

***** MPT 2 STARTS HERE *****

MEMORANDUM

To: Loretta Rodriguez
From: Examinee
Date: February 25, 2025
Re: Professor Eugene Hagen Matter

Under the Franklin Inspection of Public Records Act, public records include all documents, papers, letters, and other materials that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business, whether or not the records are required at law to be created or maintained. *Franklin Civil Code Section 14-1.*

However, there are exemptions to this mandate of disclosure. These exemptions are (1) records pertaining to physical or mental examinations (2) letters of reference concerning licensing or permits (3) letters of memoranda that are matters of opinion in personnel files (4) portions of any law enforcement record that reveal confidential sources of methods or that are related to individuals not charged with a crime, even if the matters are inactive or closed and (5) trade secrets or attorney-client privileged information. *Franklin Civil Code 14-2.*

Citizens have a fundamental right to access public records, and there is a presumption in IPRA in favor of disclosure. *Fox v. City of Brixton.* Exemptions to IPRA's mandate of disclosure are narrowly drawn. *Dunn v. Brandt.* As a public professor, Professor Hagen is subject to both these disclosure requirements and these exemptions. To ensure that we are properly disclosing all legally required information in accordance with these presumptions, the following analyses of the requested documents err on the side of caution for disclosure.

1. Professor Hagen's annual performance reviews completed by the Dean 2019-present do not have to be disclosed

14-2(a)(3) exempts letters of memoranda that are matters of opinion in personnel files. This exemption does not apply to all records contained in personnel files. *Fox v. City of Brixton.* It constitutes personnel information of the type generally found in a personnel file with information regarding the employer/employee relationship, including performance reviews, internal evaluations, and disciplinary reports. *Id.* The purpose of this exemption is to protect the employer/employee relationship from disclosure of letters that are generated by the employer/employee in support of the working relationship between them. *Id.*

Cheryl Williams, the Dean of the Law School, created Hagen's last two performance reviews. It included opinions on his teaching, and also concerns about his absences. These are explicitly the types of information that would be excluded under the Fox analysis of 14-2(a)(3). They are performance reviews and internal evaluations made by Hagen's employer, regarding his performance in the employer/employee relationship. Concealing this information is consistent with the purpose of supporting an open and honest working relationship between Hagen and Williams.

Under *Franklin Civil Code 14-6*, requested public records containing information that is exempt and non-exempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. However, when an exemption applies to a document as a whole, the entire document is exempt from disclosure and the matters of fact and opinion do not have to be distinguished. *Pederson v. Koob.* 14-2(a)(3) applies to the document as a whole. *Id.*

Williams stated that the reviews reference student course evaluations from the past two years, but the student course evaluations themselves are not attached to the annual performance review. This is distinguishable from *Fox v. Brixton*, where the records request was seeking the citizen evaluations and complaints themselves. Here, the records request is seeking not those complaints, but the performance review, which is protected in whole under 14-2(a)(3).

The performance reviews also include general information about Hagen regarding the quality of his teaching, and reviews to assess his ongoing performance while on tenure, and the committees he served on.

Although the public may be able to request the course evaluations independently or find the general information by other means, under 14-2(a)(3)'s protection of the document as a whole, the document itself does not have to be separated into exempt and nonexempt information and does not need to be produced in its entirety.

2. Any complaints about Professor Hagen submitted by members of the public to UF School of Law must be disclosed.

The University has only one complaint received from a member of the public, which is a letter from Pamela Rogers, the mother of a current law student. Dean Williams placed the letter in Hagen's personnel file.

The location of a record in a personnel file is not dispositive of whether the exemption applies. *Fox v. City of Brixton*. Rather, the critical factor is the nature of the document itself. *Id.* The Franklin Court of Appeal in *Fox* held that citizen complaints regarding a police officer's on-duty conduct was not intended by the legislature to be excluded as "opinion" material exempted by 14-2(a)(3). The fact that the complaints could lead to disciplinary action does not convert them into "matters of opinion in personnel files". *Id.*

Here, the complaint from the public was also not the type that the legislature likely intended to be excluded as "opinion" material exempted by 14-2(a)(3). In *Fox*, the Franklin Court of Appeal opined that unsolicited complaints about on-duty officers that were voluntarily generated by the very public that now requests access to those complaints must be released as a matter of public policy. *Fox* refers to police officers, who owe very specific duties to the public given their constant interaction with citizens. Hagen, as a public professor, also interacts with citizens frequently, including many students who may be impressionable. Therefore, the same policy considerations apply, and the public that voluntarily make complaints about a public employee should also be able to see those complaints, and not have them hidden simply because they are in the hands of a government institution and may have led to disciplinary action.

