MPT-1 — Sample Answer 1

To: Elise Tan

From: Examinee

Re: Turner v. Larkin

Memorandum

You have asked me to write an objective memorandum regarding the arguments on both sides of Turner v. Larkin. Per your instructions, I have omitted a recitation of the facts. There are two applicable points of contention in this matter: (1) whether Mr. Larkin's policy of favoring married people is a pretext for discrimination; and (2) whether Mr. Larkin's Policy of having a maximum of three people in the apartment in question is a has a disparate impact on the protected class of familial status.

Relevant Law

Mr. Turner (or "Turner") has filed against Mr. Larkin (or "Larkin") under the federal Fair Housing Act, 42 U.S.C. § 3601 et seq. (the "Act") The Act prohibits the refusal "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." The Act defines familial status as one or more individuals who have yet to reach the age of majority (18 years) being domiciled with a parent or guardian. There is an exemption if the owner maintains and occupies living quarters on the property as his residence. Mr. Larkin does not reside in the building in question and therefore no such exemption will apply here.

The Pretext for Discrimination Argument

Franklin courts apply the three-part burden-shifting test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) when evaluating claims of discrimination under the Act. As articulated in Karns v. U.S. Department of Housing and Urban Development (15th Cir. 2006), "[f]irst, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of discrimination under the [Act], plaintiffs must show (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the swelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available." Second, if such a prima facie case is made, "a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate
nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies the burden, the plaintiff has an opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Here, Turner, as plaintiff must first prove a prima facie case of housing discrimination. Turner is a member of a protected class, because he has three minor children, which are protected under the Act. Turner applied by text to rent the apartment in response to Larkin's Craigslist ad and was qualified to rent the dwelling. *Karns* states that inquiries into availability are included in the definition of "applied for," which is precisely what Turner texted to Larkin ("Is it still available?"). *Karns* also states that "qualified to rent" regards factors such as minimum monthly income, minimum credit score, rental and eviction history, landlord and professional references, and criminal background. Turner has a good rental history, good credit, and can easily afford the apartment. Larkin refused to negotiate with Turner. *Karns* held that a landlord's failure to respond after a statement requesting time to consider and a promise to "get back to" to applicant constitutes a refusal to negotiate. Larkin's exact words to Turner were "I need to think about that. I'll get back to you." These words are almost identical to those of the landlord in *Karns*. The apartment remained available for at least two months until Larkin was able to rent the apartment to a married couple. In *Karns*, the landlord held the apartment open for only one month, and that was enough to reach the standard required for the prima facie case. Therefore, Turner will be able to establish a prima facie case of discrimination based on familial status under the FHA.

Larkin has a policy of renting only to married couples for this apartment specifically. With Turner's prima facie case established, the burden will shift to Larkin to articulate a legitimate nondiscriminatory reason for this policy. Larkin may argue that his reason for this policy is based on his experience as a landlord, and has articulated that based on this experience he believes married people are more stable in their relationships, more likely to pay their rent on time, and are more financially stable than single people. He has rejected both single people and unmarried couples who have applied for the apartment in question in the past. As noted in *Karns*, marital status is not included in the Act as a protected classification. Larkin's reasons are legitimate and nondiscriminatory. Therefore, the burden will shift back to Turner to show by a preponderance of the evidence that Larkin's reasons are mere pretext.

The *Karns* court found pretext when, after refusing to negotiate with the plaintiff upon discovering the plaintiff's marital status and children, the landlord then agreed to do a showing to the plaintiff when the plaintiff called again, this time electing not to mention her children, but still stating that she was single. Here, Larkin and Turner only had one brief exchange by text. Furthermore, Larkin has rejected people in the past as single applicants and as unmarried couples. While Larkin never got back to Turner, there is not the same degree of evidence showing that Larkin's refusal to negotiate was mere pretext for discrimination as opposed to the application of his legitimate and nondiscriminatory reasons for favoring married couples. Furthermore, Larkin's first question to both Turner and Jake, a former applicant was "Are you married?" He never inquired about children, only marital status. While Turner informed him about the children, there is nothing to evidence that the children were a deciding factor on Larkin's decision. Therefore, Larkin will likely be successful in arguing that Turner will fail to establish by a preponderance of the evidence that Larkin's reasons are mere pretext.

The Disparate Impact Argument

A plaintiff under the Act may argue that an occupancy policy, while facially neutral, has a disparate impact because of familial status, as was argued successfully in *Baker v. Garcia Realty Inc. (1996)*. In such a case, the Fifteenth Circuit applies a three-part burden-shifting test similar to, but distinct from, the test set forth in *McDonnel Douglas*. As articulated in *Baker*, the analysis requires: (1) a plaintiff's prima facie showing that the "challenged practice caused or will predictably cause a discriminatory effect;" (2) after such a 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 meets that burden, the burden shifts back to the plaintiff, who may only prevail "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."

