

# University of Arkansas FOIA Task Force

## Report & Recommendations

### April 24, 2014

#### FOIA Overview & Challenges

Any Arkansas citizen may make a request for public records as outlined in the Arkansas Freedom of Information Act (FOIA), one of the broadest “open records” laws in the nation. Adopted in 1967, the Act’s intent is to ensure that “public business be performed in an open and public manner,” a hallmark of a democratic society. More information about the Act is available in Appendix A.

Public entities are tasked with responding to FOIA requests by providing prompt access to requested public records, while at the same time complying with the mandatory exemptions in the Act, including provisions that protect personal privacy. For example, the federal Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment, restricts the disclosure of student education records and is the subject of a specific exemption to the Arkansas Freedom of Information Act. Public entities must notify officials who may have potentially responsive records about the specifics of the request, assisting them to search for and gather the records, while also seeking to understand which exemptions may apply, then reviewing, and possibly redacting portions of records before providing a response. While the aims of FOIA are noble, depending on the type and scope of the request, the response effort can be time consuming and providing responses within the three working days allowed by the statute can be difficult.

#### About the Task Force

Chancellor G. David Gearhart appointed this Task Force in February, 2014, for the purpose of updating the existing campus policy to comply fully with the new Board of Trustees policy concerning FOIA, to enhance the ability of the campus to respond to FOIAs in the most efficient and effective manner possible, and to educate and inform all members of the campus community about the University’s legal obligations under the statute. Members (listed in Appendix B) were appointed based on previous media experience and/or experience with coordinating and responding to FOIA requests. Members believe strongly in providing ready access to public records and are committed to assisting the University to meet its obligations under the law in a prompt and efficient manner. The Task Force’s goal is to comply with each component of Chancellor Gearhart’s charge, and at the same time, the Task Force aspires to make useful information about the University widely available to the people of Arkansas.

This Task Force, among other activities, carried out Chancellor Gearhart’s charge by engaging in the following:

- Reviewing and ensuring campus compliance with Board of Trustees Policy 270.1
- Soliciting and listening to the experience of media members, including critics
- Discussing and evaluating the university’s responsiveness
- Identifying and standardizing any process improvements to enhance responsiveness
- Investigating new practices designed to ease administrative cost, both in time and resources, when possible and consistent with full compliance
- Implementing select processes, procedures and projects related to the task force’s findings

In addition to holding regular meetings to discuss and evaluate all aspects of the FOIA response process on campus, the Task Force hosted a listening session in order to provide an opportunity for news media to communicate challenges they may have faced regarding FOIA requests to public entities and to present ideas that might help facilitate the free flow of public information.

Our goal is to facilitate convenient and responsive access to public records maintained by the University and, when possible, streamline administrative obligations. After considering various approaches and processes, we have outlined a set of recommendations.

## Background for Recommendations: FOIA at the University of Arkansas

While evaluating the need to modify and enhance University practices with respect to FOIA, the Task Force sought to understand the current scope and nature of open records requests on the campus in order to make informed recommendations in this report.

In the first three months of 2014, for example, the University received approximately 100 FOIA requests — an average of one new request every five hours of the working week — for an average of nearly eight requests per week. The volume of the University’s responses to those requests, varying from individual documents to hundreds, even thousands of pages in some cases, totaled at least 28,097 pages.

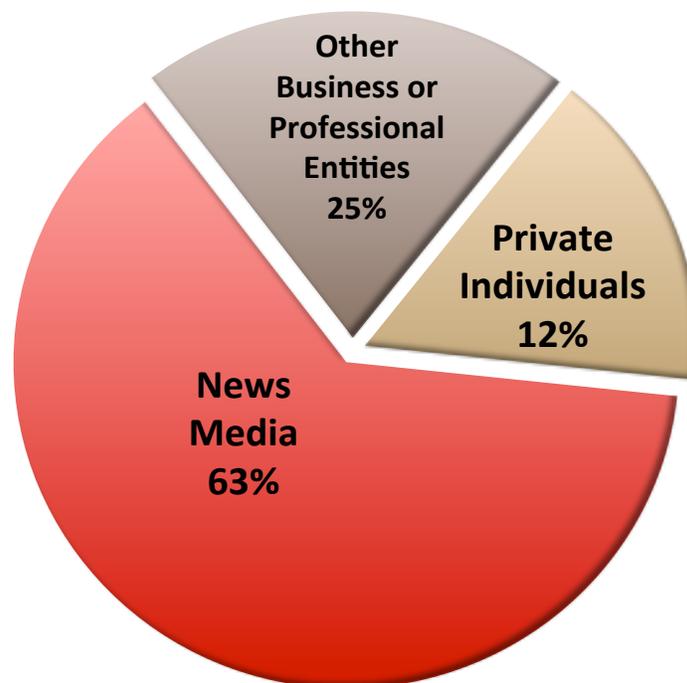
The individuals and organizations that request records from the University of Arkansas generally fall into one of three main categories:

- Representatives of news media
- Representatives of other business or professional entities
- Private individuals

The following graph provides a snapshot of who has submitted FOIA requests to the University of Arkansas in the first quarter of 2014.

