ANSWER TO MPT 1

To: Elise Tan

From: Examinee

Date: February 25, 2025

Re: Peter Larkin- Defense of housing discrimination claim

You have tasked me with drafting an objective memorandum analyzing Martin Turner's possible arguments in support of his claims against our client, Peter Larkin, under s 3604(a) of the Fair Housing Act, 42 U.S.C. (the **"FHA"),** as well as Larkin's possible defenses against the same. This memorandum will analyze the following:

1. Preliminarily, whether the FHA applies;
2. Whether Larkin's actions of refusing to rent to single tenants constitute discrimination under the *McDonnell Douglas* three-part burden-shifting test, thus violating s 3604(a) of the FHA; and
3. Whether Larkin's policy of renting the apartment to a maximum of three people constitute discrimination under the *Baker* three-part disparate impact test, thus violating s 3604(a) of the FHA.

1. Applicability of the FHA

s 3604(a) of the FHA 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 *inter alia* "familial status". Familial status is in turn defined in s 3602(k) as one or more individuals under 18 years of age being domiciled with a parent or another person having legal custody of such individual(s).

In our case, Turner is a single widowed parent with three minor children, who are aged 16, 12 and 6 and who reside with him. He is alleging that he has faced discrimination on the basis of familial status. He would fall within the protected class within the meaning of s 3602(k), and the FHA would apply to him.

Furthermore, there is an exception under s 3603(b) of the FHA which exempts four-family dwellings where the landlord/owner actually maintains and occupies one of the living quarters from s 3604 of the FHA. However, Larkin lives in a townhouse a mile away from the building in downtown Centralia which Turner sought to rent a unit in. Therefore, this exception does not apply, and the FHA would govern this dispute between Turner and Larkin.

2. Larkin's actions of refusing to rent to Turner

Having established that the FHA applies, the three-part burden shifting test in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) is applicable to claims that a landlord discriminated against a tenant through specific actions which may be ambiguous (per *Baker v. Garcia Realty Inc.* (Franklin District Court, 1996)). The first part of the test requires the plaintiff to first establish, by a preponderance of the evidence, 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 the landlord refused to negotiate with them, and (4) the dwelling remained available. Upon a prima facie showing by the plaintiff of discrimination pursuant to the first part, a presumption of illegality would arise under the second part, and the burden would shift to the defendant to articulate legitimate nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies this burden, the third part requires the plaintiff to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted are merely pretext for discrimination.

First part of the test

As analyzed above, Turner is a member of a protected class, as a parent with three minor children. He also appears qualified to rent the apartment, given that he is employed as a data analyst, with a good rental history, good credit and an income high enough to enable him to "easily afford" the apartment (as he asserted in his HUD administrative complaint). "Qualified to rent" has been judicially interpreted to mean that the individual meets factors such as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background (per *Karns v. U.S. Department of Housing and Urban Development* (15th Cir. 2006))- which is similar to the factors Turner is putting forward in his favor. Furthermore, Turner has also applied for the housing by texting Larkin to ask if the apartment was still available, given that the term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling *(Karns).* Therefore, requirements (1) and (2) of this first part of the *McDonnell Douglas* test are satisfied.

As to requirements (3) and (4), Turner was effectively denied housing since Larkin never got back to him regarding his inquiry, and the housing remained available as Larkin continued to list the apartment on Craigslist over the next few months, before he found a married couple to rent to. Hence, Turner would likely be able to demonstrate all requirements under the first part of the test on a prima facie basis, and consequently a presumption of illegality would arise.

Second part of the test

Larkin would now bear the burden of demonstrating nondiscriminatory reasons for refusing to rent to Turner.

Larkin can argue that he was concerned about Turner's finances and the fact that Turner was unmarried, given his past experiences that showed that married couples are likelier to pay rent on time. Importantly, marital status is not a protected status under the FHA, unlike familial status. This was noted in *Karns*, where the court clarified that marital status was omitted from categories of protected classes under the FHA. These two arguments are also similar to the two arguments given by the landlord in *Karns*, although with significant differences which will be illustrated and analyze below under the third part of the test.

In support of this argument, Larkin can adduce the following evidence: (a) he could articulate cogent reasons for preferring married couples, such as the reduced likelihood of one moving out halfway through the lease, and the increased likelihood of rent being paid on time; (b) his reasons are supported by past experiences where he noticed that married people are "just more stable in their relationships and are more likely to pay their rent on time" (and there is evidence to support this, such as his text messages with a prospective tenant Jake in the past where he clearly turned him down because of his marital status); (c) specifically, when he rented to a single person with a good income in the past, this tenant ended up losing his job and leaving town, leaving Larkin with no rental income for months; (d) he turned down single and unmarried people who applied for that apartment before; and (e) he ultimately rented to a married couple after a few months of searching and waiting, supporting the fact that he was concerned about marital status (and not familial status) all along. These facts demonstrate that Larkin's main concern is with tenants' ability to pay rent on time and stability in the lease (i.e. not leaving or breaking the lease midway).