The prima facie case for disparate impact differs from the prima facie case for discrimination. Nonetheless, Turner may establish a prima facie case for disparate impact as well. Larkin's policy for the apartment is that he will almost exclusively rent to married people, and may not have any more than three people in the apartment clearly impacts people with minor children more than it does the general population. Even a married couple would only be able to have one child in such an arrangement. If a married couple were to apply with more children they would be rejected under this policy. Therefore, it has a disparate impact on a protected classification under the Act, and the burden shifts to Larkin to prove that the practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.

Larkin's reason for the limit of three to the apartment has two components. First, the apartment is only 500 square feet. Second, the character of the neighborhood is one where many young people live, and it is near many nightclubs. He has had problems in the past of having young people cram "four people into a two-bedroom apartment to keep their housing costs down." This is substantially similar to the propose articulated by the defendant landlord in Baker, with avoiding the risk of large groups of young people "overpopulating units in an attempt to reduce their rental payments." As in *Baker*, Larkin's reason here is likely to be held to be a substantial, legitimate, nondiscriminatory interest, avoiding renting to large groups of young people in a small apartment. This will shift the burden back to Turner to show a way to serve such an interest with a less discriminatory effect or that the policy is overbroad.

As articulated in *Baker*, "[t]he Fifteenth Circuit has held that in cases of alleged familialstatus discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad." The Fifteenth Circuit has held an example where a landlord limits occupancy to two people in an apartment that, under the applicable code, could be occupied by four is a significant mismatch. In *Baker*, the code allowed eight, and policy allowed four, which was also held to be a significant mismatch. Section 15 of the Centralia Municipal Housing Code (the "Code") states that a dwelling of 451-700 square feet is not to be occupied by more than four people. Larkin's policy only allows three. Minor children may often share bedrooms, and Turner's family would be admissible under the

Code. Nonetheless, this is a much closer mismatch between code and policy than seen in the other examples. Both of those examples had a code allowing double the people allowed for in the policy. The lower end example still showed a difference of two people. Here, there is only a difference of one. It is therefore unlikely that Turner will succeed in showing that Larkin's policy is overbroad.

Turner may also attempt to show that a less restrictive policy exists. The purposes of Larkin's policy are the general stability of married couples and the prevention of allowing young people to overpopulate the unit. While he could easily tell that Turner's minor children were not a group of young people looking to overpopulate a unit, his concern about having a married couple is nonetheless justifiable. As such, while the number of tenants rule could likely be proven to have less restrictive means, the married couple aspect likely could not. Therefore, Larkin will likely prevail over both the pretext argument and the disparate impact argument under the Act.

MPT-1 — Sample Answer 2

MEMORANDUM

TO: Elise Tan

FROM: Examinee

DATE: Feb. 25, 2025

Re: Peter Larkin

You had asked me to draft a memorandum to determine if Peter Larkin will be successful in defending against a claim of violating the Fair Housing Act (FHA) when he refused to rent to Martin Turner. The short answer is yes. It is likely that Turner can prove a prima facie case for discrimination, Larkin has a strong argument for a discriminatory policy and Turner will have a difficult time proving that such a policy is overbroad.

I. DISCUSSION

1. The FHA applies to Larkin because he does not live in the unit that he is renting.

Generally the Fair Housing Act protects against discriminatory renting practices. 42 USC § 3601 *et seq*. This act does not apply when the rooms or units are intended to be occupied by no more than four families living independently and the owner resides in one of the units. *Id* § 3603.

Here, according to a statement by Larkin at our offices, Larkin lives in a townhouse about a mile away from the rental property at issue. Therefore, because Larkin does not live in the apartment complex at issue, the exception does not apply to him, and therefore must abide by the other provisions of the FHA.

2. Turner can prove a prima facie case for discrimination because he is a member of a protected class, applied for and was denied housing and the unit was made available to him.

To prove a case for housing discrimination under the FHA, the Court will apply a three part burden shifting test. Baker v. Garcia Realty Inc (1996). The first prong of this test is that the plaintiff must prove a prima facie case for discrimination. Id. To prove a prima facie case, a plaintiff must show that: (1) they are a member of a protected class, (2) applied for housing, (3) was denied housing, and (4) the housing remains available for rent to others. *Karns v. US Dept. of Housing and Urban Development (2006).*

A. Turner can prove that he is a member of a protected class

The FHA protects certain individuals of protected classes by preventing landlords from refusing to rent to them because of their membership in a protected class. FHA § 3604. One of these protected classes is Family Status. *Id.* Family Status is defined as "one or more individuals (who have not attained the age of 18) being domiciled with a parent ...." *Id § 3602.*

Here, Turner can easily establish that he is a member of a protected class as he was attempting to rent an apartment where both he and his three minor children could live. Because of this, he squarely falls into the Family Status protected class, and therefore the FHA protects him from discrimination in renting based upon his family status.

B. Turner can prove that he applied for and was qualified to rent the apartment because he has good rental and credit history and a stable job.

The term "applied for" in the prima facie test is interpreted broadly and includes mere inquiry into renting. *Karns*. To be qualified to rent, means that the plaintiff has met minimum credit requirements, and has the proper criminal history, eviction history, and minimum monthly income requirements to rent the designated apartment. *Id*.