None of the other 14-2 exemptions apply to this letter. Therefore, as a matter of public policy in interpretation of 14-2(a)(3) and with a presumption for disclosure of documents, the complaint must be disclosed.

3. A chart containing the names of anyone who has made a complaint about Professor Hagen does not need to be disclosed.

Although IPRA requires full disclosure of existing documents in a public body's control, nothing in the IPRA requires that a public body creates a public record. *Franklin Civil Code 14-5(b)*. No chart exists that contains the names of people who have made a complaint about Hagen, and doing so would take a considerable amount of time. IPRA allows a request into the complaints, but it does not require that the University create such a chart and need not be disclosed.

4. Records involving Professor Hagen in the possession of the UF Campus Police Department need only be partially disclosed.

Any portions of any law enforcement record that reveal confidential sources of methods or that are related to individuals not charged with a crime, even if the matters are inactive or closed, need not be disclosed. *Franklin Civil Code 14-2(a)(4)*. Records custodians are required to review the requested law enforcement records, separate information that did not reveal confidential sources/methods or that did not relate to individuals not charged with a crime from that which did, and provide the nonexempt information for inspection.

Unlike section 14-2(a)(3), section 14-2(a)(4) does not protect the document as a whole, but only the exempt provisions named above. Hagen's police records with the UF Campus Police Department include both photographs and an incident report. Hagen was arrested and charged with possession of marijuana while he was smoking out of a bong with Sykes, another professor on campus. Sykes however, was not arrested because she was not in possession of a sufficient amount of marijuana to be charged with a crime.

The photographs are "selfies" that show both Hagen and Sykes with the bong in Hagen's office. Therefore, these photographs "relate to individuals not charged with a crime", and must be separated from the other requested information and not disclosed.

The incident report contains the date, time, location, and name of the confidential source. It also includes a description of what the police officer observed in Hagen's office and the statements made by Hagen and Sykes to the officer. The date, time, and location of the infraction must be disclosed. The name of the confidential source need not be disclosed, as it would "reveal confidential sources/methods". The description of what the officers observed must be edited to not explicitly reference Sykes. Sykes' statements to the police also must not be disclosed, but Hagen's statements made.

Therefore, the police reports must be disclosed for inspection, but only with the date, time, and location of the incident, as well as Hagen's statement and any description by officers that is redacted to not reference Sykes.

Conclusion

IPRA is applied with a strong presumption in favor of disclosure, but 14-2 still permits a narrow amount of information from being disclosed. Viewing the IPRA request under this presumption, under exceptions 14-2(a)(3) and 14(2)(a)(4), (1) Professor Hagen's annual reviews do not need to be disclosed, (2) Public complaints about Professor Hagen must be disclosed (3) A chart containing information about complaining parties does not need to be disclosed and (4) UF Campus Police Records must be partially disclosed in a manner that redacts reference to Sykes or the confidential informant.

******* MPT 2 ENDS HERE *******

Memorandum

To: Loretta Rodriguez
From: Examinee
Date: February 25, 2025
Re: Professor Eugene Hagen matter

Dear Loretta Rodriguez,

You have asked me to provide you with a memorandum examining whether the University of Franklin (UF) must produce each of the documents requested by Paul Chen relating to Professor Eugene Hagen. Chen is requesting production of documents pursuant to a Inspection of Public Records Act (IPRA) request relating to Hagen's suspension by UF for "illegal use of drugs or alcohol" based on a conviction for driving under the influence (DUI) and a positive test for cocaine. The following is an analysis of each document requested by Chen.

Inspection under IPRA

Franklin Civil Code section 14-1 provides that "public records" include "all documents, papers, letters...and other materials...that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business..." Section 14-2 provides that Franklin public records are open to inspection by any person, with enumerated exceptions. A person that would like to inspect a public record must submit a written request to the custodian of records. Franklin Civil Code section 14-5.

On February 24, 2025, Chen submitted a written request to the UF Custodian of records pursuant to the IPRA requesting inspection of four items. UF is a public institution, and therefore is subject to IPRA requests. Because Chen has followed the required process for requesting inspection, if the four requested items are public records not within the enumerated exemptions, then UF will be required to allow inspection of the items.

Professor Hagen's annual performance reviews

As noted above, Franklin Civil Code section 14-1 *et seq.* define, require disclosure, and provide exemptions from such disclosure of public records. One such exemption provided is contained in section 14-2(a)(3) as "letters or memoranda that are matters of opinion in personnel files." Such "letters or memoranda" include personnel evaluations. *Pederson v. Koob, citing Newton*

v. Centralia School District. These personnel evaluations are exempted entirely from the disclosure requirement, even though Franklin Civil Code section 14-6 generally requires that matters of fact be separated from exempted matters of opinion and then disclosed, because the "letters and memoranda" exemption applies to a "document as a whole." *Pederson*. Therefore, "matters of fact" and "matters of opinion" do not need to be separated so "matters of fact can be disclosed." *Pederson*.