# Who's Submitting Requests?

*FOIA Requestors by Type: University of Arkansas: January – March 2014*



The types of requestors varied for different areas of the University (based on the totals for the first quarter of 2014) as follows:

Requests for **Academic and Administrative** records – (51 total)

- News media – 57% (29)
- Other business or professional entities – 21.5% (11)
- Private individuals – 21.5% (11)

Requests for **Police Department** (UAPD) records – (2 total)

- News media – 50% (1)
- Other business or professional entities – 50% (1)
- Private individuals – 0%

Requests for **Athletics Department** records– (47 total)

- News media – 70% (33)
- Other business or professional entities – 28% (13)
- Private individuals – 2% (1)

The University's academic and administrative units, Police Department, and Athletics Department generally receive most of the FOIA requests submitted to the University. The coordination of these requests has been handled independently of one another, for the most part, in the past.

While the University has not routinely recorded the total number of FOIA requests it receives, the number of pages provided in response, or the administrative costs associated with responding to these requests, the Task Force thought estimates would be useful in understanding current activity levels. The estimates provided are as follows:

- In the 15-month period between Jan. 1, 2013, and March 31, 2014, the University received at least 287 FOIA requests, totaling at least 54,422 pages worth of records provided.
- In October 2013, University employees directly involved in FOIA requests were asked by University Relations to estimate the amount of time they spent gathering, reviewing, preparing, and responding to FOIA requests for that single month. The totals from more than 50 employees representing multiple colleges, units and departments included 760 hours of time spent responding to FOIA requests, including searching for and assembling responsive records and preparing the records for release, including reviewing records for exempt information and redacting exempt material.
- Developing an accurate yearly estimate of the time required to facilitate FOIA responses is difficult as the number of requests received monthly, the volume of each request, and number of hours spent on each request varies greatly. For instance, the October period included a couple of extensive media requests.
- However, if the October 2013 time estimate were extended to a 12 month period, university employees would require an estimated 9,120 hours to prepare FOIA responses for one year. To provide perspective, 9,120 hours equates to more than 1,140 8-hour days or more than 228 40-hour weeks. Based on the estimate of 9,120 hours per year, it would require the equivalent of nearly four and a half (4.4) full-time university employees working solely on preparing FOIA responses for a full year to fulfill that year's FOIA requests.

Members of the Task Force are mindful of the challenges presented by the increasing volume and complexity and diffusion of public records across campus. As the University has grown and the world has become more technological, so has the scope and sophistication of University activity and the ever-increasing number of digital records generated in the operations of the University.

In order to reinforce the urgency of time and responsiveness, the Task Force wishes to prepare the campus community for their potential role in helping the university meet its obligation.

The Arkansas Freedom of Information Act has been amended since 1967 from the perspective of requestors to reflect the emergence of electronic records, but the statute has not been amended to reflect, in a realistic manner, the increasing challenges of responding to electronic records requests. For instance, no one could have predicted more than 45 years ago that FOIA submissions might include requests for e-mail correspondence among numerous individuals on multiple topics over a period of months or years. Understand, these types of requests can be extremely time consuming, both in the searching and gathering portion of the process but also in the reviewing and redacting part of the process, as public entities must consistently balance their obligations to provide public records with other laws and exemptions that prohibit the release of specific types of information.

In addition to allowing public entities to recoup material costs (paper, CDs, postage, etc.) associated with responding to FOIA requests, some state FOIA statues also allow public entities to recoup, on a routine basis, the costs of the time associated with preparing responses (searching, gathering, reviewing, and, where necessary, redacting records). Such provisions 1) help public entities defray costs of responding and 2) help ensure some correlation between the value of the information sought and the time taken from other public duties in providing access to responsive material. However, the Arkansas FOIA statue does not include this provision with respect to time spent by existing agency personnel.