Third part of the test

Under the final part, Turner can show by a preponderance of evidence that Larkin's reasons given are merely pretexts for discrimination. Turner can argue this because Larkin had ultimately learned that he had minor children, and could be using his financial circumstances or marital status as a pretext.

In *Karns,* the court rejected the contention that the landlord was concerned about the tenant's finances, because he declined to negotiate with the tenant for the rental after learning that she was an unmarried mother of two small children. At that point, he had not asked about her finances, income, credit history, assets or liabilities- as the court remarked, "for all [he] knew, [she] could have been a millionaire". This led the court to the conclusion that he refused to rent to her solely based on her familial status.

Our case is similar in the sense that Larkin did not inquire about Turner's job or finances directly. However, he was using his marital status as a proxy for his finances based on his past experiences dealing with married versus unmarried people. Larkin himself has recognized this- he stated "He might have had a good job. He might have good credit[...] But as I said, I prefer to rent to married couples because in my experience they are more stable financially". Therefore, there is at least a reason to explain why he did not inquire further into Turner's finances.

Furthermore, our case is arguably disanalogous because the first question Larkin asked Turner was "Are you married?" as opposed to "How many are there in your family?" (as the landlord in *Karns* had). In other words, his chief and foremost concerned was with Turner's marital status. Moreover, his second question "Would anyone else be living there?" was not asked to find out information about Turner's children (although this was ultimately revealed by him), but rather as a way to know the intended occupancy rate of the apartment, as he had policy of a maximum occupancy of three people.

In *Karns,* the landlord's other argument that he was concerned about the tenant's marital status (which is an unprotected status) was also rejected because the tenant called him on another occasion and informed him that she was single, and he agreed to show her the apartment. The court surmised that this meant that marital status was not significant to him, and thus the real reason for his refusal must have been based on familial status. However, again, the case at hand is dissimilar because Larkin has maintained a consistent stance throughout his years of experience as a landlord, and has evidence to demonstrate that his chief concern had always been with marital status (e.g. the text exchange with the prospective tenant Jake). Hence, he is in far better standing than the landlord in *Karns.*

Overall, unlike the case of *Karns,* it is likely that Turner would not be able to demonstrate that Larkin's reasons are merely pretextual. Hence, Larkin's refusal to rent to Turner likely would not constitute discrimination in violation of the FHA under the *McDonnell Douglas* test.

<u>3. Larkin's policy of only renting to a maximum of three occupants</u>

In *Baker v. Garcia Realty Inc.* (U.S. District Court, 1996), the court laid down a three-part disparate analysis test to analyze the legality of policies. Under this test, (1) the plaintiff tenant must first make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff succeeds in this, the burden then 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 succeeds in this, the plaintiff must then show that the said interest(s) can be served by another practice that has a less discriminatory effect. This test applies to challenged policies, as opposed to the *McDonnell Douglas* test which applies to specific ambiguous actions.

Under part 1, Turner will likely be able to show a prima facie case of disparate impact. As the court in *Baker* held, maximum occupancy policies such as Larkin's, which is being challenged here, would impact families with minor children more than the general population, given that families with minor children tend to have larger households, and minor children frequently share bedrooms, etc., making them more affected by such policies.

Under part 2, Larkin would bear the burden of articulating a nondiscriminatory interest served by the policy. He has stated here that the apartment is small, only 500 square feet, and is located near Slate Street which is a street with many nightclubs. In the past, Larkin has had issues with young people cramming four people into a two-bedroom apartment to save on costs, which is why he implemented a policy to rent two-bedroom apartments to at most three people. This would likely suffice for a legitimate and nondiscriminatory reason.

Under part 3, Turner would then have to show that the interest articulated can be served by a less discriminatory practice. Importantly, one crucial factor under this part is overbreadth - whether the policy is too broad to serve its interests - which can be demonstrated by a significant mismatch between occupancy limits set by a municipal code and those set by a landlord *(Baker).* In Baker, a mismatch of 8 people permitted under the municipal code and 4 people permitted by the landlord's policy was deemed significant, and was accepted as evidence that the landlord's policy was overbroad. In our case, the mismatch is only between 4 people set by s 15 of the Centralia Municipal Housing Code, versus 3 people set by Larkin's policy, which is not a significant difference. Furthermore, the apartment in question is 500 square feet, which is close to the threshold of 450 square feet that would have a 3 people limit under the Code. Therefore, this factor would not weigh strongly against Larkin.