Here, Turner can prove that he applied for the apartment in question when he sent an inquiry to Larkin in their text exchange on 11/6/24. Hud Complaint. Furthermore, Tuner can prove that his qualified to rent such a unit because he is currently employed as a data analyst and could have easily afforded the unit, and has good rental and credit histories. Id. Because of this, Turner can prove that he applied for and was qualified to rent the apartment.

C. Tuner can prove that he was denied the apartment and that the apartment was still avalible.

Under the prima facie test, the last two elements require that the renter be denied the housing and that the unit is still available. Karns. Availability is satisfied if the unit remains open to be rented by another. *Id*.

Here, Turner can show that he was denied the housing when Larkin refused to follow up with Tuner after their initial conversation. Furthermore, the unit remained available for rent by others as the unit was still being shown on Craigslist for at least the next two months following Larkin and Turner's conversation. Therefore, Turner can prove the last two elements and establish a prima facie case for housing discrimination.

3. Larkin can prove a non-discriminatory reason for denying Turner's application because he did so because Turner was unmarried and also to further the goal of not renting small apartments to large numbers of renters.

Once a plaintiff can establish a prima facie case for Housing Discrimination, the burden then shifts to the defendant to show that the practice "is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests ..." *Baker.*

A. Larkin can show that he had a non-discriminatory interest in not renting to Turner because he was unmarried.

The FHA does not protect against discrimination based upon marital status. FHA § 3604. Franklin Courts have held that discrimination based upon martial status is allowable so long as it not a pretext to discriminate based upon a protected class. Karns. In Karns, a renter who intended to rent an aparment for her and her minor children was denied and the landlord stated that it was because the renter was single. The renter then contacted the landlord again and stated that she was single but did not have kids and was allowed to rent.

The Court found that the stated reason of denying based upon marital status was just a pretext to allow for discrimination based upon the renter's family status. Id. The Court reasoned that if the renter truly only wanted married couples, he would not have agreed to rent to the renter the second time she contacted the landlord stating that she was single but had no kids. *Id.*

Here, we see that the main reason that Larkin offers for denying Tuner his apartment is based upon Turner's marital status as Larkin likes having renters with two incomes and a stable home. While Turner may try to argue that this is just a pretextual reason for denying Turner and that the real reason is based upon his family status much how it was in Karns, Larkin can refute that by showing his 2022 conversation with a renter when he denied him and his three friends an apartment because he said he "really prefer[s] to rent to married couples." Larkin can further rebut a claim of pretext by the fact that he has other renters that have children live in his units so long as the parents are married.

Because of this, Larkin has a strong nondiscriminatory reason for denying Tuner a unit based upon his marital status.

B. Larkin can show a nondiscriminatory purpose by not wanting to rent a small unit to a large number of people

Franklin Courts have found that limiting the amount of renters in a given unit is a valid nondiscriminatory practice. *Baker.*

Here, Larkin can show that the reason that he denied Turner was not because of his family status, but because he did not want to rent a three bedroom unit to Turner and his three children. By asserting this, he can show another non-discimintory purpose in denying Tuner's application.

4. It is unlikely that Turner can show that Larkin's limiting renting his unit to three people is overbroad because there is not a significant mismatch between this limit and the local occupancy limit.

Once a defendant makes a showing of a nondiscrimintory reason for denying the unit, the burden then shift to the plaintiff to show that the interests can be met by a less discriminatory practice. Baker. A less restrictive alternative exists when the landlord limits renting based upon occupancy sizes and there is a significant mismatch from their policy and local occupancy limits. Baker. In Baker, a landlord denied a renter a unit based upon not wanting to rent a five bedroom unit to a family of 7. The tenant then sued based upon discrimination based on family status.

The Court held that the landlord did not enact the least restrictive means of achieving this policy. The Court reasoned that because the local occupancy limits for a unit of that size was 8 people, and their policy was to only rent to four in that unit, a siginficant mismatch existed and therefore the policy was overbroad and in violation of the FHA.

Here, we see that the Centralia Occupancy limit for a unit of the size Turner attempted to rent was for five people, and Larkin limited to four. This is not a significant mismatch like the policy in Baker and will therefore not be likely to be deemed overbroad and therefore Turner has a valid defense to the discrimination claim.

CONCLUSION

While Turner has a valid prima facie case for housing discrimination based upon family status, Turner has several nondiscriminatory reasons, such as martial status and limiting occupancy, and Turner will likely not be able to show that these policies are overbroad. Therefore, there is a strong likelihood that Larkin will be able to sucessfully defend the lawsuit against him.

MPT-1 — Sample Answer 3

To: Elise Tan

From: Associate

Date: 02/25/2025

Re: Defense of Housing Discrimination Claim

MEMORANDUM

STATEMENT OF FACTS:

[omitted]

ANALYSIS:

Under 42 USC Section 3601 et. seq., "'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with-- a parent or another person having legal custody of such individual or individuals..." That provides protections against discrimination on the basis of familial status, marital status is not included. The statute further lays out that it is "unlawful to refuse or sell or rent after 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." The statute provides that for a residence/unit that is 451-700 square feet there can be no more than four people in that residence.