## Recommendations

### I. Coordination/Process

- Consistent with Board Policy 270.1, a Campus Coordinator for FOIA has been appointed in University Relations. The Campus Coordinator can be a resource to all units and work with FOIA coordinators and custodians of records across campus, as well as the General Counsel's office, to help ensure that all requests from Arkansas citizens are responded to in a timely manner and consistent with legal requirements.
- Consistent with the Board Policy and to assist in monitoring the status of requests, the Campus Coordinator is responsible for keeping an accurate record of all FOIA requests received, including the name and contact information of each requestor, the date on which the request is received, the date on which the University responds, and any other information demonstrating the compliance by the campus for each FOIA request.
- Communications directors and others with appropriate institutional roles in the units, colleges, and schools will be designated as FOIA coordinators within their areas to facilitate FOIA responses and share information with leadership in their areas. The goal of this recommendation is to increase the efficiency and speed of FOIA coordination by putting requests first in the hands of those with the most knowledge both of the FOIA process and the areas that they are designated to coordinate in order to avoid any unnecessary delays in the response process.
- To ensure the most efficient response and compliance with FOIA, all **news media** FOIA requests should be made to the designated coordinator of FOIA requests for the campus in the Office of University Relations (Campus Coordinator), or to the FOIA coordinator for Athletics or the University of Arkansas Police Department (UAPD) for records maintained by those units. While this process is not mandated by law, because of their working knowledge of FOIA, these three officials are in the best position to facilitate prompt, coordinated, and complete responses to media requests, which frequently are among the most urgent requests received by the University.
- All **other (non-media)** FOIA requests should be directed either to the Campus Coordinator or the FOIA coordinator for the relevant school, college or unit, as designated in Appendix A
- Any University employee who receives a request for public records under the FOIA will promptly furnish the request to the appropriate FOIA coordinator for the school, college or unit. FOIA coordinators will immediately furnish FOIA requests to the Campus Coordinator. The FOIA coordinator(s) involved will notify the appropriate custodian of the records as set forth in Appendix A and will assist the custodian in complying with the request. The FOIA coordinator and the custodian will consult with the Campus Coordinator and the Office of the General Counsel in order to ensure that requests are handled in a manner that is consistent with this policy and all applicable legal requirements.
- If a verbal FOIA request is made, then the recipient of the request will first ask the requesting party to put his or her request in writing. If the person declines to do so, the recipient of the verbal request will then put the request in writing as he or she understands it. FOIA coordinators will acknowledge receipt of requests consistent with the Arkansas Freedom of Information Act. Additionally, to the extent possible, FOIA coordinators will make a good faith effort to keep requestors apprised of the status of requests throughout the process.

- University representatives should engage with members of the news media, when appropriate, to clarify questions and the nature of the information sought to help focus and clarify inquiries. The clearer the request, the easier it is for University officials to conduct a prompt search and identify and process responsive records in a complete and timely manner.
- Because of the volume, complexity, and diffusion of records across campus, and in order to ensure that responses are in compliance with governing law, a coordinated process of responding to FOIA requests is essential. Accordingly, responses by the University will be furnished to the requesting parties by designated FOIA coordinators or representatives of the Office of the General Counsel.

## II. Education/Training Recommendations

- FOIA training will be provided by the Office of the General Counsel for all designated FOIA coordinators and custodians as well as other interested employees across campus.
- New faculty and staff will receive information on responding to FOIA requests as a part of the employee orientation process.
- A process flow chart and information outlining “What to do if you get a FOIA request” will be distributed to staff members most likely to encounter FOIA requests across campus. The chart and other helpful FOIA information, included as Appendix C, will be made available on the University web site in the future.
- University officials will participate in or host periodic public presentations on the topic of FOIA, which may include presentations by or panel discussions including the Arkansas Attorney General’s Office and Arkansas Press Association.

## III. Administrative Support

- A public information officer position should be added to the Office of University Relations to assist with the volume of work generated by the FOIA response process. Because all colleges, units and departments across campus receive FOIA requests, the costs of coordinating requests including the cost for this position should be shared by the entire campus.

## IV. Policy Revisions

- Fayetteville Policies and Procedures 207.0 is currently being updated to reflect current practices and procedures and developments in the law since the policy was established, see Appendix D.
- Faculty and staff handbooks will be updated as appropriate to reflect the updates to Policy 207.0.
- A service component to the response procedure has been added to help ensure that citizens making FOIA requests are informed of the progress of the response and expected delivery in a timely manner.

## V. Materials and Other Fees

- The Arkansas FOIA statute allows public entities to charge for actual costs of photocopying and printing. The current amount charged by the University is .0475 cents per page. In addition, the University is permitted to charge the costs of transmitting the response (e.g., mailing or faxing costs).
- The charge for other materials, such as DVDs, is charged at the cost for the media, roughly \$5 per DVD, for example.
- The FOIA law permits charging for personnel time if a request cannot be completed using existing agency personnel. The Task Force believes that charging a requestor for external assistance should be considered when a request is so voluminous that responding to the request will substantially interfere with the unit's ability to conduct other operations for a day or more. See A.C.A. 25-19-105(d)(3)(A)(i).
- Such requests will be evaluated and the requestor will be provided with a cost estimate in advance.

#### VI. Posting Online

- We recommend that the University continue to explore appropriate opportunities to post records of broad interest to the University web site, including records that have been requested by FOIA. Posting copies of such records online generally satisfies the University's obligation to make the records available for inspection and copying under the FOIA.

#### VII. Proactivity

- Not only should the University acknowledge receipt of FOIA requests in a timely manner, as provided for in the Act, but University representatives should make good faith efforts to keep the requestor apprised of the status of the response throughout the process.
- This task force will regularly review our processes and implementation outlined in this report and reconvene as necessary.

