsequently noted that the core purpose of the IPRA is to provide access to public information, thus encouraging accountability for wrongful acts by public officials. The Court in Fox determined that this exemption is intended to include only the following - "personnel information of the type generally found in a personnel file, i.e. information regarding the employer/employee relationship such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews."

Fox argued that the citizen complaints he sought had to do with Mr. Nelson's role as a public servant, not as an employee, while the City argued that the complaints were related to job performance. The Court noted that, while these complaints could lead to investigations about the employee's job performance, they were not, in and of themselves, opinions about job performance in that context. Instead, they were unsolicited complaints from members of the public. Because the complaints concern the officer's ability to do his job and come from the public he is intended to serve, they do not fall into the Legislature's intent of protecting employer/employee records. "It would be against IPRA's stated public policy to shield from public scrutiny as 'matters of opinions in personnel files' the complaints of citizens who interact with city police officers."

Similar to Fox, the complaint letter sent by Ms. Rogers is likely subject to disclosure by the University. Ms. Rogers is impacted by the conduct of Professor Hagen in that her child was being taught by him. She has a right to make a complaint and for that complaint to be utilized for accountability purposes, the whole point of the Public Records Act.

Other members of the public should be able to scrutinize complaints by citizens, like in Fox, as they may also be subjected to the misconduct by particular officials. Here, Mr. Chen is a student at the University, possibly a student of the law school. He has a right to know of the misconduct alleged against Professor Hagen and what information the University has on such conduct.

It is more than likely the University will need to produce Ms. Rogers' complaint to Mr. Chen in response to his request to inspect records.

3. The University of Franklin is not bound to produce a chart containing the names of anyone who made a complaint about Professor Hagen.

Mr. Chen has sought a chart containing the names of anyone who made a complaint about Professor Hagen. However, Dean Williams has informed us that this is not a type of record maintained by the Law School or University. While she states that it would be possible to make one, this is likely not necessary.

Franklin Inspection of Public Records Act, Franklin Civil Code s 14-5(b) states, "Nothing in this Act shall be construed to require a public body to create a public record." As such, because a chart as requested by Mr. Chen is not something regularly maintained or created by the University of Franklin, there is no duty to create and produce one in response to Mr. Chen's request.

4. The University of Franklin is bound to produce some of the records involving Professor Hagen in the possession of the UF Campus Police Department.

Mr. Chen has sought law enforcement records involving Professor Hagen. Subject to some limitation and some separation of information by the custodian of records, these documents are subject to disclosure.

The Chief of UF Campus Police, Chip Craft, has informed us that, relevant to Professor Hagen, the UF Campus Police is in possession of the following records: an incident report and two photographs. Mr. Craft has informed our office that the incident report contains details about an incident involving Professor Hagen smoking marijuana in his office on campus and includes the time, date, location, and the name of the confidential source who tipped off the police about the incident. It also contains descriptions by the responding officer and statements made by Hagen and a Professor Sykes who was also involved. The photos are selfies taken by Professors Hagen and Sykes.

Section 14-2(a)(4) of the Franklin Civil Code exempts from inspection certain law enforcement records. However, this exemption is limited to those records which reveal confidential sources or methods or that relate to individuals not charged with a crime. Other law enforcement records must be produced regardless of the stage at which investigation is at.

In Torres v. Elm City, the plaintiff sought records from the City involving arrest records for his sister, Francine Ellis. The City agreed to produce a primary incident report and one subpoena, but refused to produce anything else due to the fact they were actively investigating the crime committed and the "release of the requested information posed a demonstrable and serious threat to that ongoing criminal investigation." They further stated they would produce the records following the completion of the investigation. The Court disagreed with the City's assertion that s 14-2(a)(4) only intended that records be released only after the completion of ongoing investigations. Instead, the intent of the statute "is to ensure... that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. " citing s 14 - Declaration of Policy. This purpose states nothing about infringing upon the integrity of an investigation. The Legislature's specific exemptions indicate that if they wanted to include further restrictions on disclosure, they would. They are not concerned with the stage of investigation, but, instead, only with the disclosure of private information such as confidential sources and methods, and of information regarding individuals not charged with a crime. As explained by the Court in Torres, police investigation records are subject to disclosure absent this exception.