The courts in determining and weighing the arguments in Fair Housing Complaints have created a 3 part burden shifting test. In *Karns*, they used this test which comes from *McDonnell Douglas Corp*. In *Karns*, the court provides the following test:

1) for a prima facie case:

a) Plaintiff must show they are a member of a protected class;

b) Plaintiff applied for and were qualified to rent the dwelling;

c) Plaintiff was denied housing or the Landlord refused to negotiate with Plaintiff; and

d) the dwelling remained available. The courts have interpreted "applied for" as a broad interpretation where inquiry is suffice. They have interpreted qualified to rent as being that the plaintiff meets the factors (i.e. credit score, rental/eviction history, minimum monthly income, references, criminal background).

2) If Plaintiff establishes above test, burden shifts to Defendant "to articulate legitimate nondiscriminatory reasons for the challenged policies."

3) If Defendant satisfies their burden, Plaintiff can prove by preponderance of evidence that the nondiscriminatory reasons by D are pretextual.

The Court also noted that marital status is omitted from the statute and is thus not a protected classification under this federal law.

Here, Martin Turner has a familial status and is thus protected on that basis because he is the parent of three minor children who will be living with him and based on the facts of him being financially able to afford the rent of $2,200/ month, he is a qualified applicant. He also inquired via text to the defendant and was denied housing. The apartment then remained available for months after this inquiry. Thus, it is likely that Turner will be successful in creating a prima facie case. The defendant has shown that he has a policy of not renting to single and unmarried people including those with minor children. He also has a policy limiting the amount of people in the apartment being inquired into to 3 people. Turner, including his children, would amount to four people. He argues that he does this for two reasons: 1) he believes that married couples are much more reliable in paying rent than single or unmarried people and he prefers two incomes; and 2) he states that he is trying to avoid young people cramming several people in the apartment to lower rent costs (primarily college aged or younger people). He denied the same apartment to a group of 4 young people in their 20s two years prior because they were unmarried and made no mention of finances, just marital status in that exchange.

In *Baker*, the defendant stated his policy (similar policy to Peter Larkin) aims to avoid risks of large groups of Aberdeen (college) students overpopulating units to reduce rent costs. The court found this to be a legitimate reason. Thus, the burden would then shift back to Turner who would indicate, as the plaintiff did in Baker that the policy is "far more stringent" than the federal law in this case (city ordinance in that case--which governed the number of residents based on the size of the residence not the people per bedroom). The court found this to be enough but here it will be a factual determination by the court if the policy here is too stringent since it is not by bedroom, just by apartment.

Further, the rationale regarding marital status being the reason to deny Turner is reflected in his prior denial of other applicants who were unmarried and had multiple incomes or applicants who did not. Thus, it will be difficult for Turner to argue that the denial was based on his protected familial status. The rationale also does not appear to be pretextual, so Turner would likely fail at the last step in the 3-step test from Karns which cited McDonnell.

CONCLUSION

For the reasons above, it will be difficult to determine if the policy set by Larkin was truly based on his familial status and not his married status and that the policy was overly broad because it is factually distinct from the case in which the court has determined the policy was too broad.
Outline

Facts of Martin Turner situation

Martin Turner complaint (P)

- Widow, 3 minor children.
- Qualified applicant.
- Inquired regarding the apartment via text. LL responded and never got back to Turner after being informed of Turner's familial status.
- Apartment remained available after this exchange.

Interview with Peter Larkin (D)

- Admits to the facts and validates the text exchange.
- Put ad on craigslist, 2bdrm w/ 2,200/month.
- **Reasons why D rejected P:** 1) He's single, "I really don't like to rent to unmarried people because I like to have two incomes for each apartment that I rent. It just makes me feel more comfortable." 2) "I have a policy of renting that particular apartment to a maximum of three people, and with his kids, there would have been four people."
- Ended up renting the apartment to a married couple after a couple months.
- **Rationale behind policy:** "Financial and stability thing"; "I want to have married couples with two incomes." In his experience, "married people are just more stable in their relationships and are more likely to pay rent on time. They are just more financially stable than single people." D states he has turned down single people and unmarried couples who have applied for that apartment before.
- **Financial Inquiry:** D stated that he has no reason to think that P does nto have good credit and cannot pay the rent but still prefers married couples.
- **3 people in the apartment policy**: D states that he is trying to avoid young people cramming four people in the apartment to lower rent costs.
- **D addresses P and his familial status (3 kids):** D ostensibly has no issue with P having minor children and states he just does not want more than three people in the apartment regardless if they are minors or not.
- **Married couples with children**: D states he often rents to married couples with children and states he would not mind if a married couple with one child live in the apartment that P inquired into.
- The other example of an inquiry shows D rejecting a group of four people in their 20s for the same apartment 2 years prior and D stated that due to the marital status of the

candidate, he would not rent to them. The candidate had no familial relationship to the others.

