

## Chapter 21. Legal Questions

The growing interest of the government and the courts in the way that institutions of higher education manage their affairs demands of the department Chair a service not listed elsewhere in this Handbook, i.e., cognizance of, and sensitivity to, the legal implications of institutional behavior.

### 21.1 What Kind of Records to Keep?

In general, any document which bears upon the professional qualifications of a member of the departmental faculty should be kept in departmental files. This is particularly applicable to those members of the department who face reappointment or promotion decisions in the future, most of all to the non-tenured faculty. The documents which are generally part of such a person's file include: an up-to-date curriculum vitae, the appointment history of that person as registered on all department copies of the appointment recommendations forms; the written record of the annual review of status, which the person in question, as well as the Chair, will have had a chance to see; all salary letters; all solicited letters of reference from within and without the University; the results of any evaluation by students that had been requested for the purpose of preparing for a contract renewal decision, and any other information about the individual's service to Brown and the department.

Unsolicited material may also be included in a departmental file, but chairs should make known to the individual the existence of such material, thereby providing an opportunity to put it into an appropriate context, or to resolve whatever questions it may raise. The general point is that files should be as complete as possible; the less randomly and more systematically their contents are put together, the better.

Once an appointment, reappointment, or promotion decision has been made, the dossier on which it was based may remain in the departmental files. Ultimately, however, it is quite possible that the person who has just been the subject of a confidential departmental recommendation will become Chair of the department, and thereupon have access to his/her own file. For this reason, chairs may wish instead to send dossiers on appointments, reappointments and promotions to be stored in the files of the Tenure, Promotions and Appointments Committee (TPAC), in the Office of Faculty Personnel.

Finally, chairs should know that a departmental file should not contain anything libelous - that is, anything that falsely or maliciously impugns the character, morals, or general reputation of a member of the department's faculty.

### 21.2 Maintaining Confidentiality

During the course of their employment at Brown University, faculty and staff members may participate in confidential processes and have access to confidential and privileged information. Examples of confidential matters

include, but are not limited to, faculty/staff hiring and promotion processes, student evaluation and disciplinary records, and faculty and staff performance reviews.

It is imperative that all faculty and staff members meet the expectations of confidentiality that are established by University policies, norms of professional conduct, and federal and state laws. Violations of confidentiality are extremely damaging not only to the individual members of the Brown community directly involved, but also to the University itself. The University's ability to carry out critical academic, administrative, and governance functions is dependent upon the integrity of its processes, which is dependent in turn upon the professional conduct of all parties involved.

Relevant Brown University policies are found in Faculty Rules and Regulations and the Human Resources General Conditions of Employment.

Serious violations of confidentiality may be considered "conduct which substantially impairs [the faculty member's] fulfillment of institutional responsibilities" (FRR, Part 5, Section 11, I. B, 2). As such, faculty members who violate confidentiality may be subject to sanctions.

The General Conditions of Employment (HR Policy 20.061) that states that all employees are expected to "Maintain the confidentiality of University business, records and information including computing passwords, personally identifiable information, research protocols and results." Moreover, violations of confidentiality may constitute "behavior that endangers your own sustained effectiveness or that has serious ramifications for your own or others' safety, welfare, academic well-being, or professional obligations," and may be subject to sanction.

Faculty and staff members who have questions about the confidentiality expectations of any specific university process are encouraged to consult with their department chairs or supervisors.

### **21.3 Faculty Access to Files**

Although a faculty member has the right to access the files maintained by the University, department (Division) or Chair which directly concern his or her employment at Brown, solicited and unsolicited letters of recommendation are considered confidential and thus are not accessible. It is appropriate, however, in soliciting letters of recommendation on a faculty member, to let the individual being written about know that the letters have arrived; that individual should also know if letters that have been solicited do not arrive. The same applies to student evaluations. Under no circumstances should the candid comments that have been requested from other people or provided voluntarily by other people be revealed to the subject of a dossier.

## **21.5 Copyright and Fair Use**

Before reproducing and/or distributing copyrighted works, consideration must be given to which practices may constitute "infringement" under current copyright laws. [Follow this link for the set of Guidelines prepared by the Office of the General Counsel.](#)

## **21.6 Use of General Counsel**

The University's legal affairs are supervised by the Vice President and General Counsel (x39900). The Vice President and General Counsel advises the President and other officers and are available to department chairs and members of the faculty when their assignments or projects require legal services. All inquiries about new or continuing legal issues should be addressed to the General Counsel. Certainly a chair who (in his/her capacity as an agent of the University) is served with a subpoena should inform General Counsel immediately.

Early identification of issues which have a legal dimension will save staff and faculty time, economize in the expenditure of money, and prevent unnecessary difficulties for all concerned. One responsibility of the in-house General Counsel is to assist in preventing administrative and legal problems.

## **21.7 University Indemnification of Faculty**

Brown University, to the extent legally permissible, indemnifies faculty employees against all liabilities and reasonable expenses in connection with the defense of disposition of any civil action, suit, or proceeding in which he/she may be involved or with which he/she may be threatened as a consequence of discharging his/her responsibilities and duties as an employee of Brown University, provided that the actions of the employee are within the scope of employment, and are in good faith and are undertaken with the reasonable belief that such actions are in the best interests of the University. The University retains the right to direct, settle, compromise and/or otherwise define said action, suit or proceeding, including representation and the use of counsel as it deems desirable.

The General Counsel is authorized to represent the University and/or the faculty employee and/or direct the defense of such actions, suits, or proceedings on behalf of the University and the faculty employee.

Faculty are not represented by counsel within the University in grievance procedures or other University tribunals, as these are internal processes which seek to inform the University and its officers regarding the appropriateness of specific conflicts.

The University does not provide representation or indemnify employees with regard to criminal offenses, parking and moving vehicle violations, or fees, fines or penalties associated with such violations. Each faculty employee is expected to comply with federal and state laws and local ordinances.

Questions regarding any of the foregoing should be directed to the Office of the General Counsel at x39900.