February 2025
MPT-2 Item

In re University of Franklin

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FILE

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University of Franklin
Office of University Counsel
Howler Hall
10 Campus Drive, Ste. 100
Franklin City, Franklin 33701

MEMORANDUM

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

We have been asked to advise regarding an Inspection of Public Records Act (IPRA) request for records relating to Professor Eugene Hagen. The purpose of IPRA is to allow inspection of records that are normally maintained by public entities in order to provide transparency and insight into public operations and functions. Fr. Civil Code § 14-1 *et seq*. The University of Franklin (UF) is subject to IPRA requests as a public institution. We were contacted by Cheryl Williams, Dean of the UF School of Law, and Chip Craft, Chief of Police of the UF Campus Police Department. They were copied on the request.

Professor Hagen has taught at the law school since 2012. Last fall, the Faculty Misconduct Review Committee (FMRC) conducted a faculty peer hearing. The FMRC suspended Professor Hagen from UF for one year without pay, pursuant to UF disciplinary policy C07, which allows for suspension of a faculty member for "illegal use of drugs or alcohol." Professor Hagen was suspended based on a conviction for driving under the influence (DUI) and a positive test for cocaine.

The suspension of Professor Hagen has received a fair amount of attention from the academic community and the media. The requestor, Paul Chen, is a student reporter at the UF student newspaper, *The Daily Howl*. Mr. Chen has already published one article (see attached) about Professor Hagen.

Please write a memorandum to me addressing whether we must produce each of the requested documents. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your conclusions.

The Daily Howl
The Independent Voice of the University of Franklin Since 1922

What Is UP with Professor Eugene Hagen?

By Paul Chen, staff writer

September 19, 2024

Once-beloved University of Franklin (UF) law professor Eugene Hagen will face UF's Faculty Misconduct Review Committee this Friday. A confidential source reports that Hagen is scheduled to appear before the committee on charges that he violated UF's disciplinary policy C07, which allows for suspension of a faculty member for "illegal use of drugs or alcohol." Hagen was arrested by the Franklin City Police on May 25, 2024, for driving under the influence (DUI). At the time of arrest, Hagen tested positive for cocaine. Hagen was convicted of DUI on September 17, 2024, in Franklin City municipal court.

The UF School of Law community is still shocked by Hagen's arrest and subsequent conviction for DUI. "Professor Hagen was my favorite professor 1L year. I can't believe this happened. He's brilliant," said Susan Ellwood. "I actually enjoyed getting cold-called by Professor Hagen," said Thomas Kennedy. However, another student, 3L Kate Rogers, noted that her mother had written a letter complaining about Hagen to UF Law School Dean Cheryl Williams. Rogers added, "I thought there was something wrong with Hagen. I thought that he was a drunk. How was I supposed to know that he was using cocaine?" Pamela Rogers, Kate Rogers's mother, echoed her daughter's statement and said, "Last year I wrote a letter to Dean Williams complaining about Professor Hagen, and I wrote, 'that man has a substance abuse problem and should not be teaching our children.'"

UF's Faculty Misconduct Review Committee has a reputation for being strict. We will keep you informed as the Eugene Hagen story continues to unfold.

The Daily Howl
University of Franklin
30 Campus Drive
Franklin City, Franklin 33701

February 24, 2025

Custodian of Records
University of Franklin
Howler Hall
10 Campus Drive
Franklin City, Franklin 33701

Re: Professor Eugene Hagen, Inspection of Public Records Act request

Dear UF Custodian of Records:

I am a student reporter at *The Daily Howl*. I am writing to request records pursuant to the State of Franklin's Inspection of Public Records Act. The requested items concern the UF School of Law and Professor Eugene Hagen.

I intend to write and publish a follow-up article about Professor Hagen. The public and the UF community have a right to know whether the university knew about Professor Hagen's drug use prior to his DUI arrest.

The requested items are

1. Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law from 2019 to the present.
2. Any complaints about Professor Hagen submitted by members of the public to the UF School of Law.
3. A chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen.
4. Any records involving Professor Hagen in the possession of the UF Campus Police Department.