US FHA 42 USC 3601

- "Unlawful to refuse or sell or rent after 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."
- 500 square feet; no more than 4 people

Karns v US Department of HUD (15th circuit COA, 2006)

- **Rule**: 3-part burden shifting test (McDonnell Douglas Corp.)
- 1 - For prima facie case: 1) P must show they are a member of a protected class; 2) P applied for and were qualified to rent the dwelling; 3) P was denied housing or LL refused to negotiate with P; and 4) the dwelling remained available.
- Applied for = broad interpretation (inquiry suffice)
- Qualified to rent = P meets factors (i.e. credit score, rental/eviction history, min monthly income, references, criminal background)
- 2 - If P establishes above test, burden shifts to D "to articulate legitimate nondiscriminatory reasons for the challenged policies.
- 3 - If D satisfies their burden, P can prove by preponderance of evidence that the nondiscriminatory reasons by D are pretextual
- Court noted marital status is omitted from statute and is thus not a protected classification
- **Facts:**
- Karns (P) had 2 children under 18 and showed she was denied housing. She inquired to rent the apartment and was qualified. LL refused to negotiate and apartment remained available. Dickson (D) argued concerns about her financial ability and marital status. D did not have any info beyond her marital and familial status and assessed P's ability to pay on her familial status, not financial status.
- **Holding:** REVERSED, P provided enough evidence to support a showing that D's reasons for not renting were pretextual and and the underlying reason was due to P's familial status.

Baker v Garcia Realty (US District Court for Franklin, 1996) Facts based case analyzing test factors

- **Rule:**
- Lays out same test from Karns but with distinctions.
- "Courts apply ... disparate impact analysis when we are analyzing a facially neutral policy"
- **Facts:**
- Baker is married with five children and sought a 3 bedroom apartment.
- Prima facie analysis: Bakers (P) satisfied first burden. Families with minor children tend to have larger households than the general population thus creating disparate impact.

- Nondiscriminatory reason analysis: Burden on Garcia (D) to articulate one or more substantial, legitimate, nondiscriminatory interests serving their policy. D states the policy avoids risk of large groups of Aberdeen students overpopulating units to reduce rent costs. D has met his burden.
- Overbreadth and less restrictive means analysis: Burden back to P. P argues that the policy is "far more stringent" than the city ordinance which governs the number of residents based on the size of the residence not the people per bedroom. P would be permitted under the city ordinance but under the Garcia policy, only 4 can live in a 3 bedroom apartment.
- **Holding**: MSJ GRANTED for P, P successfully showed that D's "bedroom plus one" policy was overly broad or by showing the goals of the policy can be achieved with a less restrictive means. Court found that D could have found less restrictive means of achieving their goal of limiting college students than creating a an overly broad policy disparately impacting families with minor children.

MPT-2 — Sample Answer 1

MEMORANDUM

To: Loretta Rodriguez, General Counsel

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen Matter

I. Introduction

We have been requested to advice regarding an Inspection of Public Records Act (IPRA) request for records relating to Professor Eugene Hagen. There are four documents in question, and we have been asked to determine which documents must be produced. The four documents in question are: (1) Professor Hagen's annual performance review; (2) any complaints about Professor Hagen submitted by the public; (3) A chart containing a list of names of anyone who submitted complaints; (4) Any records regarding Professor Hagen from the UF Campus Police Department. As provided by the Franklin Supreme Court in *Torres v. Elm City*, the purpose of the IPRA is "to ensure...that all persons are entitled ot the greatest possible information regarding the affairs of government and the official acts of public officers and employees." Id. at § 14. Each document is analyzed below.

II. Statement of Facts

[Omitted per instructions]

III. Legal Argument

A. Professor Hagen's annual performance reviews cannot be produced.

1. <u>The performance reviews contain matters of opinion which are exempt from production.</u>

The first set of documents in question are Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law. In her *Privileged and Confidential - IPRA Request* email correspondence, Dean Williams provides that these "performance reviews contain a lot of general information - what classes Eugene taught, the quality of his teachings, the committees he served on, what publications he completed, and the quality of his publications. In determining whether or not these reviews can be produced, we look to Franklin Inspection of Public Records Act § 142 which provides a list of exempted documents that cannot be produced, with (a)(3) providing that "letters or memoranda that are matters of opinion in personnel files" are not those

listed of which the public has a right to inspect. It is understood that the documents relating to "the quality of his teachings" and the "quality of his publications" are matters of opinion. Additionally, Dean Williams "referenced student course evaluations in his annual reviews" which are also matters of opinion.

In interpreting § (a)(3), we look to the Franklin Supreme Court, which held in *Newton v. Centralia School District* (Fr. Ct. 2015), where the court held that this exemption applies to "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." In providing context for such an exemption, the Newton court held that these documents are such that are "generated by an employer or employee in support of the working relationship." The Franklin Court of Appeals held similarly in *Fox v. City of Brixton*, Franklin Court of Appeal (2018), where it determined that the exemption in § (a)(3) was purported to "protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of the working relationship between them." As such, given the definition of the requested documents as provided by Dean Williams, these documents are not to be produced. Dean Williams stated herself in her *Privileged and Confidential Email* that the documents were completed by herself, and "were mixed."