Another factor relevant here is whether Larkin could have used a less restrictive means of meeting his goal. In *Baker,* this was found because the landlord's rental application allows the rental company to tell the difference between college students and a family with minor children. Our case is likely similar- it would be fairly easy for Larkin to collect information on whether the tenants were young people (whom his policy targets, and is trying to protect against in terms of the risk of overcrowding his apartment), versus older tenants, married couples or families (whom his policy likely does not target); and make his decisions to impose or relax the occupancy limit accordingly. Therefore, there were certainly less restrictive ways to achieve his goals, and this policy would thus fall afoul of the *Baker* test and constitute discrimination under the FHA.

<u>Conclusion</u>

In conclusion, Larkin's specific actions of refusing to rent to Turner likely would not constitute a violation of the FHA, but his policy of only permitting three tenants likely would violate the FHA for not being the least restrictive means of achieving his goals and interests.

<u>ANSWER TO MPT 1</u>

I. Applicable Law

The United States Fair Housing Act ("FHA") defines "familial status" as the presence of minor children in the household. 42 USC 3602(k). The FHA provides that it is unlawful to " [r]efuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status." 42 USC 3604(a). However, Section 3604 does not apply to units in dwelling containing living quarters of no more than four families living independently of each other if the owner actually maintains and occupies one of the living quarters. As noted in *Karns v. U.S. Department of Housing and Urban Development* (15th Cir. 2006), marital status, is *not* a protected class.

In evaluating claims for discrimination under the FHA courts apply the three-part burden-shifting test set forth in *McDonnell Douglas Cop. v. Green* , 411 U.S. 792 (1973), when the plaintiff claims that a landlord discriminated against a tenant through specific actions that may be ambiguous. *Baker v. Garcia Realty Inc.* (D. Fran. 1996). First, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence and mush show that: (1) they are a member of a protected class, (2) they applied for (includes inquiries) and were qualified (analyzes credit score, rental and eviction history, monthly income, landlord and professional references and criminal background) to rent the dwelling, (3) they were denied housing or the landlord refused to negotiated with them, and (4) the dwelling remained available. Second, if established, a presumption of illegality arises and burden shifts to defendant to articulate a legitimate nondiscriminatory reason for the denial. Finally, if defendant satisfies this burden, plaintiff then has the opportunity to prove by a preponderance of the evidence that those reasons are pretextual. *See Karns.*

When the claim is instead that a tenant was discriminated against based on a housing policy that is facially neutral, the Fifteenth Circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant must make a prima facie showing that challenged practice caused or predictably will cause a discriminatory effect; (2) if shown, burden shifts to landlord to prove that it is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if this burden is met, the burden shifts back to plaintiff who may only prevail if they can show that the policy is overbroad or those interests could be served by another practice that has a less discriminatory effect. *See Baker.*

In the 15th Circuit, when a policy differs significantly from the applicable municipal code maximum occupancy, such as permitting half of what is permitted under the municipal code, it is evidence of overbreadth. See *Baker.* Here, the Centralia Municipal Housing Code ("MHC") provides that the maximum occupancy of a 451-700 square foot apartment be no more than four people. Section 15(A)(3).

II. Analysis of Legal Arguments

Martin Turner ("Turner") is a widower and single parent with three minor children that inquired about renting a two-bedroom, 500 square foot apartment from Peter Larkin ("Larkin"), which he desired to rent to be close to his parents after the death of his spouse. His children are 16, 13 and 6. Martin claims he was denied the opportunity to rent the available apartment by Larkin after being asked about his marital status and the number of occupants for the unit based on his familial status in violation of the FHA.

In order to prove his claim for discrimination under the FHA, Turner must prove that Larking " [r]efused to negotiate for the sale or rental of, or otherwise make unavailable or deny" the apartment" to Turner because of his "familial status." 42 USC 3604(a). There are two different tests that the 15th Circuit utilizes to analyze such claims. Here, the first test applies to Larkin's preference for married couples and the second test applies to Larkin's policy of limiting occupancy in the unit to 3 individuals.