## APPENDIX A

A FOIA handbook, a joint effort published by the Arkansas Press Association, the Governor of Arkansas, the Attorney General of Arkansas, the Society of Professional Journalists, the Arkansas Broadcasters Association, the Society of Professional Journalists, the Associated Press Broadcasters Association and the Associated Press Managing Editors, may be accessed here: <http://www.arkansaspress.org/publications/38-foi-handbook>

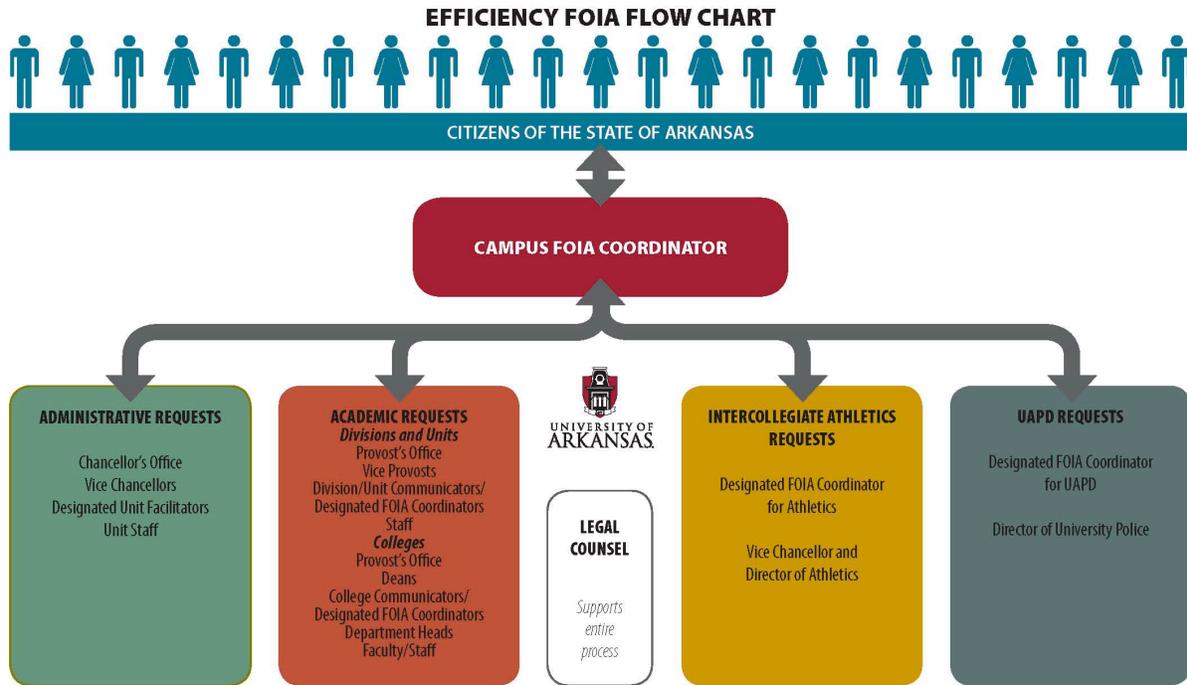
## APPENDIX B

### Task Force Members

- Laura Jacobs, convener, University Relations
- Mark Rushing, FOIA coordinator, University Relations
- Kevin Trainor, FOIA coordinator, Athletics
- Judy Schwab, Chancellor's office
- Gary Gunderman, Provost's office
- Charlie Alison, University Relations
- Steve Voorhies, University Relations
- Chris Branam, University Relations
- Gary Crain, FOIA coordinator, UAPD
- Darinda Sharp, J. William Fulbright College of Arts & Sciences
- Tim O'Donnell, Business Affairs office

Office of the General Counsel assists the Task Force in an advisory capacity.

APPENDIX C



**What should I do if I receive a Freedom of Information Act Request (FOIA) or open records request?**

- 1) Ask for the request in writing (to ensure understanding of the specifics of the request)
- 2) In an effort to increase efficiency of the response process, forward the request to all of the following individuals:
  - a. Your department head
  - b. Your college or unit communicator OR designated unit FOIA facilitator
  - c. Campus FOIA coordinator: foia@uark.edu
- 3) Be prepared to discuss the request with FOIA coordinators to ensure full understanding of exactly what is being asked for including who should be involved, what types of records are being requested, and during what time range(s)
- 4) Legal questions should be addressed to the Office of Legal Counsel: 479-575-5401

**Helpful Tips:**

- Please act immediately so the University can meet its obligations under the Arkansas Freedom of Information Act
- Keep date range(s) of request in mind as you are searching
- Print or copy potentially responsive records on one-sided paper
- Do not number pages (turn off any default page-numbering printing features)
- Do not staple records – instead label stacks/folders as appropriate

**Freedom of Information****Purpose**

The purpose of this policy is to help guide the University's compliance with the Arkansas Freedom of Information Act (FOIA or Act) and with Board of Trustees Policy 270.1. This policy summarizes the University's responsibilities under the open records and open meetings provisions of the Act, and outlines campus procedures for compliance with the Act. The procedures outlined in this policy are designed to be consistent with the letter and spirit of the FOIA; however, in the event of any conflict, any statutory requirements shall take precedence, and this policy is not intended and shall not be interpreted to create additional rights or obligations beyond those created by law.