2. <u>The performance reviews contain matters of fact, but under Koob, must also be excluded.</u>

It is likely that The Daily Howl may argue that some of the documents must be produced under § 146, which provides that "requested public records that is exempt and nonexempt from disclosure shall be separated by the custodian prior to disclosure and the nonexempt information shall be made available for inspection." Dean Williams provides that Professor Hagen's performance reviews contains information such as his committee information and a list of his publications. This information is likely permitted for production. However, we turn to the Franklin Court of Appeals in *Pederson v. Koob*, in which a petitioner argued that "factual matters concerning misconduct by a public officer related to that officer's role as a public servant" must be divided from such documents that are related to "matters of opinion constituting personnel information that are related to the officer's role as an employee." The *Koob* court has held that documents relating to "personnel information that contain both matters of fact and opinion are conclusively excluded." Thus, because the fact that Professor Hagen's personnel file contains both factual matters such as his committee information and publications, as well as personnel information discussed above, the *Koob* court furthers that § 14(a)(3) "applies to a document as a hole" and "the entire document is exempt from disclosure and matters of fact in that document do not have to be separated from matters of opinion and disclosed.

B. The complaints submitted by the members of the public can be produced.

The next set of documents sought by The Daily Howl are those consisting of "any complaints about Professor Hagen submitted by members of the public to the UF Law School." In determining whether or not these documents can be produced, we again turn to the Franklin

Inspection of Public Records Act § 142. The IPRA defines public records as those which are "all documents, papers, letters, books, maps, tapes, photographs, recordings, and all other materials." As discussed above, however, exemptions exist to the ability to produce such documents. In order to determine whether or not the complaints in question here fall under the exemption in § 142(3), which exempts, "letters or memoranda that are matters of opinion in personnel files" we look to *Fox v. City of Brixton*, Franklin Court of Appeal (2018).

The *City of Brixton* court handled an issue similar to that here in which "all citizen complaints filed against [party]" were requested. The defendant in *City of Brixton* claimed the exemption under § 142(a)(3). However, the Court determined here that "unsolicited complaints about the on-duty conduct...voluntarily generated by the very public that now requests access to those complaints..." are not an exempted from production. Some of the documents in question with regards to Professor Hagen will clearly reflect negatively on the professor; in the *What is UP with Professor Eugene Hagen* article in *The Daily Howl*, a Pamela Rogers states "last year I wrote a letter to Dean Williams complaining about Professor Hagen...that man has a substance abuse problem and should not be teaching our children." However, unfortunately for Professor Hagen, the *City of Brixton* court also held that, "the fact that citizen complaints may bring negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure."

Further, as in *City of Brixton*, it is clear that complaints arising from Professor Hagen's service as a teacher are not those which related to his position as an employee of the university. In *City of Brixton*, the court held that "unsolicited complaints about the on-duty conduct of a law enforcement officer, voluntarily generated by the very public that now requests those complaints" are not "matters of opinion in personnel files..." and thus not exempted. Dean Williams provides in her *Privileged and Confidential* email that she "[has] received a number of complaints from students about Eugene" excluding the complaint discussed in *The Daily Howl*. As such, despite the complaints existence in "Eugene's personnel file," these documents can be produced.

C. The chart cannot be produced because it does not exist.

The third item requested by The Daily Howl is a "chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen." In her *Confidential and Privileged* email, Dean Williams provides that "we don't have a chart containing the names of people who have made a complaint about Eugene. It would take some time to make one, but we can do it." Simply put, the IPRA provides that a public body cannot be forced to create a public record. The IPRA § 145 provides the procedure in which an individual can request records, but § 145(b) provides that "nothing in this act shall be construed to require a public body to create a public record." As such, so long as Dean Williams is correct in her statement that they do not have such a chart as requested, then UF cannot be forced to create such a record and subsequently produce it.

D. Only those records not containing documents relating to the investigation can be produced; the burden is on UF to separate the exempt documents from the nonexempt documents.

1. <u>The documents can be produced.</u>

The final group of documents that are requested by *The Daily Howl* are "are records involving Professor Hagen in the possession of the UF Campus Police Department." In determining whether such documents can be produced, we look to the IPRA § 141 which provides an exemption from production for "portions of any law enforcement record that reveal confidential sources or methods that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations." The applicability of such an exemption was litigated in *Torres v. Elm City*, Franklin Supreme Court (2016). Here, the *Elm City* court handled a request for production of police records and found that documents that did not "reveal confidential sources or methods or that [did not relate] to individuals not charged with a crime" could be produced. In applying this holding to the issue at hand, it would seem that, pursuant to Chief Craft in his *Privileged and Confidential* correspondence, records exist that are "related to the recent arrest of Professor Hagen for possession of marijuana." These records are related to the "8 ounces of marijuana in [Hagen's] office" as Professor Hagen had sufficient amounts of marijuana on him to be charged with a crime. Chief Craft provides that three items exist in the records, being "an incident report and two photographs." These documents can be produced, so long as UF follows the holding of Elm City which found that these documents "shall be made available for inspection."