If Turner argues that Larkin discriminated against him through specific actions that may be ambiguous, courts in the 15th Circuit will apply the three-part burden-shifting test set forth in *McDonnell Douglas Cop. v. Green,* 411 U.S. 792 (1973). See *Baker v. Garcia Realty Inc.* (D. Fran. 1996). Under the *McDonnell* test, Larkin will need to first prove a prima facie case of housing discrimination by a preponderance of the evidence showing that: (1) he and his family are members of a protected class, (2) they applied for (includes inquiries) and were qualified (analyzes credit score, rental and eviction history, monthly income, landlord and professional references and criminal background) to rent the dwelling, (3) they were denied housing or the landlord refused to negotiated with them, and (4) the dwelling remained available. Second, if established, a presumption of illegality arises and burden shifts to Larkin to articulate a legitimate nondiscriminatory reason for the denial. Finally, if Larkin satisfies this burden, Turner then has the opportunity to prove by a preponderance of the evidence that those reasons are pretextual. See *Karns.*

Here, Turner will likely meet his burden to prove a prima facie case of housing discrimination by a preponderance of the evidence. He and his three minor children are plainly members of the protected "familial status" class as defined under the FHA. While he didn't formally apply for the apartment, that term is interpreted broadly to include inquiries, which he clearly made and thereafter was refused further engagement by Larkin. Based on the information provided in the file, he was also likely qualified to rent the apartment. Specifically, he is employed as a data analyst and at least claims that he can easily afford the $2,200 rent per month for the apartment, has a good rental history and good credit. Either way, because Larkin did not inquire into his financial status or conduct any background check, as in *Karns,* this element is likely to be assumed. He was also plainly denied the housing by way of Larkin's failure to ever get back to him. Moreover, while the dwelling was eventually rented by Larkin, it remained available for two months after he inquired, such that it was certainly still available when he was denied further negotiations.

As a result of meeting his prima facie burden, a presumption of illegality of Larkin's refusal to rent to Turner arises and Larkin would be required to articulate a legitimate nondiscriminatory reason for the denial. Here, Larkin has one such reasons that he has a long-standing preference for renting to married couples as they are more financially stable. As noted above, the FHA does not define "marital status" as a protected class, so this preference is permitted. While *Karns* does not provide analysis on whether the alleged nondiscriminatory reasons in that case -- marital status and finances --were legitimate, because the court then goes on to analyze whether or not the plaintiff proved her burden to show they were pretextual, we can assume that they were deemed legitimate by the court. Here, Larkin's similar reasons of marital status/finances is likely to be legitimate; he can articulate evidence that of his past experience showing that married couples are more stable than unmarried couples and single people, even where the single individual has a good job, as that job can be lost easily.

As such, in the final step in *McDonnell,* Turner would bear the burden to show that this reason is, based on a preponderance of the evidence, pretextual. Here, based on the facts as provided by Larkin, it is unlikely that Turner will be able to meet that burden based on the many facts that Larkin would be able to marshal in rebuttal. While Turner might claim that pretext his demonstrated, as in *Karns,* by the fact that Larkin refused to engage with Turner after determining that he had children. Here, that argument is unlikely to be as easily won because Larkin did continue to engage with Turner - he asked about his marital status. Indeed, it was only after obtaining that information that he expressed his reluctance, tying that reluctance to his need to pay his mortgage. As such, unlike in *Karns,* here, it does appear that it was the marital status and Larkin's belief that it is an indicator of financial stability that was the reason he refused to rent the apartment; not a pretext for denying Turner on the basis of his familial status. Most importantly, Larkin will be able to show that he has no issue renting to families where the parents are married based on his past policy of renting to families where the parents are married and indeed his decision to in the end rent this apartment to a married couple.

If Turner argues that he was discriminated against based on Larkin's facially-neutral housing policy to not rent an apartment of that size to more than 3 individuals, the 15th Circuit will apply a three-part disparate-impact analysis. Under this analysis, Turner must make a prima facie showing that challenged practice caused or predictably will cause a discriminatory effect. If shown, the burden shifts to Larkin to prove that it is nonetheless necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. If that burden is met, then the burden shifts back to Turner to show to show that the policy is overbroad or those interests could be served by another practice that has a less discriminatory effect. See *Baker*.

Here, Turner will likely be able to show that Larkin's policy of not renting an apartment of that size to more than 3 individuals causes a discriminatory effect. The exact same analysis that the Court engaged in *Baker* would apply here -- such an occupation limitation necessarily discriminates against families. The facts are a little different here, because the policy is based on the apartment size rather than bedroom count -- and in *Baker* the Court noted that children often share bedrooms -- however the effect is the same and the policy is likely to be shown to cause a discriminatory effect.

