

Question MPT-2 – February 2025 – Selected Answer 1

MEMORANDUM

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

Following the suspension of Professor Eugene Hagen for a DUI conviction and a positive cocaine test, the a reporter at the student newspaper for Hagan's school, the University of Franklin (UF), has requested four documents pertaining to the incident from the UF Custodian of Records. The reporter's request falls under the Franklin Inspection of Public Records Act (IPRA), which grants every person to inspect public records EXCEPT records pertaining to physical or mental examinations, letters of reference concerning licensing or permits, letters or memoranda that are matters of personal opinion in personnel files, portions of any law enforcement record that reveal confidential sources or methods related to individuals not charged with a crime, and attorney-client privileged information (Franklin Civil Code § 14-2). The Code defines public records as "all documents, papers, letters... used, created, received, maintained, or held by or on behalf of any public body and related to public business" (*Id.* at § 14-1).

The records being requested are (1) Hagen's annual performance reviews from 2019 to the present; (2) any complaints about Hagen submitted by members of the public to the UF; (3) a chart containing the names of anyone who has made a complaint about Hagen; and (4) any records about Hagen in the possession of the UF Campus Police Department.

1. Hagan's performance reviews are not subject to disclosure because they contain matters of opinion in support of an employer's working relationship.

The IPRA protects matters of opinion in personnel files, which Franklin courts have construed to include "information regarding the employer/employee relationship such as internal evaluations, disciplinary reports... or performance reviews" (*Fox v. City of Brixton* (Fr. Ct. App. 2018)). According to a Dean at UF, Hagan's performance reviews contain general information such as the classes he taught, his teaching quality, committees on which he served, and the quality of any publications he had made. The Dean notes Hagan's last two performance reviews include references to negative comments made by students in their separately filed student evaluations.

Hagan's performance reviews are made in support of the working relationship between himself and the UF; courts have held that the personnel file exception to the IPRA was made to protect the employer/employee relationship (*Fox v. City of Brixton*).

Hagan's case is similar to that of *Newton v. Centralia School District*, in which a journalist sought staff personnel records under IPRA (Fr. Sup. Ct. 2015). The court in *Newton* held that the records were exempt from disclosure and that the disclosure 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" (*Id.*).

It should be noted that although Hagan's performance reviews contain non-opinion facts, such as information about the classes he taught, courts differentiate records which can be disclosed in part, such as police records, and records that must be disclosed or protected in whole, such as opinions (*Pederson v. Koob* (Fr. Ct. App. 2022)). Because the exemption under which the performance review falls protects the whole of the record, not just the portions to which the exemption applies, none of the document should be disclosed.

Under this interpretation of the exemption, Hagan's performance reviews, which were generated in support of the working relationship, are not subject to disclosure as matters of opinion.

2. The complaint written about Hagan by a member of the public is subject to disclosure because it is not the type of opinion intended to be protected by the IPRA.

The Dean of UF states that the only complaint from the public she has received about Hagan is a letter from the mother of a current student; the letter is in Hagan's personnel file. Although the IPRA specifically protects letters that are matters of opinion in personnel files, Franklin courts have held that "to hold that any matter of opinion could be placed in a personnel file, and avoid disclosure under the IPRA, would violate the broad mandate of disclosure embodied in the statute" (*Fox v. City of Brixton*). As a result, whether the letter falls under the exemption should be analyzed based on its own nature, not the fact that the Dean placed it in Hagan's personnel file. As opposed to Hagan's performance review, which was generated by the school as an annual requirement, the letter of complaint was unsolicited and sent voluntarily by a member of the public. This seems to exclude the letter from the expanded definition of letters of opinion proffered by *Newton*, which revolve around documents generated by an employee or employer in support of that relationship. The letter of complaint may have been referenced by Hagan's employer, but was not created by the employer for that purpose.

The question of the letter of complaint is similar to the situation in *Fox v. City of Brixton*, in which the city argued that public complaints about the actions of an on-duty police officer were protected from disclosure as a matter of opinion in the officer's personnel file. However, the court in *Fox* found that this argument goes against public policy by limiting the public from accessing complaints about a public official made by other members of the public. Similarly, because the letter of

complaint was made by a member of the public, it does not fall under the matter of opinion exception and should be turned over as was properly requested.

3. The UF likely does not need to create a chart containing the names of anyone who has complained about Hagan because the IPRA does not compel the creation of records.