Further, even where records may contain some exempted and some non-exempted, the public agency has a duty to separate out the non-exempted material and produce that in response to a request. Torres; s 14-6(a). Here, the UF Campus Police, a public agency, have stated that the records they have relevant to Professor Hagen's arrest include the name of a confidential informant. While their office may be permitted to separate out/redact that name, as well as any information/evidence related to Professor Sykes who was not charged, and unless the Office can demonstrate any of the other material shows confidential information or methods, the remainder of the records are non-exempted and must be produced to Mr. Chen in the name of upholding the Legislature's purpose of providing persons with the greatest possible information regarding public officials and employees.

5. Conclusion

In short, subject to the Inspection of Public Records Act, the University of Franklin is bound to produce the following documents in response to Mr. Chen's written public record response:

1. The Complaint about Professor Hagen submitted by Ms. Rogers as a member of the public to the UF School of Law.

2. Some of the records involving Professor Hagen in the possession of the UF Campus Police Department, excluding those related to the confidential source and Professor Sykes.

Maryland State Board of Law Examiners

FEBRUARY 2025 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

I hope this research assists you in advising the University on their duty to disclose under the Inspection of Public Records Act. Please let me know if I am in any way able to assist further in this matter or if you have any questions regarding my conclusions.

MEE 1
Representative Good Answer No. 1

1. Kim is not an agent to Comet Fitness when she purchases the treadmill as she had no authority to act.

An agent is someone who acts on behalf and for the benefit of the principal. There are three elements to create a Principal-agent relationship: 1) control; 2) assent; and 3) for the benefit of the principal. Control means that the principal can decide how the agent acts.

Assent means that the principal and agent consented to the agency relationship through either a discussion or agreement. Benefit requires that the agent is acting, or engaging in services for the benefit of the principal.

Here, Kim overheard a discussion with Bill and Nancy regarding the opening of Comet Fitness, and they merely stated that she should come for a job interview. Kim then overheard Bill say to Nancy, "I wish [the gym] had two more [treadmills]." Kim then took it upon herself to go to the sporting goods store that was going out of business and purchase the treadmills on her own volition. This is no way indicative of Comet Fitness' "control" as Kim, without even having the trainer job, acted on behalf of Comet Fitness. However, Comet Fitness never instructed her to so do. Assent is not satisfied as Nancy and Bill merely told Kim to come work for them, however there was no indica that Kim was even going to work for them or that this was a formal agreement. Further, Kim only said she would "think about it". Thus, there was no assent. Lastly, Kim did purchase the treadmills for the benefit of Comet Fitness, but she also had selfish goals, believing that the purchase would "impress" Bill and Nancy.

There was no agency relationship created.

2.a. Kim did not have actual authority to purchase the treadmill as the partnership granted her no express or implied authority.

An agent is granted the authority to act through either actual authority or apparent authority. Actual authority may be indicated in two ways: 1) express or implied. Express authority is straightforward, in that the principal directly grants the agent the power to act on behalf of the principal like in an employee relationship. Implied, more ambiguous, but may be inferred when the principal controls the agent and has the agent act for the benefit of the principal.

In this case, Bill and Nancy never hired Kim for the position of gym trainer, there was only conversation regarding the job. Thus, Kim was never an employee, acting as an agent under Comet Fitness, in which express authority could be granted. However, even for the more ambiguous "implied authority" there are still no facts which indicate that Kim had the authority to act on behalf of Comet Fitness. For one, Nancy and Bill had not seen Kim in several months, and two, they did not even state their need to acquire more treadmills directly to Kim, rather she overheard it in a conversation. There are no facts in which Kim realistically could have believes that she had the authority to act for the benefit of the partnership and bind it.

There is no actual authority for Kim to act on.

b. Kim did not have apparent authority as Nancy and Bill never held Kim out as an agent to the gym.