Larkin will also be likely able to show that his policy is necessary to achieve substantial, legitimate and nondiscriminatory interests. Specifically, as was accepted in *Baker,* the desire to limit over-occupation by individuals in an effort to minimize rent payments is a legitimate, nondiscriminatory interest. Here, it is young folks that tend to live in the neighborhood as opposed to students but the same analysis should hold.

Finally, it is not clear which way a court would rule on whether or not Turner would be able to show that the policy is overbroad or that they could be served by a practice that has a less discriminatory effect. In the 15th Circuit, when a policy differs significantly from the applicable municipal code maximum occupancy, such as permitting half of what is permitted under the municipal code, it is evidence of overbreadth, *see Baker,* and here the Centralia Municipal Housing Code ("MHC") provides that the maximum occupancy of a 451-700 square foot apartment be no more than *four* people. See Section 15(A)(3). Thus, while Larkin's limit is less than the code, it is not significantly less than the code and the square footage is on the lower end of the square footage addressed by the code. On the whole, the variance from the code is unlikely to be strong evidence of overbreadth. On the other hand, the same less restrictive measure approved of in *Baker* could be utilized by Larkin here -- distinguish between families with kids and a bunch of 20 year olds. On the whole, it would seem that Larkin has the losing argument here and that the policy of limiting rental to three individuals would not be upheld under the disparate impact test.

In any event, while the caselaw is not clear, because Larkin had a legitimate, non-pretextual reason for not renting to Turner, the fact that his policy on occupation might be overbroad will be neither here nor there as he only needs one permissible reason not to rent.

III. Conclusion

Turner is unlikely to succeed on his claim for discrimination under the FHA. While he might be able to show that Larkin could apply his occupancy limitation in a narrower fashion to meet his stated purpose of not having his units overrun with young folks looking to avoid rent payments, he is unlikely to show that Larkin's preference for married individuals is pretextual because Larkin has stuck to his preference in his prior rentals and at the same time has been willing to rent to married individuals with children.

<u>ANSWER TO MPT 2</u>

Memo

Re: Professor Eugene Hagen IPRA request

To: Loretta Rodriguez

From: Examinee

Date: February 25, 2025

INTRODUCTION

On February 24, 2025, the University of Franklin (UF) received an Inspection of Public Records Act (IPRA) request from Paul Chen, a staff writer for The Daily Howl. The request is with regards to the recent suspension of law professor Eugene Hagen. The IPRA request asks for four categories of items: 1) annual performance reviews, 2) complaints about Professor Hagen from members of the public, 3) the names of anyone who has made a complaint about Professor Hagen, 4) records in possession of the UF Campus Police department. The following analyzes each category of document in order to assess whether UF must produce each of the requested documents.

STATEMENT OF FACTS

[Omitted]

LEGAL ANALYSIS

Pursuant to the Franklin Civil Code (FCC), every citizen has a fundamental right to have access to public records. *See* FCC§ 14-2, *Fox v. City of Brixton* (2018). Public records include all documents, papers ... 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, whether or not the records are required by law to be created or maintained." FCC§ 14-1. Citizens may request access to public records through written IPRA requests to the custodian of the records. FCC § 14-5. Although there is a presumption in favor of disclosure, *Fox,* the right to inspect is subject to enumerated limitations. FCC§ 14-2. Of particular importance to the instant case are the exemptions for 1) letters or memoranda that are matters of opinion in personnel files, and 2) portions of any law enforcement record that reveal confidential sources or methods that are related to individuals not charged with a crime. */d.*

Here, Mr. Chen appears to have appropriately requested public records using the procedure outlined in FCC§ 14-5. He submitted a written request to the Custodian of Records at UF and cc-ed the Chief of UF Campus Police. Ostensibly, these are the record custodians for the records requested. Therefore, each of the four categories of requested items must be taken in turn and analyzed pursuant to FCC§ 14-1 *et* seq. to determine what exactly must be produced to Mr. Chen pursuant to his IPRA request.

<u>Professor Hagen's Annual Performance Reviews</u>

As noted above, there is an exception to the general public record disclosure requirement for "letters or memoranda that are matters of opinion in personnel files." FCC§ 14-2(a)(3). In *Fox v. City of Brixton* (2018), the Franklin Court of Appeals considered what the legislature intended to include within the phrase "matters of opinion in personnel files." The court stated that the location of a record in a personnel file was not determinative of its disclosure-status. *Fox.* Rather, the dispositive factor is "the nature of the document itself." In general, the legislature intended for "information regarding the employer/employee relationship such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews" to be exempt from disclosure. */d.* The idea being that the exemption's intent is 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.