**Part 1: Public Records****Process Overview**

To help ensure that the information requested is clearly specified, all FOIA requests to the University should be made in writing.

To ensure the most efficient response and compliance with FOIA, all **news media** FOIA requests should be made to the designated coordinator of FOIA requests for the campus in the Office of University Relations (Campus Coordinator) or to the FOIA coordinator for Athletics or the University of Arkansas Police Department (UAPD), for records maintained by those units.

All **other (non-media)** FOIA requests should be directed to the Campus Coordinator and the FOIA coordinator for the relevant school, college or unit, as designated in Appendix A to this policy.

Any University employee who receives a request for public records under the FOIA shall promptly furnish the request to the appropriate FOIA coordinator for the school, college or unit. FOIA coordinators will immediately furnish FOIA requests to the Campus Coordinator. The FOIA coordinator(s) involved will notify the appropriate custodian of the records as set forth in Appendix A and will assist the custodian in complying with the request. The FOIA coordinator and the custodian shall consult with the Campus Coordinator and the Office of the General Counsel in order to ensure that requests are handled in a manner that is consistent with this policy and all applicable legal requirements.

If a verbal FOIA request is made, then the recipient of the request will first ask the requesting party to put the request in writing. If the requestor declines to do so, the recipient of the verbal request will then put the request in writing as he or she understands it. FOIA coordinators will acknowledge receipt of requests consistent with the Arkansas Freedom of Information Act. Additionally, to the extent possible, FOIA coordinators will make a good faith effort to keep requestors apprised of the status of requests throughout the process.

Because of the volume, complexity, and diffusion of records across campus, and in order to ensure that responses are in compliance with governing law, a coordinated process of responding to FOIA requests is essential. Accordingly, responses by the University should be furnished by the designated FOIA coordinators, or representatives of the Office of the General Counsel.

The Campus Coordinator will keep an accurate record of all FOIA requests received, including the name and contact information of each requestor, the date on which the request is received, the date on which the University responds, and any other information demonstrating the compliance by the campus for each FOIA request.

**Section 1.01. Definition of Public Records.**

All records maintained at the University that are required by law to be kept or are otherwise kept and that constitute a record of the performance or lack of performance of official functions are generally considered to be "public records" under the law. The FOIA is applicable to data compilations in any format, including papers, email, microfilm, microfiche, computer disks and tapes, and audio and video recordings.

#### Section 1.02. **Custodian.**

For purposes of this policy, the Chancellor is the custodian of all records maintained at the University. Because institutional records are not maintained in a central location on campus, the Chancellor has designated various administrators as custodians of particular records and FOIA Coordinators to facilitate requests and responses, as set forth in **Appendix A**.

#### Section 1.03. **Requests for Records.**

(a) Any citizen of the State of Arkansas may request records pursuant to the FOIA. Such requests should be made, in writing, to the Campus Coordinator or the FOIA coordinator for the relevant records or unit as designated in Appendix A.

(b) A University employee who receives a misdirected request shall promptly forward it to the Campus Coordinator and shall so notify the requester.

(c) A request shall identify the records in question with sufficient specificity to enable the custodian or other University employee familiar with the subject matter to locate the records with a reasonable amount of effort.

#### Section 1.04. **Response to Requests.**

(a) Virtually all records maintained at the University are either in active use or storage. If that is the case with respect to the requested records, the Campus Coordinator or the FOIA Coordinator shall certify that fact to the requester in writing and set a date and time within three working days at which time the custodian shall (i) make available for inspection and copying those records subject to disclosure, and/or (ii) advise the requester that particular records are exempt by law from disclosure, do not exist, or cannot be located.

(b) Upon receiving a request for personnel records, employee evaluation records, or job performance records, the custodian shall determine within twenty-four hours of the receipt of the request whether the records or a portion thereof are exempt from disclosure and make efforts to the fullest extent possible to notify the person making request and the subject of the records of that decision. The custodian, the requester, or the subject of the records may immediately seek an opinion from the Attorney General as to whether the records or a portion thereof are exempt from disclosure. In the event of such review by the Attorney General, the custodian shall not disclose the records until an opinion is issued. Should the custodian disagree with an Attorney General's opinion that the records or a portion thereof are subject to disclosure, he or she shall promptly advise the requester of that decision and state the reasons therefor.

(c) If the custodian has any question as to whether a requested record is subject to disclosure, he or she shall immediately seek advice from the Office of the General Counsel. The final decision as to disclosure of records rests with the Chancellor.

