



Privacy, Access, and Disclosure Law

Bryan Dearing
Associate General Counsel
bdearing@uoregon.edu

Topics We Will Cover



- Oregon Public Records Law
- FERPA
- Faculty Records Rule
- Subpoena & Summons
- Contact by Gov't Agents/Agencies

Privacy

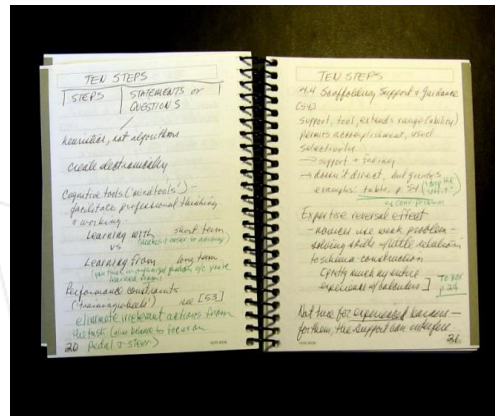
Access*

Disclosure



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What is a Public Record?



AND MUCH MORE!

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Here . . . and there!



AND EVERYWHERE!

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“Public Record”



Any writing that:

- (1) **Relates to the conduct of the public’s business;**
- (2) **Prepared, owned, used or retained by UO.**


- **“Writing” =**
 - Handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.



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“Public Body”



- **Public Body:** UO and every employee
 - Private Body, too: If it is determined to be the “functional equivalent” to a public body.
 - **How to Respond?**
 - Comply with or deny request.
 - Comply includes ability to withhold or redact if lawful.
 - **How quickly? . . .**
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New State Law = Less Time



- Must complete request in 15 business business days
 - (Acknowledge within 5 business days)
 - But there are ways to pause the clock
- New appeal rights
 - Failure to comply within a certain timeframe is a denial entitling requestor to immediately appeal.

Clock

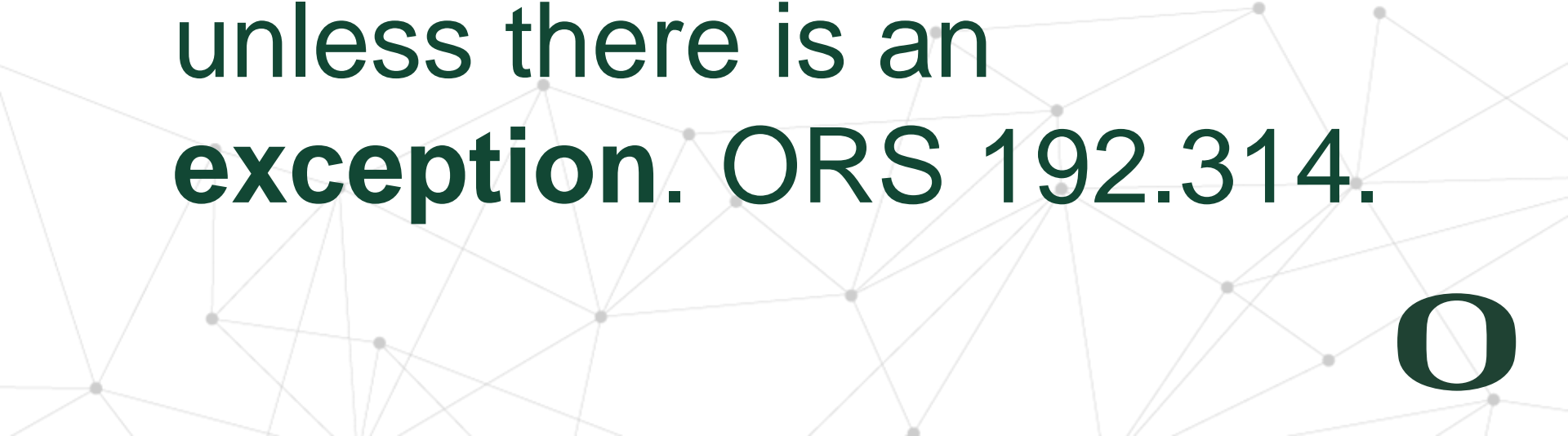


- **Starts:**
 - When written request is received by person identified in public body's procedure.
- **Clock Pauses:** when waiting for action by the requester:
 - Request for clarification
 - Request for payment of fee estimate
- **Stops:** When PRR is “complete”
 - Actual completion; OR
 - “Reasonable estimated date” provided



Default is Disclosure



- Anyone has a right to inspect any **public record** of a **public body** in Oregon unless there is an **exception**. ORS 192.314.
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Disclosure & Retention



- A “public record” for purposes of disclosure is not the same as a “public record” for purposes of retention.
- Disclosure broader than retention
 - *Examples...*
- Records Management Policy and new retention schedule.