FCC § 14-6 states that 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. Although many letters or memoranda in a personnel file contain both matters of fact and matters of opinion regarding an employee's performance, the Franklin Supreme Court has held that FCC § 14-2(a)(3) applies to letters or memoranda *in their entirety. Newton v. Centralia School District* (2015). This full document exemption overrides the requirement in FCC§ 14-6. *Pederson v. Koob* (2022). A custodian need not disclose portions of the letters and memoranda solely because they do not contain an opinion.

Here, the Annual Performance Reviews were clearly generated by UF in support of the working relationship between the law school and Professor Hagen. Despite the fact that there are factual portions of the reviews, such as the notes regarding Professor Hagen's absences at committee meetings and office hours, as well as a list of classes he taught, committees he served on, and publications he completed, those factual portions need not be disclosed because of the aforementioned full document exemption. The performance reviews are primarily an assessment of Professor's ongoing performance as a faculty member, and as such are clearly letters or memoranda that are matters of opinion, and therefore are excluded from required disclosure pursuant to FCC§ 14-2(a)(3).

<u>Complaints About Professor Hagen</u>

When an employer maintains records of complaints in an employee's personnel file, those records may be subject to disclosure under the IPRA. As stated above, the fact that the complaints are located in a personnel file does not render them un-producible. *Fox.* Rather, the question is whether the document requested was generated to support the working relationship between the employer and employee. *Fox.* In *Fox,* the plaintiff requested all citizen complaints filed against a police officer. Although the city argued that the complaints related to job performance and were inadmissible, the plaintiff alleged that the complaints arose from the officer's role as a public servant, not his role as a city employee. */d.* The court considered the fact that the complaints in question were "voluntarily generated by the public" and not "generated by the City or in response to a City query for information," and concluded that they were not the type of "opinion" material the legislature intended to exclude from disclosure. */d.* Notably, the court stated that the fact that the complaints may bring "negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure." */d.*

There have been several complaints from students about Professor Hagen, but only one from a member of the public. The member of the public was Pamela Rogers, a mother of a current law student. Although her complaint is kept in the UF personnel file, it was "voluntarily generated" by a member of the public, not the city, and was not sent "in response to a City query for information." Therefore, like the complaints in *Fox,* the complaint submitted by Pamela Rogers will need to be disclosed in response to the IPRA request.

Student complaints should not be considered to come from members of the public. In request #3, Paul Chen specifically lists "students" as separate from "members of the public." Therefore, their complaints should not be included in the request for complaints by members of the public. Moreover, to the extent that the student evaluations constitute complaints, these evaluations were generated in response to a UF query for information, and would therefore probably be exempt from production on those grounds as well.

<u>Chart Containing the Names of Anyone Who Has Made a Complaint About Professor Hagen</u>

Despite the aforementioned presumption in favor of disclosure, the Franklin IPRA states clearly that it shall not be "construed to require a public body to create a public record." FCC§14-S(b). UF does not currently maintain a chart containing the names of people who have made complaints about Professor Eugene. Such a chart would need to be created, and it would take time to do so. Therefore, UF is not required to produce such a chart because of the rule stated in FCC § 14-S(b).

<u>UF Campus Police Records Involving Professor Hagen</u>

As previously discussed, there is also an exception to the general public record disclosure requirement 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 records from inactive matters or closed investigations to the extent that it contains the information listed in this paragraph." FCC§ 14-2(a)(4). The Franklin Supreme Court has held that this exemption does not bar the production of all law enforcement records relating to ongoing criminal investigations. *Torres v. Elm City* (2016). FCC§ 14-6 requires that requested law enforcement records containing both exempt and nonexempt information cannot be held in toto. Rather, when requested public records contain a mix of exempt and nonexempt information, the 'exempt and nonexempt [information] ... shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection"' *Torres* citing FCC§ 14-6(a); *Wynn v. Franklin Dept. of Justice.*

The UF Campus Police do not have any documents related to the arrest that led to Professor Hagan's DUI and subsequent suspension. Therefore, UF could try to argue that the records they do have are not relevant to Paul Chen's IPRA request, because the request is explicitly related to the DUI, per Paul Chen's email. However, this argument will likely be unavailing.

The UF Campus Police does have records relating to a recent arrest of Professor Hagen for possession of marijuana. This investigation appears to still be ongoing, but that does not exempt its records from disclosure. The arrest was the consequence of a confidential informant's tip, and the records include an incident report and two photographs. The incident report includes the name of the informant and the photographs show Professor Hagen and another Professor who was not charged with any crime related to the marijuana possession. Pursuant to § 14-2(a)(4), the information about the confidential informant and the information identifying the other professor *I* the photos clearly showing an individual (the other professor) not charged with a crime are exempt from production. However, the nonexempt information, meaning the remainder of the incident report, must be disclosed pursuant to FCC§ 14-6(a).