Sincerely,
Paul Chen

Paul Chen, staff writer

cc: Dean Cheryl Williams
Chief of UF Campus Police Chip Craft

From: Dean Cheryl Williams
Sent: February 25, 2025, 8:15 a.m.
To: General Counsel Loretta Rodriguez
Subject: PRIVILEGED AND CONFIDENTIAL – IPRA request re: Eugene Hagen

Dear Loretta,

The university received the attached IPRA request from Paul Chen at *The Daily Howl*. He is asking for records from Professor Eugene Hagen's personnel file. I need your advice. As you know, Professor Hagen was suspended for one year without pay on September 20, 2024, under disciplinary policy C07 for "illegal use of drugs or alcohol" related to his September 17, 2024, conviction for driving under the influence (DUI).

Eugene's last two annual performance reviews, which I completed, were mixed. His teaching is strong, and he's a popular teacher. That said, he hasn't been showing up for faculty or committee meetings or his office hours, and I did note concerns about these absences in his annual review both this year and last year. I also referenced Eugene's student course evaluations in his annual reviews. There are a lot of negative comments in the student course evaluations from the past two years to the effect that Eugene has been late for classes and has been moody and erratic in class. Students have noted that Eugene often misses office hours and doesn't respond to students' emails. The student course evaluations themselves are not attached to the annual performance reviews.

The annual performance reviews contain a lot of general information—what classes Eugene taught, the quality of his teaching, the committees he served on, what publications he completed, and the quality of his publications. While Eugene has tenure, annual reviews are still required so that we can assess his ongoing performance as a faculty member.

While I have received several complaints from students about Eugene, I have only received one complaint from a member of the public. It is a letter from Pamela Rogers, the mother of a current law student. I placed the letter in Eugene's personnel file.

We don't have a chart containing the names of people who have made a complaint about Eugene. It would take some time to make one, but we can do it.

Honestly, we knew that something was off about Eugene, but we didn't know what it was until his DUI arrest. I want to ensure that we comply with the law in producing records pursuant to this IPRA request, but I'd also like to protect as many documents as possible from disclosure.

Thanks so much for your help with this.
Cheryl

Cheryl Williams
Dean and Professor of Law, UF School of Law

From: Chief of UF Campus Police Chip Craft
Sent: February 25, 2025, 9:05 a.m.
To: General Counsel Loretta Rodriguez
Subject: PRIVILEGED AND CONFIDENTIAL - IPRA request

Dear Counselor Rodriguez,

I am writing to request your advice regarding the attached IPRA request that the university received yesterday from a student reporter at *The Daily Howl*.

We are aware that Professor Eugene Hagen was arrested by the Franklin City Police for DUI last May. We do not have any records related to that arrest. Those records are kept by the Franklin City Police Department.

However, we do have records here at the UF Campus Police Department related to a recent arrest of Professor Hagen for possession of marijuana. Just two weeks ago, on February 11, 2025, we received a confidential tip that Professor Hagen was smoking marijuana in his office. UF Police Officer Sharla Marx was at the UF School of Law and went immediately to Professor Hagen's office to investigate.

Officer Marx found Professor Hagen and another UF law professor, Hope Sykes, smoking marijuana from a bong in Professor Hagen's office. Officer Marx discovered 8 ounces of marijuana in the office. She then called the Franklin City Police Department, which sent an officer to apprehend Professor Hagen. The District Attorney's office has charged him with possession of marijuana. Professor Sykes was not arrested because, while she was smoking, she was not in possession of a sufficient amount of marijuana to be charged with a crime. While Professor Hagen was suspended at the time of the incident, he was not barred from being on campus or using his office.

In our records, we have only three items: an incident report and two photographs. The incident report contains details about the incident including the time, the date, the location, and the name of the confidential source. It also includes a description of what Officer Marx observed in Hagen's office and the statements made by Hagen and Sykes to Officer Marx. The two photographs are "selfies" showing both Hagen and Sykes with the bong in Hagen's office on the night in question.

Our investigation and the Franklin City Police Department's investigation are ongoing. What, if anything, do I need to produce in response to the request?

Thanks for your help with this.

Chip

Chip Craft
Chief of Police
University of Franklin Campus Police Department

FRANKLIN INSPECTION OF PUBLIC RECORDS ACT
Franklin Civil Code § 14-1 *et seq*.