Exceptions

- Different than exemptions in OPRL.
- Not “public records” at all.
- ORS 352.226(12):
 - Any category of personnel records specifically designated as confidential pursuant to valid standards or orders pursuant to this section is not a public record for the purposes of ORS 192.420.
- E.g., UO Faculty Records Policy (later)
- ***Scenarios . . .***

Exemptions



ORS 192.501 – “conditional”

- 37 listed exceptions
- Exempt from disclosure “*unless* the public interest requires disclosure in this particular instance.”

ORS 192.502 – “unconditional”

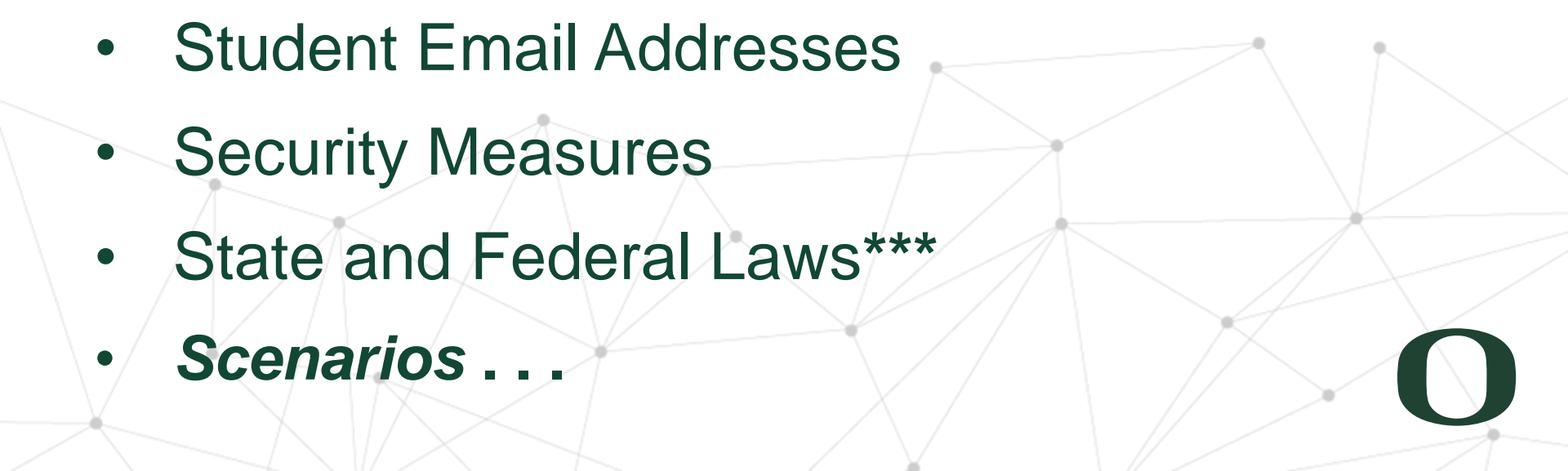
- 38 listed exceptions
- Most of which are not subject to balancing.

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Conditional Exemptions



- Trade Secrets
 - Test and Exam Material
 - Donation Records
 - Faculty Research
 - Student Email Addresses
 - Security Measures
 - State and Federal Laws***
 - ***Scenarios . . .***
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Unconditional Exemptions



- Internal Advisory Communications
- Personal Privacy
- Confidential Submissions
- State & Federal Law Exemptions***
- ***Scenarios . . .***
- **Sidebar: PECBA...**



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Fees

- **We may charge the requester fees reasonably calculated to reimburse us for actual cost of making records available.**
 - Locating, compiling, reviewing the records in order to delete exempt material, copying, etc.
 - Includes dep't time, PRO time*, OGC time*
 - Can charge if records not found or if exempt
- **Fee Waivers/Reductions: “public interest test”**
- **Appeals for denials**
- **Time estimates needed ASAP; document!**
 - Respond promptly to PRO email; they can help.
- **Communicate!**

Who Requests Public Records?