The Dean of UF states that there is no such chart listing complaints against Hagan, but that she could make one although it would "take some time." The IPRA states that "nothing in this act shall be construed to require a public body to create a public record" (§ 14-5(b)). Because no such chart currently exists, the UF would have to create one, which is not something required by the IPRA. As a result, the reporter will not receive the non-existent chart and cannot compel the school to make one.

4. The police records may be disclosed but without any references to Professor Sykes, who has not been charged with a crime.

The only record regarding Hagan from the UF Campus Police is an arrest report in which Hagan was arrested two weeks ago for possession of marijuana. The report contains the arresting officer's description of the incident as well as statements made by Hagan and a Professor Sykes, who was with him at the time. Sykes was not arrested because she did not possess a sufficient amount of marijuana. The report also contained two selfies depicting Hagan, Sykes, and the bong being used.

The IPRA protects portions of police reports that reveal confidential sources or individuals not charged with a crime (§ 14-2). Records containing information that is both exempt and nonexempt should be separated before providing the nonexempt information to the person who requested the records (§ 14-6).

Although the IPRA limits the information in police reports that is subject to disclosure, the overall purpose of the IPRA is to ensure "that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees" (§ 14, *Declaration of Policy*). The exemptions to disclosure of police reports must be narrowly drawn. (*Dunn v. Brandt* (Fr. Ct. App. 2008)). Interpreting the exemption narrowly, the police report is subject to disclosure, but may not either include the identity of the confidential source that reported Hagan or of Sykes's involvement with the incident. The IPRA allows the redacting of relevant confidential information before being disclosed, such as in *Wynn v. Franklin Dept. of Justice*, which compelled the disclosure of an audio recording after redacting 90 seconds related to confidential informant information (Fr. Sup. Ct. 2011). Note that information regarding Sykes must be withheld because she is "an individual not charged with a crime" (§ 14-2(4)). This supports the interpretation of the IPRA through a plain language lens, as is supported by courts to promote public policy and prevent the IPRA from being interpreted too broadly (*Torres v. Elm City* (Fr. Sup. Ct. 2016)).

As a result, although the police report contains protected information, it should not be excluded in its entirety, but must be divided according to § 14-6. This may exclude the photos contained in the record entirely, unless they are cropped to conceal Sykes, but the written report is subject to disclosure provided that the confidential informant and information about Sykes is redacted.

Following the exemption to public disclosure outlined in the IPRA, Hagan's performance reviews and a chart of his complainants are not subject to disclosure, but the letter of complaint and police record both are and should be turned over to the reporter.

Question MPT-2 – February 2025 – Selected Answer 2

University of Franklin
Office of University Counsel

MEMORANDUM

To: Loretta Rodriguez, General Counsel
From: Examinee
Re: Professor Eugene Hagen Matter; Production of Requested Documents

EXECUTIVE SUMMARY

UF must release the public citizen report, and a redacted portion of the law enforcement report mentioning Professor Hagan under the IPRA law enforcement exception. UF need not release the personnel files of performance reviews, or the "chart" Mr. Chen requested, as these are covered by the personnel review exception, and UF is likely not a "custodian" of a chart that does not exist. (IPRA).

APPLICABLE LEGAL AUTHORITIES

Under the Franklin Inspection of Public Records Act (IPRA), the legislature intended to ensure that all persons are entitled to the "greatest possible information regarding the affairs of government and official public acts of public officers and employees." (Section 14); (Torres v. Elm City, Franklin Supreme Court, 2016).

Public records are defined as generally materials that are held by or on behalf of any public body, and relate to public business. (Section 14-1). Every person has the right to request under IPRA, but must request the record from the appropriate custodian. (Section 14-2, 5). Individuals may file a complaint in the courts in order to seek a court order compelling the release of IPRA records. (Pederson v. Koob, Franklin Court of Appeal, 2022). However, there are several listed exemptions, whereby the IPRA does not require disclosure of these records. The pertinent exemptions are as follows, construed in a manner favoring disclosure:

Personnel Files. (3) letters or memoranda that are matters of opinion in personnel files

Law Enforcement Records. (4) portions of any law enforcement records that reveal confidential sources or methods that are related to individuals not charged with a crime... (Id. at Section 14-2); (Fox v. City of Brixton, Franklin Court of Appeal (2018)).