§ 14-1 Definitions

(a) "Public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of physical form or characteristics, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

. . .

§ 14-2 Right to inspect public records; exemptions

(a) Every person has a right to inspect public records of this state except

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning licensing or permits;

(3) letters or memoranda that are matters of opinion in personnel files;

(4) portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations to the extent that it contains the information listed in this paragraph;

(5) trade secrets, attorney-client privileged information, ...

. . .

§ 14-5 Procedure for requesting records

(a) Any person wishing to inspect public records shall submit a written request to the custodian.

(b) Nothing in this Act shall be construed to require a public body to create a public record.

§ 14-6 Procedure for inspection

(a) Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.

. . .

Fox v. City of Brixton
Franklin Court of Appeal (2018)

Plaintiff Robert Fox made a written request to the City of Brixton pursuant to the Franklin Inspection of Public Records Act (IPRA) asking to inspect and copy all citizen complaints filed against John Nelson, a police officer employed by the City. The City denied the request on the ground that the information sought consisted of "letters or memoranda that are matters of opinion in personnel files" under § 14-2(a)(3) and were therefore exempt from disclosure. Fox then sued the City of Brixton, alleging that it had violated IPRA by denying his request. The district court granted summary judgment to the City, finding that there were no material facts in dispute and that the citizen complaints requested were not subject to inspection. The sole issue on appeal is whether the district court erred when it held that Fox was not entitled to inspect citizen complaints concerning the on-duty conduct of a police officer.

Franklin courts have long recognized IPRA's core purpose of providing access to public information, thereby encouraging accountability in public officials. A citizen has a fundamental right to have access to public records. The public's right to inspect, however, is not without limitation. IPRA itself contains narrow statutory exemptions. In ruling that the City was not required to provide Fox with access to the requested citizen complaints, the district court relied on § 14-2(a)(3), which states that "letters or memoranda that are matters of opinion in personnel files" are exempted from disclosure under IPRA. Interpreting this provision requires us to determine what the legislature intended to include within "matters of opinion in personnel files." We agree with the district court's assessment that the location of a record in a personnel file is not dispositive of whether the exemption applies; rather, the critical factor is the nature of the document itself. To hold that any matter of opinion could be placed in a personnel file, and avoid disclosure under IPRA, would violate the broad mandate of disclosure embodied in the statute.

Construing § 14-2(a)(3) in a manner that gives effect to the presumption in favor of disclosure, we conclude that the legislature intended to exempt from disclosure "matters of opinion" that constitute personnel information of the type generally found in a personnel file, i.e., information regarding the employer/employee relationship such as internal evaluations;

disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews. The purpose of the exemption is to protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of the working relationship between them.

This interpretation is also consistent with *Newton v. Centralia School District* (Fr. Sup. Ct. 2015). In *Newton*, a journalist sought access to all nonacademic staff personnel records held by the Centralia School District that were not specifically exempt from disclosure under IPRA. The journalist sought a ruling from the court that no portion of the personnel records of the employees was exempt from disclosure. The court held that the exemption applies to "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion." The documents listed by the *Newton* court are all documents generated by an employer or employee in support of the working relationship.

Here, Fox argues that the citizen complaints at issue are not personnel information within the meaning of the exemption because the complaints arise from the officer's role as a public servant, not from his role as a city employee. Fox asserts that as a public servant, the officer has a statutory duty to conduct himself in a manner that justifies the confidence of the public. The City, on the other hand, argues that the citizen complaints are in fact personnel information because they relate to the officer's job performance, and the subject matter of the complaints might lead to disciplinary action against Officer Nelson.

We note that Fox is not requesting information regarding the City's investigative processes, disciplinary actions, or internal memoranda that might contain the City's opinions in its capacity as Officer Nelson's employer. The complaints in question were not generated by the City or in response to a City query for information; rather, these documents are unsolicited complaints about the on-duty conduct of a law enforcement officer, voluntarily generated by the very public that now requests access to those complaints. While citizen complaints may lead the City to investigate the officer's job performance and could eventually result in disciplinary action, this fact by itself does not transmute such records into "matters of opinion in personnel files" for purposes of § 14-2(a)(3).