- Media (39%)
- Commercial Organizations (36%)
- Private (22%)
- Other (3%)



Which Records Are Requested?



1. Responses to Request for Procurement or Quotation
 2. Employment Contracts
 3. Vendor Contracts
 4. Invoices and Purchase Orders
 5. Financial Reports
 6. Student Directory Information
 7. Construction payroll
 8. Emails, texts messages re: specific projects
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Help! Someone Wants My Records!



Communicate! If you are contacted by a person or entity wanting to make a public records request, direct them to the PRO ASAP.

- If you receive the request via email, forward the email to pubrec@uoregon.edu
- If you receive the request via US mail, scan and email it to pubrec@uoregon.edu. Send the original via campus mail to the Office of Public Records
- Do not contact or provide documents to the requester directly. Follow the process!



Help! You Want My Records?




If you are contacted by the PRO:

- **Be proactive and cooperative!**
- **Communicate!** Talk with the PRO about what records you have and don't have. Ask questions!
- **Estimate your time in hours; act reasonably.**
- **Gather:** You are only being asked to gather records, not to review them. The PRO will determine what is exempt.
- **Err on side of more:** If you think it might be responsive, send it. When in doubt send it anyway, the PRO can make that determination.

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What is . . . FERPA?



- **F**amily **E**ducational **R**ights & **P**rivacy **A**ct of 1974
- Protects privacy of students' education records.


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FERPA's Big 4: Students



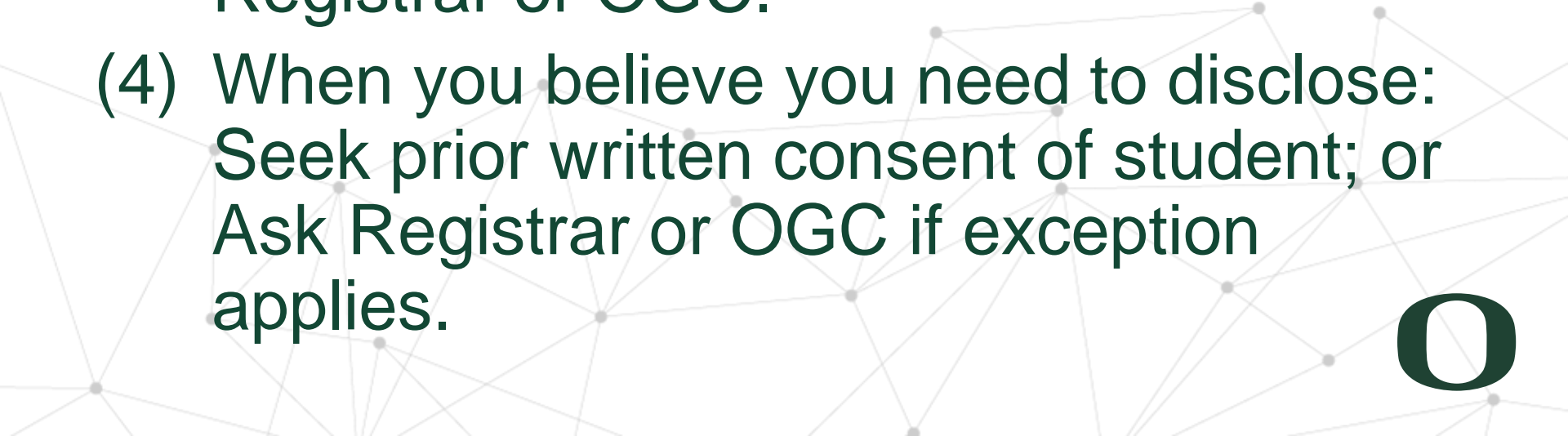
Students have the right to:

- (1) Consent to or block** disclosure of their “education records”;
 - (2) Inspect and review** their “education records” within 45 days of request;
 - (3) Seek to amend** their “education records”;
 - (4) File complaints** with USDOE re: alleged failures by schools to comply with FERPA.
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FERPA's Big 4: Faculty



- (1) Education Records are broadly defined;
 - (2) Err on the side of protecting the record;
 - (3) You and your UO colleague may be “school officials” under FERPA who are permitted to share the record. Ask the Registrar or OGC.
 - (4) When you believe you need to disclose:
Seek prior written consent of student; or
Ask Registrar or OGC if exception applies.
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FERPA: “Education Record”

- **Education Records = all records that are:**
 - (1) Directly related to a student; *and*
 - (2) Maintained by UO
- **“Record”**
 - Any information recorded in any way, including handwriting, print, electronic media, video, audio tape, film, microfilm/fiche.
 - But **not** information that is not “recorded” (i.e., personal knowledge), or sole possession records.
- **“Student”**
 - Any individual who is or has been **in attendance** at UO
 - Applicants aren’t students until they accept & **attend**
 - ‘Til death do us part.