2. <u>However, the exempt portions must be redacted.</u>

While the records from the police department can be produced, a question remains as the records contain both exempt and nonexempt documents. As stated, the IPRA exempts those documents that "reveal confidential sources or methods that are related to individuals not charged with a crime." Chief Craft provides that the incident report in the issue at hand contains "the name of a confidential source" as well as "what Officer Marx observed in Hagen's office and the statements made by both Hagen and Sykes." As provided by Chief Craft in his Privileged and Confidential email communications "Professor Sykes was not arrested because, while she was smoking, she was not in possession of a sufficient amount of marijuana to be charged with a crime." However, the two photographs in Chief Craft's possession are those of "selfies showing both Hagen and Sykes with the bond in Hagen's office on the night in question."

As such, clearly the name of a confidential source and a photograph of an individual not charged with a crime are exempt from production. However, UF is still charged to produce as much information as they can, pursuant to the Franklin Court of Appeals in *Pederson v. Koob*, Franklin Court of Appeal (2022). The *Koob* court has held that the exemption provided in § 142(a)(4) "applies only to certain portions of a document." As such, when only portions of documents are exempted, "such as § 146(a)," then the individual with the burden of production must "separate the exempt from nonexempt demands redaction of the exempt material in the document."

In applying this analysis to the issue at hand, the police report that Chief Craft holds can be produced, but the name of the anonymous informant must be redacted. Additionally, the image of Professor Sykes must be redacted in order to protect her privacy. Thus, the documents must be produced, but due care must be taken in order to oblige the holding in *Pederson v. Koob.*

IV. Conclusion.

To conclude, the performance reviews must be excluded, as all documents containing opinion in personnel files must be excluded. Additionally, when documents contain matters of opinion and matters of fact, they must be excluded entirely. The documents relating to complaints by members of the public must be produced. The chart containing names of those who filed complaints does not have to be produced, as it does not exist. The records from the police department must be produced so long as confidential information such as names and faces are excluded.

MPT-2 — Sample Answer 2

To: Loretta Rodriguez, General Counsel

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen Matter

The university has received a request for several different documents from the University. Each individual request is evaluated in detail below.

Hagen's Annual Performance Reviews

The university does not need to produce any of Professor Hagen's annual performance reviews or student evaluations. The issue here is whether these documents are considered "matters of opinion" in personnel files, and thus are exempt from disclosure.

IPRA §14(a)(2) exempts letters or memoranda that are matters of opinion in personnel files. In Newton v. Centralia School District, a journalist sought access to all nonacademic staff personnel records held by the district that were not exempt under IPRA. The Newton court held that the exemption in 14(a)(2) applies to "letters of reference, documents concerning infractions and discipinary action, personnel evaluations....and other matters of opinion" in their entirety. The location of the document in a personnel file is not dispositive of whether the exemption applies; rather, the critical factor is the nature of the document itself. Fox v. City of Brixton (2018). The court characterized these documents as a whole as "opinion information". The Franklin Court of Appeals would later clarify in Fox v. City of Brixton that the documents at hand in Newton are all generated by an employer in support of the working relationship. The Fox court stated that a police department could not exempt certain complaints by members of the public that were placed in an officer's personnel file. Their reasoning was that the complaints were unsolicited complaints by the public, and while they may lead to a job performance investigation, that fact alone does not transmute such records into "matters of opinion in personnel files".

In our case, the annual reviews themselves are clearly within the definition of "personnel evaluations", and they are also generated by an employer in support of the employee/employer working relationship. However, the student course evaluations are solicited by the university itself and form a core part of the evaluations.

A separate issue here is whether we are obligated to separate exempt and nonexempt information from these records under 14-6(b), which states that "requested public records contiaining information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for

inspection." We have no obligation to separate this information, and can exempt them in their entirety. As mentioned above, the Newton court described this exemption as applying to letters or memoranda in their entirety. Furthermore, the full document exemption in 14-2(a)(3) overrides the requirement in 14-6 that nonexempt matter in those documents be disclosed. Pederson v. Koob (2022) When an exemption applies only to certain portions of a document, such as portions of law enforcement records, then the material must be separated. Id. In our situation, the exemption would apply to the entirety of the personnel evaluations and the solicited student evaluations, so we have no obligation to separate any part of them.

Complaints about Professor Hagen submitted by members of the public to the School of Law

The university needs to produce the letter from Pamela Rogers. The issue here is the same as above, whether these documents are considered "matters of opinion" in personnel files, and thus are exempt from disclosure. As mentioned above, the key factor is not the physical location of the document, but rather the nature of the document and whether it is generated in support of the working relationship. The Fox court ruled that a public complaint in a police officer's personnel file could not be exempted from disclosure under this rule. Just as in fox, this document was an unsolicited complaint from the public, so it must be disclosed.