Here, Chen requests Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law from 2019 to the present. Professor Hagen's annual performance reviews contain general information, in addition to student course evaluations. However, an annual performance review is a personnel evaluation, and is therefore exempted from inspection under section 14-2(a)(3). Additionally, UF will not be required to divide Professor Hagen's performance review based on "matters of fact" and "matters of opinion", because the exemption applies to the personnel evaluation as a whole. *See Pederson*.

Therefore, UF does not need to allow inspection of Professor Hagen's annual performance reviews by Chen.

Any complaints about Professor Hagen submitted by members of the public to UF School of Law

As noted above, Franklin Civil Code section 14-1 *et seq.* define, require disclosure, and provide exemptions from such disclosure of public records. The integral purpose of IPRA is to allow access to public information, leading to greater accountability by public officials, and therefore there is a presumption favoring disclosure of public records. *Fox v. City of Brixton*. Nonetheless, section 14-2(a)(3) specifically excludes "letters or memoranda that are matters of opinion in personnel files" from public records requiring disclosure. This definition encompasses "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*. This exemption seeks to protect the working relationship between the employer and employee. *Fox*. However, citizen complaints against police officers, for example, do not fall under the exception of section 14-2(a)(3) because they are generated by the public, not a city or other government entity, and shielding police officer from public scrutiny in such a way would be against the core policy of the IPRA. *Fox*.

Chen has also requested inspection of any complaints about Professor Hagen submitted by members of the public. UF currently only has one complaint from a member of the public, made by Pamela Rogers, a mother of a current law student. Here, complaints by a member of the public to UF School of Law about Professor Hagen would be most analogous to citizen complaints against police officers, as in *Fox*. Like the police complaint records requested in *Fox*, which the court noted were unsolicited and about the on-duty conduct of the officer, here Pamela Rogers provided an unsolicited complaint about Hagen's conduct while on the job, specifically, "that man has a substance abuse problem and should not be teaching our children." While such complaints may bring negative attention to Hagen, the court in *Fox* held that such is not a basis not disallow inspection.

Therefore, UF will need to allow inspection of Roger's complaint about Professor Hagen.

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

As noted above, Franklin Civil Code section 14-1 *et seq.* define, require disclosure, and provide exemptions from such disclosure of public records. Section 14-1(a) defines public records expansively to include "other materials" that are "created" by or on behalf of any public body. However, under Franklin Civil Code section 14-5(b), a public body is not required "to create a public record."

Here, Chen is requesting a chart containing the names of anyone who has made a complaint about Professor Hagen. Cheryl Williams, as Dean of the UF School of Law, has the name of the one member of the public who has complained about Professor Hagen and the names of the several students who have complained. However, Williams does not have a chart containing the names of people who have made a complaint about Professor Hagen, as requested by Chen.

Therefore, under Franklin Civil Code section 14-5(b), such a chart does not need to be produced because UF is not required to create a public record.

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

As noted above, Franklin Civil Code section 14-1 *et seq.* define, require disclosure, and provide exemptions from such disclosure of public records.

One exemption is contained in section 14-2(a)(4), which exempts certain law enforcement records from inspection. *Torres v. Elm City*, citing Franklin Civil Code section 14-2(a)(4). Law enforcement records that are exempted from inspection are those "that reveal confidential sources or methods or that are related to individuals not charged with a crime." Franklin Civil Code section 14-2(a)(4). What is essential is the record's contents. *Torres*. Additionally, if a law enforcement record contains both exempt and nonexempt information, the records custodian must separate the information before inspection and allow inspection of the nonexempt information. Franklin Civil Code section 14-6(a).

Here, Chen has requested inspection of any records involving Professor Hagen in the possession of the UF Campus Police Department. The UF Campus Police Department currently has in its records three items: an incident report and two photographs. The incident report contains detailing about an incident involving the recent arrest of Hagen for possession of marijuana. The photographs are "selfies" showing Hagen and another teacher with a bong in Hagen's office. The police department will have to allow inspection of some of the records. Exempted will be the information relating to the other teacher, Sykes, because Sykes was not charged with a crime. However, the remainder of the records, i.e., those pertaining to Hagen, will be nonexempt because they do not reveal confidential sources or methods or relate to individuals not charged with a crime - Hagen was arrested.

Therefore, the nonexempt UF Police Department records must be partially available for inspection by Chen.