Restrictions on Disclosure of Education Records



- FERPA requires that education records of a student not be disclosed without the prior written consent of the student.
- A student's rights to privacy of education records is created when the student enrolls and remains even after the student leaves UO!

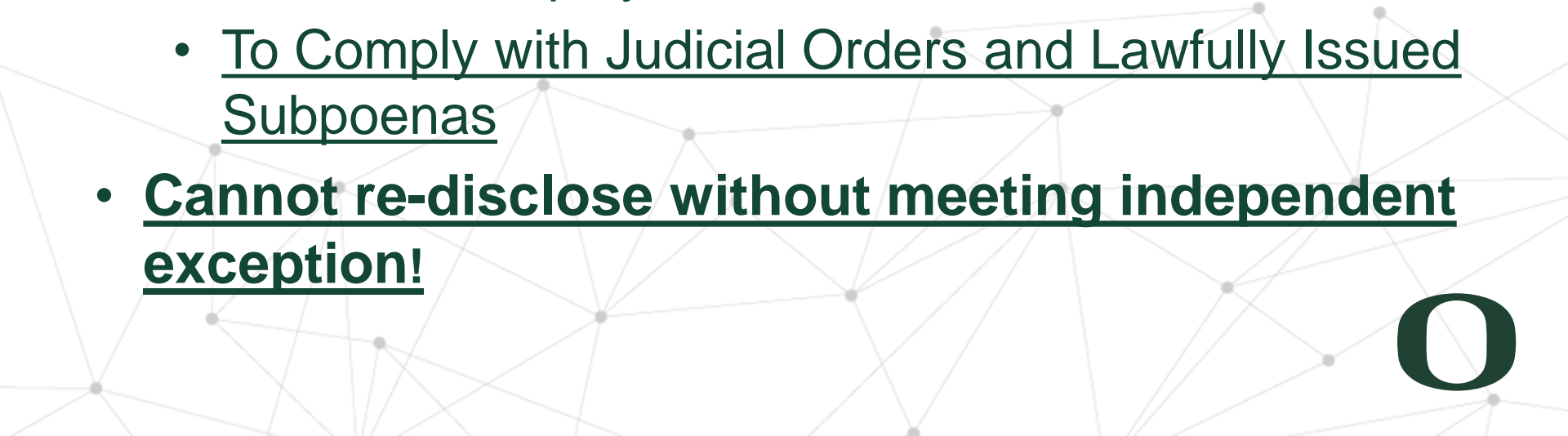
Restrictions on Disclosure of Education Records – cont'd



- Education records shall not be disclosed absent
 - (1) prior written consent by student; OR
 - (2) under an exception to (1)
- Consent must be signed, dated, and specify:
 - (a) the specific records that may be disclosed;
 - (b) the purpose for which they may be disclosed;
 - (c) the persons to whom they may be disclosed.

FERPA Exceptions



- **Exceptions to prior written consent (examples):**
 - Directory information (unless opt-out)
 - School Officials
 - Health & Safety Threats
 - Law Enforcement records
 - Exclusive Employment records
 - To Comply with Judicial Orders and Lawfully Issued Subpoenas
 - **Cannot re-disclose without meeting independent exception!**
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Where are Education Records Located?



AND EVERYWHERE!

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What Are Not Education Records?



Examples:

- ❖ Alumni records
- ❖ Employment records, excluding those for work-study students
- ❖ Records in possession of the maker and not accessible by others
- ❖ Records of applicants to the university who did not attend

Directory v. Non-Directory



- ❖ Student's Full Name
- ❖ Mailing Address
- ❖ Phone #
- ❖ Email address
- ❖ Class level & major
- ❖ Enrollment Status
- ❖ Dates of attendance
- ❖ Degrees, Honors, Certificates Awarded
- ❖ Participation in officially recognized UO activities

- ❖ UO ID number
- ❖ PAC
- ❖ DOB
- ❖ Gender
- ❖ Ethnicity
- ❖ Parent names & addresses
- ❖ GPA, grades, or work
- ❖ Current term credits or class schedule
- ❖ *Many more categories...*

<https://registrar.uoregon.edu/records-privacy>



FERPA QUIZ #1



Which of the following UO employees have a legitimate educational need to access records of Tom Smith, a current student?