(d) If the requested records appear to be related to an ongoing law enforcement investigation by the campus police, the custodian shall refer the request to UAPD.

(e) Any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt by law from disclosure.

(f) The custodian is under no obligation to create a new record by compiling and collecting information in the manner specified by the requester. Moreover, the custodian is not required to search records for particular information.

### Section 1.05. **Inspection and Copying.**

(a) The custodian shall permit the inspection of records subject to disclosure during regular business hours, at a time and in a manner that does not interfere with normal office operations. The custodian shall provide the requester reasonable comforts and facilities for such inspection.

(b) The requester may copy any records made available for inspection under paragraph (a) of this section, but may not remove such records from the office of the custodian. Such copying may be done by hand or with the requester's own equipment.

(c) For the convenience of the requester, the custodian shall, on application, furnish copies of the records within a reasonably prompt period of time. However, the custodian shall not provide copies of any copyrighted records without the express authorization of the copyright owner. The cost for photocopies shall be listed in Appendix B to this policy, and updated from time to time, which shall reflect the actual costs of reproduction, including costs of medium of reproduction, supplies, equipment and maintenance. Reasonable copying charges for records in other formats shall be established by the Vice Chancellor for Finance and Administration and shall be uniformly applied throughout the University. The University may also charge the actual costs of mailing, faxing or transmitting the record by other electronic means. Payment for all copying shall be made at the Treasurer's Office.

(d) Except for certain special requests provided by law, the costs of existing personnel time associated with searching for, retrieving, reviewing or copying records shall not be charged. However, in the event it should become necessary to engage additional personnel to comply with a request, such costs may be charged. Any unit which believes that additional assistance may be necessary to comply with a request should consult with the Campus Coordinator and the General Counsel's office.

(e) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

### Section 1.06. **Exemptions.**

The FOIA and other statutes exempt certain public records from disclosure. The records listed in this section are exempt and may not be made available for inspection and copying, except as provided herein. The list includes exemptions with particular application to the University but is not inclusive.

(a) **State Income Tax Records.** This exemption is not limited to income tax returns and thus includes payroll records that show the amount of tax withheld.

(b) **Medical Records.** Test results, doctor's evaluations, and similar records related to the treatment or diagnosis of an individual's medical condition are exempt.

(c) **Education Records** As defined under the Federal Family Educational Rights and Privacy Act (FERPA), except to the extent disclosure is consistent with FERPA. Education records are defined by FERPA as records that are directly related to a student and maintained by the University or a party acting for the University. There are exceptions to the definition, as well as certain provisions under which student education records may be disclosed without the student's consent. Note that education records which may be considered directory information under FERPA may be subject to a directory hold placed by a student and therefore exempt from FOIA.

(d) **Law Enforcement Records.** With the exception of routine police records such as arrest reports, records related to ongoing criminal investigations conducted by the campus police are exempt. Upon an administrative determination by the campus police that no criminal activity has occurred or that the investigation is otherwise at an end, the exemption no longer applies and the records must be disclosed upon request. If the campus police have turned the matter over to the prosecutor's office or another law enforcement agency, the status of the records for FOIA purposes will be determined by that office or agency. The exemption does not apply to routine police records that are not investigative in nature. Note that additional exemptions apply to law enforcement records, such as driver's license numbers and information directly identifying a sex crime victim.

(e) **Competitive Advantage.** This exemption applies to records which, if disclosed, would give an

advantage to competitors or bidders. It protects trade secrets and other proprietary information.

(f) **Personnel Records.** These records are exempt to the extent that their disclosure would constitute an unwarranted invasion of personal privacy. This exemption must be applied on a case-by-case basis; as a general rule, it includes records that contain intimate details of a person's life which, if disclosed, could subject him or her to embarrassment, harassment, disgrace, or loss of employment or friends. Some personnel records, such as medical or education records, may fall within other exemptions and therefore be protected from disclosure on that basis. Most records relating to current or former employees are personnel records, whether or not they are kept in a personnel file. However, the University directory listing students, faculty, and staff is not a personnel record for purposes of this exemption. Employee evaluations and job performance records are governed by a separate exemption, as discussed in paragraph (g) of this section.

(1) By statute, home addresses of nonelected employees are exempt from disclosure. The following personnel records have also been deemed exempt by court ruling or attorney general opinion: social security numbers, unlisted phone numbers, personal email addresses, religious affiliation, marital status and similar family information, welfare payments, payroll deductions, insurance coverage, credit union statements and similar personal financial records, and test scores on promotional exams.

(2) In contrast, the following records have been deemed open to the public: lists of names and race of employees; job titles and salary data; job applications and references; employment history; educational background, training and certification; records indicating whether employees had taken vacation time or sick leave; employment contracts; terms of a settlement releasing an employee from his contract; and letters of resignation.