PERSONNEL FILES EXCEPTION

The personnel files exception has found to be construed more broadly than the law enforcement exemption. A court looks to the content and nature of the document itself in determining the type of material--not the "location" of the file. (Fox v. City of Brixton, Franklin Court of Appeal (2018)). Even where the personnel files related to fraud, and potential criminal action, for example time sheet violations, the court held that these files concerning an independent investigation into employee conduct is "personnel files" intended to be exempted from disclosure under IPRA. (Pederson v. Koob, Franklin Court of Appeal (2022)) (finding no difference from reports containing "disciplinary matters of opinion" and matters of "fact"). The court held that these personnel files are not subjected to the redaction disclosures, as found in the law enforcement records exception. (Id.). The court in Fox lists several examples of "personnel files" for the purposes of the IPRA exemption, with key theme being varieties of documents generated and that are related to and support the "working relationship" between the employee and employer, including: internal evaluations, disciplinary records, promotion/demotion, termination, and performance reviews. (Fox).

Specifically regarding academic staff personnel records in a public school sought by a school newspaper, the court held that *no portion* of "nonacademic staff personnel records" held by the school were subject to disclosure, as they all were "documents generated by an employer or employee in support of the working relationship." (Id.); (Newton v. Centralia School, Fr. Sup. Ct. 2015).

But documents that are "unsolicited complaints about the on-duty conduct of law enforcement officers voluntarily generated by the public" are not protected just

because they may later related to the disciplinary and personnel action of law enforcement officers. (Fox).

LAW ENFORCEMENT RECORDS EXCEPTION

Courts have interpreted IPRA's law enforcement records exception to narrowly construe the statutory exemption from disclosure. (See, e.g., *Torres v. Elm City*, Franklin Supreme Court, 2016) (holding that whether the investigation is ongoing or not is immaterial to the disclosure, and instead, the exemption focuses on the *content* of the records). Furthermore, the Court in *Torres* severely limited this exception; instead of exempting law enforcement records that contain some exempted material and not others, the court will instead require that portions of inadmissible materials be redacted, and the rest of the report disclosed. (Id.); (*Dunn v. Brandt* (Fr. Ct. App. 2008) ("The exemptions to IPRA's mandate of disclosure are narrowly drawn."). In *Torres*, the court held that law enforcement must disclose records when the agency failed to establish that the requested records related to either confidential sources or methods, or that the records related to individuals not charged with a crime. (*Torres*). The court stated that even if the agency had established this, it would still have had to release the records upon redacting the nonexempt and exempt information. (Id.) (requiring disclosure relating to an ongoing investigation of aggravated assault, listed in police records).

ANALYSIS

Paul Chen, a reporter for a student newspaper organization on UF campus, has requested 4 separate documents from the university. Each is analyzed in turn:

1. Professor Hagan's annual performance reviews from the UF Dean, from 2019-present.

This category of documents is most likely to be protected by the IPRA disclosure exemption for personnel files. Personnel files that are at their core, related to the working relationship between employee and employer and not subject to disclosure under IPRA. (IPRA); (*Newton*). These reviews that UF holds are based on the performance of professor Hagan, UF's employee, created by his employer, and made for the purpose of evaluating his teaching methods at the university. This is the core of protected documents under IPRA. And the student evaluations included in these reports likely speak to the same materials as well. It does not matter that these reports also included information pertinent to Professor Hagan's disciplinary record. (See, e.g., *Pederson*) (holding that the employee reviews, even where allegations of fraud

and independent investigations were concerned, are still not subject to disclosure). And in Newton, the court held that the entirety of the personnel file is protected, and not subject to redaction. (Newton); (see above, discussion on difference from law enforcement records).

In Newton, the court found that a journalist seeking access to performance review of a teacher at a public school could not get access to the "non academic" staff personnel records, *including personnel evaluations* and other documents relating to opinions on performance and disciplinary actions. (Newton). This is distinctly akin to Professor Hagan's case here. While Newton's facts do not indicate whether the matters resulting in the personnel records were criminal in nature, as is here, the fact that no part of the records were subject to redaction or disclosure as a matter of law is inherently protective of these personnel records under IPRA.

As a result, the annual performance reviews of Professor Hagan are not subject to disclosure by UF, in whole or in part, because these are documents created in support of the workign relationship between the employee and employer, and are not subject to redaction and dislcosure of portions of the record. (Id.).

2. Complaints about Professor Hagan, submitted by the public to the UF university.

This category of documents will likely not be protected, as they appear to be substantially similar to the unprotected classification of public citizen reported documents as that found in Fox.