CONCLUSION

In conclusion, the complaint from Pamela Rogers and the UF Police incident report (with the name of the confidential informant and the other professor redacted) must be produced. All other documents, including performance reviews, student evaluations, and the requested chart are not required to be produced.

ANSWER TO MPT 2

To: Loretta Rodriquez, General Counsel, University of Franklin

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen matter

I. INTRODUCTION

You have asked me to assess whether we must produce each of the documents requested by Paul Chen pursuant to the Franklin Inspection of Public Records Act (IPRA) relating to Professor Eugene Hagen. Generally, the University would like to protect as many documents as possible from disclosure. In summary, (a) we do not need to disclose Hagen's annual performance reviews, (b) we do need to disclose the complaints from members of the public, (c) we do not need to produce a chart containing the names of anyone who has made a complaint about Hagen, and (d) we do need to disclose the records of the ongoing campus police investigation into Hagen, subject to the redactions that are described below.

II. REQUIREMENTS OF THE IPRA

The core purpose of the IPRA is providing access to public information, thereby encouraging accountability in public officials. Fox v City of Brixton. A citizen has a fundamental right to have access to public records. Id. Persons are entitled to the "greatest possible information regarding the affairs of government and the official acts of public officers and employees". Franklin Civil Code **(FCC)** §14 Declaration of Policy, cited in Torres v Elm City.

The IPRA accordingly provides that every person has the right to inspect public records, save where an exemption applies. FCC §14-2(a). Generally, the exemptions are narrowly drawn. Dunn v Brandt, cited in Torres v Elm City. "Public records" include all documents that are used, created, received, maintained or held by or on behalf of any public body and related to public business. FCC §14-1(a). To make a request, a person must submit a written request. FCC §14-5(a).

As a public body, the University of Franklin is subject to the IPRA. Chen has properly submitted a written request, by his letter dated February 24, 2025. Each of the documents he has requested are documents that, to the extent they exist, are used, created, received, maintained or held by the University and relate to its public business. Under the IPRA, each of the documents requested by Chen should be disclosed unless an applicable exemption applies. Therefore, consider each of the documents requested in turn.

III. HAGEN'S ANNUAL PERFORMANCE REVIEWS COMPLETED BY THE DEAN OF THE UF SCHOOL OF LAW FROM 2019 TO PRESENT

The IPRA exempts from disclosure "letters or memoranda that are matters of opinion in personnel files". FCC §14-2(a)(3).

The legislature intended to exempt from disclosure "matters of opinion" that constitute personnel information of the type generally found in personnel files. Fox. The purpose of this exemption is to protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of a working relationship between them. ld.

Specifically, this includes internal evaluations, disciplinary reports or documentation, promotion, demotion or termination information and performance reviews. Id. The Franklin Supreme Court has further held that the 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." Newton v Centralia School District, cited in Fox.

It is not possible to divide a document in this category into "matters of opinion" and "matters of fact". Newton v Centralia School District, cited in *Pederson v Koob*. The types of documents in scope are exempt as a whole. Pederson.

In *Pederson,* the appellant argued that an investigation into an employee of a public agency be split into factual matters and matters of opinion, such that the factual matters should be disclosed to the appellant. The court rejected this argument and prevented disclosure of the report in its entirety.

Here, Williams conducted annual performance reviews with Hagen. These included (a) internal performance evaluations by Williams, including in relation to concerns about Hagen's absences (b) summaries of student course evaluations, which included negative comments from student course evaluations from the past two years around Hagen's tardiness, unresponsiveness to emails, and moody and erratic behavior, and (c) general information, which included the classes Hagen taught, the quality of his teaching, the committees he served on, what publications he completed and the quality of his publications.

These detailed performance evaluations fall squarely within the exemption provided in FCC §14-2(a)(3). They are "personnel evaluations" or "performance reviews" that the

Franklin courts have repeatedly held are exempt from disclosure. Fox and Newton. The performance reviews contain a mix of Williams' opinions and matters of fact. However, the reports in their entirety are exempt from disclosure, given that they contain matters of opinion. Fox.

Therefore, Hagen's annual performance reviews are exempt from disclosure.