(3) Regardless of whether they are open to the public, personnel records are available to the person about whom they are maintained or to that person's designated representative.

(g) **Employee Evaluation and Job Performance Records.** These records are not available for public inspection unless there has been a final administrative resolution of a proceeding to suspend or terminate an employee, the records formed a basis for the decision, and there is a compelling public interest in disclosure. Evaluation/job performance records of an employee who has resigned or has been reprimanded, demoted, or placed on probation are exempt, since there has been no termination or suspension of the employee.

(1) The term "evaluation records" includes memoranda, and preliminary materials associated with the evaluation process. Student and peer evaluations of faculty used for purposes of promotion and tenure are evaluation records.

(2) A "job performance record" is any record that details the performance or lack of performance of an employee with regard to a specific incident or incidents. This category includes such records as written reprimands, records of an internal investigation into alleged misconduct, and documents related to a recommendation for dismissal.

(3) Regardless of whether they are open to the public, employee evaluation and job performance records are available to the person about whom they are maintained or to that person's designated representative.

(h) **Library Records.** Documents or information in any format retained by a University library that identify a patron as having requested, used, or obtained services, books or other library materials are exempt. Such records may be disclosed only to the patron, a person whom the patron has designated in writing at the time disclosure is sought, or a law enforcement agency or court pursuant to a search warrant.

(i) **Personal Privacy.** By court decision, records are exempt if they contain sensitive personal information that would be harmful or embarrassing to a reasonable person if disclosed, unless this right to privacy is outweighed by the government's interest in making the information public. A case-by-case determination is required, and any record maintained by the University is potentially affected.

(j) **Computer Software.** By statute, public records exclude software acquired by purchase, lease or

license.

(k) **Computer Security Information.** By statute, measures, procedures, instructions or related data used to cause a computer or computer system or network to perform security functions are exempt from disclosure.

(l) **Banking information.** By attorney general's opinion, individual banking information is exempt from disclosure.

## Part 2: **Open Meetings**

### Section 2.01. **Meetings Covered.**

(a) For purposes of the FOIA, the Board of Trustees of the University of Arkansas is a governing body whose meetings are subject to the FOIA. Nothing in this campus policy applies to meetings of the Board.

(b) As a matter of University policy, the openness and notice requirements of the FOIA shall be deemed applicable to meetings of the Campus Faculty and the Campus Council, to the extent provided herein. Nothing in this policy precludes other bodies, groups, or organizations on campus from adopting rules and procedures governing their meetings.

### Section 2.02. **Notice**

(a) Notice of regular meetings of the Faculty Senate, the Campus Faculty and the Campus Council shall be furnished at least five working days in advance of the meeting to anyone who has requested such information in accordance with Section 2.04. The time, date, and place of the meeting shall be specified in the notice.

(b) Notice of special or emergency meetings shall be furnished at least two hours in advance of the meeting to news media that have requested such information in accordance with Section 2.04, provided that the news organization is located in Washington County, Arkansas, or, if located elsewhere, regularly covers the meetings. The time, date, and place of the meeting shall be specified in the notice.

(c) Notice under paragraphs (a) and (b) of this section shall be given even though all or part of the meeting is to be held in executive session.

(d) This section does not supersede other notice requirements that may be imposed by the Board of Trustees or the University administration.

### Section 2.03. **Responsibility for Giving Notice.**

The Office of University Relations shall provide the notice required under Section 2.02(a) & (b). The chair of the Faculty Senate, Campus Faculty, or the Campus Council, or his or her designee, shall inform the Office of University Relations of the time, place and date of the meeting. Such information shall be furnished in a timely manner to enable the Office of University Relations to meet the deadlines set forth in Section 2.02(a) & (b).

### Section 2.04. **Procedure for Requesting Notice.**

Any person or news organization who desires notice under Section 2.02(a) & (b) shall send a request for such notice, in writing, to the Office of University Relations. Such request shall specify whether it applies to the Faculty Senate, the Campus Faculty, the Campus Council, or each, and shall provide the name, address, and telephone number of the person to whom notice is to be furnished.

### Section 2.05. **Conduct of Meetings.**

(a) The right to attend a meeting is subject to the right of the Faculty Senate, the Campus Faculty and the Campus Council to prevent disruption and to conduct their meetings in an orderly manner. Members of the public and the news media may take photographs and make audio and video recordings at meetings, subject to reasonable limitations to prevent disruption.

(b) The right to participate in a meeting is determined by rules of the Faculty Senate, the Campus

Faculty, the Campus Council, the University administration, or the Board of Trustees. Nothing in this policy shall be construed as conferring such a right of participation.

(c) Any method of voting employed by the Faculty Senate, the Campus Faculty and the Campus Council shall ensure that those persons in attendance at the meeting are able to ascertain how each member voted on a given matter.