In Fox, the court held that public complaints submitted by citizens against officials in their official capacity are not "personnel records" within the IPRA exemption, and as such, must be disclosed. It does not matter that these complaints could later be used in disciplinary actions, because the "core" of the docuemtns were not centered on the workign relationship between the employee officer and employer law enforcement agency. (Fox). Here, the public report sumbitted by the parent to UF univiersty about professor Hagan is likely akin to the officer's non-exempted records in Fox. Both documents were created by a public citizen, related to the officials' official duty, and concerning matters that are not inherently related to their working relationship with their employer. Here, Professor Hagan's behavior was erratic, and reported by the concerned parent to the university. While this report certainly is invovled in Professor Hagan's future employment and determination, and even disciplinary actions, this is not enough to be a "personnel record" for the IRPA exemption. Fox. Furthermore, the location of the document itself does not matter. It does not matter that UF placed

the public report in Professor Hagan's personnel file, because the court merely examines the "nature" of the document, and not the location.

As a result, the complaint submitted by Professor Hagan is likely not exempted from disclosure by IPRA, and UF will need to release this complaint.

3. Chart containing names of anyone who has made a complaint about Professor Hagan.

Following the analysis in #2, above, this is similarly not likely to be protected from exemption under the IPRA, because the identity and reports themselves are not protected. If UF were in control of this document, it likely would not meet any exception to disclosure under the IPRA. Here, the facts state that Chen is seeking a chart containing the names of anyone who has made a complaint about professor Hagan. The IPRA requires disclosure of any public documents, "regardless of physical form," which would include a chart. However, UF would not likely be required to disclose the names and documents of any public reports that it has, as UF mentions in its email, but the IPRA does not expressly require the university to create any document for the use of the citizen. The school need only release documents that it is a "custodian" of. (IPRA). UF does not currently have any chart of names of people complaining about Professor Hagan. As a result, UF cannot likely be a "custodian" of a document that is not in existence.

Thus, UF will not need to disclose this chart, because it is not a custodian.

4. Any records involving Professor Hagan, possessed by the UF Campus Police department.

While a closer call, it is most likely that this report will be protected in part, subject to redaction when mentioning Professor Sykes, under the law enforcement records exception. The law enforcement records exception provides that reports concerning law enforcement are not subject to exemption unless it relates to confidential matters or matters that are on individuals who have not been charged. (Torres); (IPRA). The court held that even if portions of the record are exempted, the custodian must redact the nonexempted portions and release the record anyway. Furthermore, the distinction between the fact that UF is a "campus police" and not an official law enforcement agency likely is not material; the IPRA does not distinguish between "official" police departments, and instead requires disclosure of law enforcement records. (IPRA).

Chen is seeking "any records involving Professor Hagan, possessed by UF" campus police. First, UF does not need to release any record about Professor Hagan's DUI in May. This is because UF campus police does not have any record here, and as a result, cannot be the custodian of a document not in its hands. (See above, IPRA).

Secondly, however, the UF campus police must release, the recent arrest record of Professor Hagan from 2 weeks ago, involving the bong in his office and marijuana. First, none of the report from Chief Craft's email indicates that the report *itself* is confidential; merely that the tip for the arrest came from a confidential informant. However, there are portions of the report relating to the confidentiality of the informant, then UF should permissibly redact this part before releasing it. (Torres). The incident report from UF contains the name of the informant, and as a result, this should be redacted. Secondly, UF should redact any information in the report that relates to Professor Hagan; IPRA states that law enforcement records are exempted when they contain information relating to individuals who have not been charged. (Torres). Professor Sykes was not charged for this incident, because she did not have enough marijuana to be charged at the time of the crime. Furthermore, the IPRA protects more than just "reports" and includes photographs like the selfies that the professors took when using the bong on school property. (IPRA, section 14-1); (Wynn v. Franklin Dep't of Justice, 2011) (redacting portions of audio recording related to confidential police informant before releasing rest of audio under IPRA). It does not matter that this information "may" be relevant to an ongoing investigation--the court in Torres found that the report must be disclosed anyway. (Torres).

As a result, UF should release the report portions containing information about Professor Hagan, but can redact the portions of the report that relate to Professor Sykes, and the photographs of the two, and the name of the confidential informant.

CONCLUSION

Thus, UF should release complaints about Professor Hagan, and portions of the UF campus law enforcement record and most likely need not submit the performance review of professor Hagan under the personnel records exception, or the chart.