IV. ANY COMPLAINTS ABOUT HAGEN SUBMITTED BY MEMBERS OF THE PUBLIC TO THE UF SCHOOL OF LAW

As noted above, the IPRA exempts from disclosure "letters or memoranda that are matters of opinion in personnel files". FCC §14-2(a)(3). The purpose behind this exemption is noted above. The location of a record in a personnel file is not dispositive. Fox. Rather, the critical factor is the nature of the document itself. ld.

In *Fox,* the Franklin Court of Appeal held that complaints about a police officer employed by the city were *not* protected from disclosure. The Court noted that the complaints were not generated by the employer; rather they were unsolicited complaints about the officer, voluntarily generated by the public. While that could lead to disciplinary action, this did not make the complaints "matters of opinion in personnel files". The fact that police officers often receive complaints from disgruntled citizens and that complaints may have no foundation in fact did not shield the records from public disclosure. Police officers are "public officers" and the complaints concern the official acts of those officers.

Here, the University has received one complaint from a member of the public. It is a letter from Pamela Rogers, the mother of a current law student. Although the letter was placed by Williams in the personnel file of Hagen, its location is not dispositive and does not make the complaint a letter or memoranda that is a matter of opinion in a personnel file. Similar to the complaints in *Fox,* this complaint was unsolicited. It was voluntarily generated by the mother of a student. The fact that it could lead to disciplinary action does not change the analysis. Unlike the police officer in *Fox,* professors such as Hagen are not "public officers" because they are serving their students rather than the public at large. However, in favor of disclosure, it is clear that Chen already knows about Rogers' complaint. In his September 19, 2024 newspaper article Chen notes that Kate Rogers' mother had written a letter complaining about Hagen to Williams. Chen further quotes Pamela Rogers. Therefore, any potential privacy concerns Pamela Rogers about her complaint becoming known by Chen can be dismissed.

Therefore, the public complaint against Hagen by Pamela Rogers should be disclosed to Chen.

V. A CHART CONTAINING THE NAMES OF ANYONE WHO HAS MADE A COMPLAINT ABOUT HAGEN

The IPRA does not require a public body to create a public record. FCC §14-5(b).

Here, Chen has requested a chart containing the names of anyone who has made a complaint about Hagen. Cheryl Williams has confirmed that such a chart does not exist. Because such a chart does not exist, we are not required to produce one.

Therefore, we do not need to provide Chen with a chart containing the names of anyone who has made a complaint about Hagen.

VI. ANY RECORDS INVOLVING HAGEN IN THE POSSESSION OF THE UF CAMPUS POLICE DEPARTMENT

Portions of law enforcement records are exempt from inspection if they reveal confidential sources or methods or are related to individuals not charged with a crime. FCC §14-2(4). This exemption is not concerned with the stage of the investigation. Torres. If an investigation is ongoing, this is not material to whether the requested records could be withheld. ld. Rather, it is the specific content of the records that is relevant. ld.

Unlike in the case of personnel records, where the requested law enforce records contain both exempt and nonexempt information, the exempt and nonexempt information must be separated, and all nonexempt information made available. FCC §14-6(a), and Torres. For example, an Attorney General's audio recording relating to a financial investigation was required to made available for inspection after redacting 90 seconds relating to a confidential informant. Wynn v Franklin Dept of Justice, cited in Torres. The Franklin Supreme Court has held that the public body is required to review the requested law enforcement records, separate information that is exempt, and provide the nonexempt information. Torres.

Here, the University's police department have records relating to a recent arrest of Hagen for smoking marijuana. Hagen was smoking marijuana with another professor, Hope Sykes. Sykes was not arrested, because she had an insufficient quantity of marijuana to be charged with a crime. The records include three items: (a) an incident report and (b) two photos. The report includes details about the incident, including the time, date, location and name of the confidential source. It also includes a description of what the police officer observed and the statements made by Hagen and Sykes. The photographs show both Hagen and Sykes with the bong in Hagen's office.

The fact that the investigation is ongoing does not affect whether the materials can be disclosed. The police report in general should be disclosed. However, the portion of the police reports containing the name of the confidential source must be redacted. Further, because Sykes was not charged with a crime, she should be redacted from copies of the photos and her name and her statements redacted from the report.

Therefore, the police report should be disclosed, but we must make the redactions described in the prior paragraph before disclosure.

VII. CONCLUSION

In conclusion, (a) we do not need to disclose Hagen's annual performance reviews, (b) we do need to disclose Pamela Roger's complaint, (c) we do not need to produce a chart containing the names of anyone who has made a complaint about Hagen, and (d) we do need to disclose the records of the ongoing campus police investigation into Hagen, subject to the appropriate redactions described above.