A chart containing the names of anyone who has made a complaint about Professor Hagen

IPRA §145(b) states that nothing in this act shall be construed to require a public body to create a public record. The university does not currently have such a chart, and is under no obligation to create one to satisfy this request.

Any records involving Professor Hagen in the possession of the UF Campus Police Department.

The issue here is whether what parts of the police departments must be redacted. IPRA §142(a)(4) exempts from disclosure "Portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime". 14-6 states that requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. As mentioned above, the 14-6 exception does apply to portions of law enforcement records as mentioned in §142(a)(4). See Pederson v. Koob. Courts have found that whether or not an investigation is ongoing is not the controlling factor in this analysis. Rather, the key factor is whether the information would reveal confidential sources or methods, or would relate to individuals not charged with a crime. Torres v. Elm City (2016). In this situation, the Campus police department should redact all portions of their incident report about the identity of the confidential source, as well as all references to Hope Sykes, as she was not charged with a crime. The two photographs depicting both Professor Hagen and Sykes should be blacked out so that professor Sykes is not visible, for the same reason.

In summary, we should produce the complaint from Pamela Rogers and a redacted version of the police report and photographs related to the February 11th incident. We should not produce any other materials in response to this request.

MPT-2 — Sample Answer 3

To: Loretta Rodriguez

From: Examinee

Re: IPRA and Hagen

Memorandum

You have asked me to write an objective memorandum regarding the production of requested documents under the Inspection of Public Records Act (IPRA) Per your instructions, I have omitted a recitation of the facts. I have organized this memorandum by each item requested by Mr. Chen regarding Professor Hagen (Hagen).

Relevant Law

The IPRA requires all requested public records to be offered to the requesting person but for certain narrowly construed exemptions. Public records include "all documents, papers, letters . . . photographs . . . and other materials, regardless of physical form or characteristics, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business." As discussed in *Fox v. Brixton* (2018), the IPRA is construed to give a presumption in favor of disclosure, and the exemptions are to be construed narrowly. In *Pederson v. Koob* (2022), the Franklin Court of Appeal held that the full document exemption of § 142(a)(3) "overrides the requirement in § 146 that nonexempt matter in that document be disclosed." Therefore, unless an exemption applies only to portions of a document, the entirety of the document may be omitted.

Annual Performance Reviews

As documents produced by a public body, here Dean Williams, relating to public business, here the business of FU, Hagen's performance reviews are public records. However, Hagen's performance reviews likely fall under the exemption of matters of opinion in personnel files. §14-2(a)(3) of the IPRA holds that matters of opinion in personnel files are exempt from public record requests. As held in Fox, "matters of opinion" specifically regards "the employer/employee relationship such as internal evaluations . . . or performance reviews."

Here, performance reviews, like Hagen's, are specifically listed in *Fox* as being exempt from the IRPA. Unlike in *Fox*, these reviews are entirely focused on the employer/employee relationship between Hagen and Dean Williams. These reviews do not include any nonexempt material, and even if they did, per *Pederson* and *Newton*, the entirety of the performance reviews may be omitted.

Complaints from the Public

As discussed in *Fox*, complaints made by the public are admissible even if they are located in a personnel file. The physical location of the record does not matter; "the critical factor is the nature of the document itself." In Fox, the plaintiff requested complaints generated by the public, and the court held this to not be exempt under the IPRA, even as they pertained to matters of opinion in personnel files.

Here, the only complaint from a member of the public is that of Mrs. Rogers. Mrs. Rogers's letter was placed in Hagen's personnel file, and it is a matter of opinion. As a letter received by a public body, Mrs. Rogers's letter is a public record. However, it does not arise from the employer/employee relationship and is, like in Fox, a complaint generated by the public. Therefore, it should be provided to Chen in its entirety under the IPRA.

Chart of Complaints

§ 145(b) of the IPRA states that "nothing in this Act shall be construed to require a public body to create a public record." While there have been some student complaints about Hagen, FU does not currently have a chart containing the names of any person to complain about Professor Hagen, and it would take some time to make one. As such, under the code, the IPRA may not be used to require FU to create such a chart, although it would be required to be sent if such a chart already existed.

Police Records

Portions of police reports may be exempted from the IPRA if they "reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters." As held in *Pederson*, these portions do not exempt the production of the entire document, rather permitting the police to redact exempt elements from a document. In *Torres v. Elm City*, the Franklin Supreme Court held that documents could not be withheld merely because an investigation is ongoing.

Here, there are three items that pertain to Mr. Chen's request: an incident report and two photographs. These include both Hagen and another Professor Sykes (Sykes). Sykes was not arrested. As stated time and time again, as in *Dunn*, the exemptions are narrowly drawn.

Incident report

The incident report contains details about the incident, the name of a confidential source, and statements made by Hagen and Sykes to Officer Marx. These must be produced per the IPRA, but the police department may redact any mention of the confidential source and Sykes, per the IPRA.

Photographs

The photographs are selfies showing both Hagen and Sykes and the bong. The images may be redacted to exclude Sykes, but must otherwise be produced per the IPRA.