The City also argues that police officers are "lightning rods for complaints by disgruntled citizens" and that, therefore, information in a complaint may be untrue or have no foundation in fact. This argument is unavailing. The fact that citizen complaints may bring negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure. City of Brixton police officers are without question "public officers," and the complaints at issue concern the official acts of those officers in dealing with the public they are entrusted with serving. It would be against IPRA's stated public policy to shield from public scrutiny as "matters of opinion in personnel files" the complaints of citizens who interact with city police officers. Accordingly, the citizen complaints requested by Fox are not protected from disclosure under § 14-2(a)(3).

We conclude, therefore, that citizen complaints regarding a police officer's conduct while performing his or her duties as a public official are not the type of "opinion" material the legislature intended to exclude from disclosure in § 14-2(a)(3).

Reversed.

Pederson v. Koob
Franklin Court of Appeal (2022)

This appeal is brought under Franklin's Inspection of Public Records Act (IPRA). Nancy Pederson appeals from an order denying her petition to compel the Franklin Livestock Board, a public agency, to make available for inspection an investigative report concerning one of its employees. Pederson claims that the court erred in concluding that the report in its entirety is exempt from disclosure under IPRA § 14-2(a)(3), the exemption for "letters or memoranda that are matters of opinion in personnel files." We affirm.

BACKGROUND

Pederson filed a complaint with the Franklin Livestock Board (the Board) alleging that Kenneth Larson, who was employed by the Board as a livestock inspector (a law enforcement position), had engaged in timesheet fraud by billing the Board for his time while working at a second job. The Board retained an outside firm to investigate whether the Board's rules on the billing of time had been violated, to investigate Larson's general job performance and compliance with the Board's rules of conduct, and to advise the Board on whether disciplinary action should be taken. After the investigation had been completed, Pederson sent an IPRA request to the Board's custodian of records, Julie Koob, asking for a copy of "the Investigation Report pertaining to Kenneth Larson [the Larson Report]."

The Board denied Pederson's request, stating that the report was exempt from disclosure under § 14-2(a)(3). Pederson filed a complaint in district court seeking a court order compelling the Board to produce the Larson Report. The district court granted the Board's motion for summary judgment, finding that "the undisputed evidence shows that the Larson Report concerns a potential disciplinary action against Larson, an employee of the Board" and concluding that "evidence is sufficient to shield the Larson Report from disclosure" under IPRA § 14-2(a)(3). This appeal followed.

DISCUSSION

Pederson argues that the Board's custodian of records was required to divide the Larson Report into "factual matters concerning misconduct by a public officer related to that officer's role as a public servant" and "matters of opinion constituting personnel information" that are related to the officer's role as an employee. Pederson agrees that

the "matters of opinion" concerning discipline are exempt from disclosure under IPRA § 14-2(a)(3) but claims that "matters of fact" must be disclosed. We disagree.

In *Newton v. Centralia School District* (Fr. Sup. Ct. 2015), the Franklin Supreme Court described this IPRA exemption as applying to letters or memoranda *in their entirety*. It reasoned that the legislature intended the phrase "letters or memoranda that are matters of opinion in personnel files" to include items such as "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." The court characterized these documents as a whole as "opinion information," a reading that is consistent with the plain language of the exemption.

Moreover, the full document exemption under § 14-2(a)(3) overrides the requirement in § 14-6 that nonexempt matter in that document be disclosed. Thus, Pederson is incorrect in asserting that, even if § 14-2(a)(3) applies to "letters or memoranda" in their entirety, under § 14-6(a) the Board must separate "matters of fact" from "matters of opinion" and produce the matters of fact for inspection. Section 14-6(a) requires the custodian of records to separate exempt records from nonexempt records. When an exemption applies only to certain portions of a document, such as the § 14-2(a)(4) exemption related to *portions* of law enforcement records, then separating the exempt from nonexempt material demands redaction of the exempt material in that document. However, when an exemption applies to a document *as a whole*, as § 14-2(a)(3) does, the entire document is exempt from disclosure and matters of fact in that document do not have to be separated from matters of opinion and disclosed.

We agree that under IPRA the entire Larson Report is exempt from disclosure. Affirmed.

