

# V.B. CONFIDENTIALITY OF EMPLOYEE RECORDS

(Source: *Offices of the President and Provost, December 5, 1980; revised, Almanac, October 6, 1981 and Personnel Policy Manual Policy No. 101; revised, Human Resources Policy Manual Policy No. 201, September 1, 1991 and Almanac, May 18, 1993; revised, Personnel Policy Manual Policy 201, March 29, 2005* (<https://www.hr.upenn.edu/policies-and-procedures/policy-manual/other-policies/confidentiality-of-records/>))

To insure confidentiality, uniformity, and accuracy of personnel information, it is the responsibility of Division of Human Resources/Information Management/Records (HR/IM/Records) to handle all inquiries, other than subpoenas, which require reference to documentary records concerning past and present staff of the University. Responses to the subpoenas are handled by the Office of the General Counsel. Inquiries received by other offices should be referred to HR/IM/Records. All subpoenas and inquiries from lawyers should be referred to the Office of the General Counsel.

Personnel records, including those established in connection with the selection process, are University property and are afforded confidential treatment at all times.

Individually identifiable personal information contained in computerized databases, whether maintained centrally or by schools, departments or other units, is afforded the same confidential treatment that applies to written records.

The Provost (or designee) shall administer this policy with respect to the records of faculty members. The Vice President for Human Resources (or designee) shall administer the policy with respect to the records of staff members. Deans and directors shall notify the Provost or the Vice President for Human Resources, as appropriate, of the name of the individual who shall serve as custodian for personnel records maintained in their areas of responsibility.

## Exceptions

This policy does not cover disclosures of information that are made on the basis of personal knowledge or recollection.

This policy does not apply to applicants for employment unless they are subsequently hired.

## Access to Records

Both active and retired members of the faculty and staff shall have the right of access to their records as described in this policy.

Individuals who are on leave of absence or whose employment has been terminated for reasons other than retirement with reemployment rights shall have the right of access.

Legal representatives of deceased faculty and staff members shall have the right of access for five years after the death of the individual.

Exceptions to the above may be granted by the Provost or the Vice President for Human Resources.

## Review of Records

A. An individual may review his/her records by making an appointment with HR/IM/Records during regular business hours. HR/IM/Records

shall assure that references to others that may be contained in the file are deleted for the purpose of the review. (For exceptions please refer to "Limitations on Review of Records," which follows later in this policy.)

- B. The review shall take place in the office where the records are maintained and in the presence of a designated staff member of HR/IM/Records.
- C. The individual shall sign a log indicating the date of the inspection of the records.
- D. If necessary, an individual may request copies of his/her records. There is no charge for copies of records referred to in the Occupational Health and Safety Act (OSHA) standards for access to medical records; for other records a reasonable charge may be made for reproduction costs.

## Correction of Records

If an individual considers a record to be misleading, if it contains a statement of fact that can be shown to be erroneous, or if it contains information that is not relevant, a correction may be requested.

The request must be submitted in writing to HR/IM/Records.

A request for correction of information such as date of birth must be accompanied by supporting documentation, for example, birth certificate or passport. The designated custodian of the records may consult the Provost (or designee) or the Vice President for Human Resources (or designee), as appropriate. On the basis of this consultation, the custodian should make the correction or indicate the reason why the request is denied.

If a correction is sought on an appropriate ground but is denied, the individual involved may submit for inclusion in the file a short statement explaining the grounds for the request and the correction sought. The Provost or the Vice President for Human Resources may submit a counterstatement, a copy of which is sent to the affected individual. Both statement and counterstatement shall be placed in the Personnel Record.

## Limitations on Review of Records

To protect against inappropriate disclosure of confidential information, certain records, including those containing confidential information about more than one individual and medical records, are not open to review by an individual who is a subject of the record. These records are maintained separately from other benefits records and may be available under separate policies or practices applicable to all recipients of care at the Hospital of the University of Pennsylvania or elsewhere at the University.

Individuals may not review the following:

- records that contain confidential information about other people;
- all letters of recommendation relating to the consideration of a faculty member for appointment, re-appointment, promotion or tenure, or staff member for employment, unless released by written consent of the author;
- documents including records concerning benefits that are being developed or prepared for use in civil, criminal or grievance procedures;
- records relating to the investigation of a possible criminal offense;
- medical and hospital records.

## Records That May Be Disclosed to Third Parties

Information contained in personnel records may be disclosed by the University without the written consent of the subject of the record when the Provost or Vice President for Human Resources concludes that a constructive purpose would be served or when required by law in the judgment of the Office of the General Counsel.

Unless specifically excepted from this policy, the content of personnel records may not be disclosed to third parties without the express written permission of the individual who is the subject of the record. The written permission must describe specifically the records to be disclosed and the persons to whom they are to be disclosed.

Except for disclosures of directory information and as required by law, the University shall notify any third party to whom disclosures are made that disclosures are made under the condition that the party shall not make any redisclosure of the information without the written consent of the subject of the record.

Certain substantive categories of information may be disclosed:

1. Penn makes certain directory information available to its staff, faculty, and students – and a more limited set of information available to the general public – so that the ordinary University business can be conducted. In some cases, individuals may "opt-out" of having certain data appear. In other cases involving more personal information, such as home contact information, individuals may "opt-in" to having their data appear. Also, individuals can often list organizational contact information, rather than personal contact information, in their directory entries. For more information on the levels of control individuals can exercise over their directory information in disclosures to Penn's faculty, staff and students and to the general public, see Appendix I., Directory Information Privacy Grid (<https://www.hr.upenn.edu/policies-and-procedures/policy-manual/other-policies/confidentiality-of-records/directory-information-privacy-grid/>).
2. Authorized Individuals: Personnel records may be disclosed to University officials, and authorized individuals performing work for the University who require the information for the performance of their duties.
3. Legal Requirements: The University may release personnel records in response to a lawful subpoena, warrant, or court order or if, in the opinion of the Office of the General Counsel, such records could be required by law to be produced for any reason, including disclosure to a government agency. Whenever possible, notice of disclosure shall be given in advance through the *Almanac* for general categories of personnel records or by mail for individual records.
4. Protection of University Interests: The University may disclose information contained in records to protect its legal interest when it believes the actions of an individual violate or have violated his/her conditions of employment or threaten injury to people or property
5. Collective Bargaining Agreements: Information may be disclosed as required under the terms of a collective bargaining agreement.
6. Emergencies: Information may be disclosed if, in the judgment of the designated custodian of HR/IM/Records, such disclosure is necessary to protect the health, safety or property of any person.

## Exemption to Third Party Disclosure Policy

The Office of Equal Opportunity Programs, Division of Human Resources and Office of the General Counsel are exempted from the above section, "Records That May be Disclosed to Third Parties."

## Record Retention Requirements

Records shall be maintained for the period specified by state or federal law, or longer at the direction of the Provost, the Vice President for Human Resources, the University Archivist or the General Counsel.

Records	Years
Affirmative Action records	7 years
Information Management/Records	5 years after death
Medical records relating to job qualification	30 years beyond termination date
Records relating to faculty appointment or promotion	5 years after death
Grievance records	5 years after death
Public Safety Records	5 years after death
Payroll <sup>1</sup>	7 years
Occupational Safety and Health Act (OSHA) records of exposure to toxic substances <sup>1</sup>	30 years
Applications (unsuccessful candidates) <sup>1</sup>	2 years

<sup>1</sup> Payroll, OSHA records and applications are retained according to this schedule and are not dependent on employment status.

The Department of Public Safety and the Hospital of the University of Pennsylvania shall develop their own record retention policies for security records and medical records.