- A. The Dean who is a family friend of Tom's parents and wants to check on his progress for them?
- B. Tom's advisor who needs to review his academic progress to properly advise on which classes to take?
- C. A work study student who is Tom's roommate and wants to pick up his exam from his professor?
- D. Tom's supervisor in bookstore who wants to see his class schedule in order to set schedules?
- E. All of the above



FERPA QUIZ 1 – Answers



B is correct.

- A. Tom's advisor needs to see his records for purposes of reviewing his academic progress and giving appropriate advice.
- B. Desiring to update family friends on their child's progress is not a legitimate need to know Tom's grades.
- C. Tom's roommate, even if a work study employee of UO, does not have an educational need to access Tom's records. The professor should give Tom's exam paper only to Tom.
- D. Tom's supervisor in the bookstore has no educational need to see any of Tom's records, including his class schedule.

FERPA Quiz 2 – T or F

- It is permissible for a faculty member to post student grades on her office door.
- It is permissible for a faculty member place graded exams on table for pickup.
- Colleges must annual notify students of their FERPA rights.
- In a legal separation or divorce situation, biological parents have equal standing with custodial parents to access education records.
- Student consent is required before UO releases info to a national research org doing a study on advantages and disadvantages of selective admissions.
- It is permissible for an employment agency not connected with UO to share a student's transcript with a prospective employer so long as student has given written permission to UO to provide transcript to employment agency.

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Faculty Records Policy

Four decades

- OAR 571 to UO FRP and Definitio of Unclassified Staff.

Key Terms

- Faculty → Academic + OAs
- Personal Records
 - Laundry list
 - Evaluative
- Directory Information
- Legitimate Business Need.
- Exceptions
- Subpoenas (& Notice)



Subpoenas



- Writ/order **commanding person to do** a specified act.
- Form, content, service of and responses are governed by state or federal rules of civil or criminal procedure.
- Types of Subpoenas (*Ad Testificandum*; *Duces Tecum*)
- Disobedience → Contempt
- **UO Subpoena Rule:**
 - If you receive a subpoena relating to your duties or activities at UO you must notify OGC send subpoena to OGC ASAP!
 - **You should not accept service, respond to the subpoena, or provide documents prior to consulting OGC.**
 - Do same for subpoenas for UO student records (FERPA req.)
- If the matter is unrelated to work at UO, we cannot assist you. You should hire & obtain advice from personal attorney.



Summons



- A **summons and complaint** are the documents used to initiate a lawsuit. A summons will generally be accompanied by a complaint that describes the allegations on which the lawsuit is based.
- If you are named individually in a lawsuit that is related to your position at the university, please contact the OGC immediately.
- If the matter is unrelated to the university, you do not need to contact OGC and you should consider contacting a personal attorney. You can obtain a referral [here](#).

Subpoena/Summons Questions



An agent or process server asks me how to serve a subpoena or summons on my office or the university. What should I do?

- Please explain to the individual that you are not authorized to accept service on behalf of the university and refer them to OGC. OGC is authorized to accept service for the university.

What should I do if I am served with a subpoena or summons relating to non-university business?

- If the matter is unrelated to the university, you do not need to contact OGC and you should consider contacting a personal attorney.

Ooops! What if I improperly or accidentally accepted service?

- If you accept service of a subpoena or summons on your own behalf, receive such documents by mail or e-mail, and/or accidentally accept service of such documents, please contact OGC immediately. These documents are often time sensitive and failure to alert OGC can result in adverse legal consequences.



Visits or Requests by Government



- Be polite and courteous, and advise the government agent that the UO will generally cooperate with all government investigations, after consultation with OGC. (Put it on us!)
- Make a note of time, date, agency and agent's full contact info. Request identification and/or a business card from the agent requesting the information.
- Request to make a copy of documents relied upon for information demands: search warrants, subpoenas, other court orders, etc.
- Advise the agent that you will be pleased to assist after contacting OGC, as required by UO procedure.
- Contact OGC as soon as possible. In some cases, the UO may need to make back-up copies of information before allowing computers, files, or other documents to be removed.
- *Visit OGC Website!*



Questions?



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