#### Section 2.05. **Executive Sessions.**

(a) An executive session of the Faculty Senate, the Campus Faculty or the Campus Council may be held to consider the awarding of honorary degrees and to consider any personnel issues in accordance with paragraph (b) of this section. An executive session of the above bodies shall be held to consider any matter pertaining to an individual student, unless the student consents to an open meeting. If the student consents to a public meeting, deliberations may be held in executive session.

(b) The following personnel matters may be considered in executive session of the above bodies: the promotion, demotion, disciplining, or termination of an employee, or conducted in public if the employee or prospective employee requests or if any evidentiary hearing is held, but deliberations may be held in executive session.

(c) If an executive session is permitted or required, the Faculty Senate, the Campus Faculty or the Campus Council shall first convene in public. Any member may move to hold an executive session, with the motion stating the purpose of the session and ground therefor. The members shall then vote on the motion. Upon the conclusion of an executive session, the members shall reconvene in public and formally vote on the matter considered in executive session. The identities of those considered for honorary degrees shall remain confidential, and the identities of the recipients shall be announced only at the direction of the Chancellor. The identity of an employee who was the subject of the executive session shall be disclosed, but the identity of a student who was the subject of such a session shall remain confidential, unless the student consents to the disclosure.

Revised July 9, 2014  
May 6, 1993

APPENDIX A (OF APPENDIX D): CUSTODIANS & COORDINATORS

**Campus FOIA Coordinator.** The FOIA coordinator for the campus designated by the Chancellor per Board of Trustees Policy 270.1 is the Director of Strategic Communications in the Office of University Relations.

**Custodians and Coordinators for Specific Units and Types of Records.** The following chart reflects the administrators who have been designated as custodians of particular records maintained by the University and the coordinators who have been designated to receive, manage and respond to FOIA requests in conjunction with the Campus Coordinator.

Type of Record	Designated Custodian	Designated Coordinator
1. Student Records		
• Academic	Registrar	Registrar
• Academic Dishonesty	Provost	Executive Director, Academic Initiatives and Integrity
• Financial Accounting	Treasurer	Associate Vice Chancellor for Finance/University Treasurer
• Financial Aid	Director, Student Financial Aid	Director, Student Financial Aid
• Student Conduct	Dean of Students	Director, Office of Student Standards and Conduct
• Center for Educational Access	Dean of Students	Director, Center for Educational Access
• Medical, Counseling	Director, Pat Walker Health Center	Director, Pat Walker Health Center
• Campus Life and Other Student Services	Dean of Students	Communications Director, Student Affairs
2. Financial, Business and Facility Records		
• Audits	Assoc. Vice Chancellor for Financial Affairs/University Treasurer	Director of Financial Management and Analysis
• Budgets	Assoc. Vice Chancellor for Budgets and Financial Planning	Assoc. Vice Chancellor for Budgets and Financial Planning
• General Accounts Receivable (Invoices Paid to the University)	Assoc. Vice Chancellor Financial Affairs/University Treasurer	Financial Systems Coordinator, Treasurer's Office
• Investment Records	Assoc. Vice Chancellor for Financial Affairs/University Treasurer	Director of Cash Management
• Research Accounting	Assoc. Vice Chancellor for	Director of Research

Records	Financial Affairs/University Treasurer	Accounting
• Procurement Records	Director of Business Services, Business Affairs	Director of Procurement
• Accounts Payable (Invoices Paid by the University and Travel claims)	Director of Business Services, Business Affairs	Manager Accounts Payable and Travel
• Telephone Records	Director of Risk and Property Management	Telephone Service Manager
• Other Financial Records	Vice Chancellor for Finance and Administration	Associate Vice Chancellor for Financial Affairs and University Treasurer
• Construction	Associate Vice Chancellor for Facilities	Director, Business & Support Services, Facilities Management
• Property	Director of Risk and Property Management	Director of Risk and Property Management
3. Academic Program Records		
• Specific Academic Program	Dean of appropriate school or college	Communicator for appropriate school, college or department
• General Academic Affairs	Provost	FOIA Coordinator, University Relations (as liaison to Provost)
4. Athletics Records		
	Director, Intercollegiate Athletics	FOIA Coordinator, Athletics
5. Law Enforcement Records		
	Director of University Police	FOIA Coordinator, UAPD Public Information Officer
6. Personnel Records		
• Personnel (staff/students)	Assoc. Vice Chancellor for Human Resources *	Associate Vice Chancellor for Human Resources
• Personnel (faculty)	Dean or department chair of appropriate school, college or unit #	Communicator for appropriate school, college or unit

\* Some staff/student worker personnel records may be maintained by the employee's school, college or unit.

# Some faculty personnel records may be maintained by Human Resources or the Office of the Provost.

APPENDIX B (of APPENDIX D)

Effective July 1, 2014, unless otherwise specified, the photocopying rate for 8.5" by 11" black-and-white copies provided in response to a Freedom of Information Act request is \$.0475 per copy. This rate is subject to being updated from time to time.