Torres v. Elm City
Franklin Supreme Court (2016)

Section 14-2(a)(4) of the Franklin Inspection of Public Records Act (IPRA) creates an exemption from inspection for certain law enforcement records. Plaintiff James Torres filed an IPRA enforcement action against Elm City after it denied his request for records related to his sister's arrest on the ground that the records were part of an ongoing investigation. The court granted summary judgment to Elm City, finding that the requested records were exempt from disclosure under IPRA, and dismissed Torres's IPRA enforcement action. The Court of Appeal affirmed. Torres filed a petition for a writ of certiorari, which we granted.

Francine Ellis was arrested by Elm City police officers for aggravated assault on March 5, 2015. On April 1, 2015, Ellis's brother James Torres sent a written IPRA request to Elm City seeking various records relating to the arrest. Elm City responded 14 days later, agreeing to produce a primary incident report and one subpoena. But Elm City denied production of all other pertinent records in its possession, citing § 14-2(a)(4), which exempts from the general IPRA disclosure requirement "portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime." Elm City stated that its police department was investigating the crime and therefore "release of the requested information posed a demonstrable and serious threat to that ongoing criminal investigation" and that the requested records would be released "when the release of such records no longer jeopardized the law enforcement investigation." Elm City claims that, in enacting § 14-2(a)(4), "the legislature intended that records pertaining to ongoing investigations remain sealed until the investigation is complete."

DISCUSSION

As declared by our legislature, the purpose of 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 legislature has limited this general rule by providing specific exemptions to the right to inspect public records. *See* § 14-2(a)(1–8). Central to this case is § 14-2(a)(4), which provides certain exemptions for law enforcement records.

Nowhere does § 14-2(a)(4) exempt *all* law enforcement records relating to an ongoing criminal investigation. Rather, the plain language of § 14-2(a)(4) indicates that the legislature was not concerned with the stage of the investigation as such: "[L]aw enforcement record[s] that reveal confidential sources or methods or that are related to individuals not charged with a crime" are exempt, even if the law enforcement records relate to "*inactive matters or closed investigations*" (emphasis added). Contrary to the conclusion of the district court, the plain language of § 14-2(a)(4) indicates that the ongoing Elm City investigation was not, of itself, material to whether the requested records could be withheld. Instead of focusing on whether there was an ongoing investigation, the legislature was concerned with the specific content of the records. The district court seems to have required only that the requested records relate to an ongoing criminal investigation, or perhaps that inspection of the records would "interfere" with an ongoing investigation. Either standard is untethered from the plain language of § 14-2(a)(4).

Section 14-6(a) provides that requested law enforcement records containing both exempt and nonexempt information cannot be withheld in toto. Rather, when requested public records contain a mix of exempt and nonexempt information, the "exempt and nonexempt [information] . . . shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection." § 14-6(a); *see Wynn v. Franklin Dept. of Justice* (Fr. Sup. Ct. 2011) (Attorney General's audio recording relating to financial investigation required to be made available for inspection after redacting 90 seconds related to confidential informant information). Read together, the plain language of §§ 14-2(a) and 14-6(a) provides that Elm City was required to review the requested law enforcement records, separate information that did not "reveal confidential sources or methods or that [did not relate] to individuals not charged with a crime" from that which did, and provide the nonexempt information for inspection. By contrast, and incorrectly, the district court allowed Elm City to broadly withhold law enforcement records simply because there was an ongoing criminal investigation. Such an interpretation is overbroad and incongruent with the plain language of § 14-2(a)(4). *See Dunn v. Brandt* (Fr. Ct. App. 2008) ("The exemptions to IPRA's mandate of disclosure are narrowly drawn.").

We now examine whether the district court was correct to find that the records were exempt from inspection pursuant to § 14-2(a)(4). It is undisputed that there is an

ongoing law enforcement investigation; however, Elm City did not present evidence that any of the specific records that it refused to produce revealed "confidential sources or methods or [were] related to individuals not charged with a crime." § 14-2(a)(4). Nor did Elm City present any evidence that, as required pursuant to § 14-6(a), it had reviewed the requested records to separate exempt from nonexempt information, or that it had provided any nonexempt information. For these reasons, the district court incorrectly determined that the requested records were exempt from inspection pursuant to § 14-2(a)(4).

Reversed and remanded for further proceedings.