

IX-1
**GUIDELINES FOR ACCESS TO UNIVERSITY PERSONNEL RECORDS BY GOVERNMENTAL
AGENCIES**
(Revised October, 1995)
(administrative updates as of 10/10)

The following University of California guidelines and procedures for Access to University Personnel Records by Governmental Agencies were issued in 1987 by then Acting Vice Chancellor, Robert S. Michaelsen.

All governmental agency requests regarding access to academic and staff personnel records about a university employee classified as (1) "confidential academic review records" (peer review records), (2) "confidential records", (3) "personal records", or (4) "non-personal records" are to be directed to the Office of The Executive Vice Chancellor. The policy covers:

1. Academic Records

Campus responses to governmental agency requests to access to academic personnel records subject to Academic Personnel Policy section 160, for any purpose will be coordinated by the offices of the Associate Vice Chancellor, Academic Personnel, the Director, Equal Opportunity, and Business Services.

2. Staff Records

Campus responses to governmental agency requests to access staff records are subject to Staff Personnel Policy 605. Responses will be coordinated by the Director of Human Resources, Director, Equal Opportunity, and Business Services.

As appropriate, the offices of General Counsel will be consulted regarding questions of a governmental agency's statutory right of review, of relevancy, and for interpretation of the attached guidelines.

Reviews

Once the campus has determined that under University guidelines the particular governmental agency is entitled to review academic and staff personnel records subject to our academic and staff personnel policies, the campus will provide a central location for review of these files. Throughout the review, a campus official will be present to insure the appropriate accounting of records under review.

In regard to files that may be copied by a governmental agency representative subject to these guidelines, the Executive Vice Chancellor's office will number each file and record the number of pages. The governmental agency representative will sign a form indicating the pages they wish to copy. Each page copied will be stamped noting that it is subject to the specific agreement between the University of California and the governmental agency.

GUIDELINES FOR ACCESS TO UNIVERSITY PERSONNEL RECORDS
BY GOVERNMENTAL AGENCIES

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GUIDELINES FOR ACCESS TO UNIVERSITY PERSONNEL RECORDS BY GOVERNMENTAL AGENCIES

I. Introduction.

All University records about individuals are classified as (1) "confidential academic review records" (peer review records), (2) "confidential records," (3) "personal records," or (4) "non-personal records." Access rights by individuals and entities vary according to the type of record. Comprehensive requirements for access to all types of University records are contained in Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of, and Access to Information." The purpose of these guidelines is to supplement that document by specifying the rights of Federal, state, and local government officials to access the four categories of University personnel records. Included in these guidelines are the provisions of the two legal agreements between the University and the U.S. Department of Labor (DOL), and the State of California Department of Fair Employment and Housing (DFEH) pertaining to access to confidential academic review (peer review records) during investigations of discrimination complaints or compliance reviews.

For additional information on access to, and the privacy of personnel information refer to:

Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information," dated December 10, 1985;

Academic Personnel Manual Section 160, "Maintenance of, Access to, and Opportunity to Request Amendment of Academic Personnel Records," revised August 1, 1992;¹ and

Staff Personnel Policy 605, "Staff Personnel Records," dated December 1, 1990.²

II. Access by Governmental Agencies to Confidential Academic Review (Peer Review) Records.

This section does not apply to access to peer review records by the U.S. Department of Labor (DOL) or the State of California Department of Fair Employment and Housing (DFEH) relating to complaints of discrimination or compliance reviews. See Sections III and IV.

If a representative of a governmental agency other than DOL or DFEH requests access to material in University personnel records which includes items that are "confidential academic review records" (peer review records) pursuant to Academic Personnel Manual Section 160-20-b(1) (Appendix A), such request must be in writing. In response to the written request, the requester should be informed that:

The University of California is in full support of (name of agency)'s need and duty to acquire information pertinent to carrying out its functions. University policies concerning confidential academic peer review records, however, specify that such records are confidential documents. This designation of confidentiality is essential to the University's academic personnel process to secure candid evaluations of individuals under review. The University provides safeguards

¹ All references to this policy apply to academic personnel except as otherwise provided by a Memorandum of Understanding.

² Staff Personnel Policy 605 does not apply to staff employees covered by a Memorandum of Understanding.

in the review process to assure that the confidentiality does not cloak unfairness to individuals or result in abuse.

With respect to academic peer review personnel records, our policies take into account the need to protect individual rights of privacy. Furthermore, our academic personnel policies provide that subject individuals may receive, on request, a redacted copy of the substance of the confidential documents in their files, edited to withhold disclosure of the identity of persons who have supplied evaluations of the subject individuals with the understanding that the identity of the evaluator will be held in confidence.

In light of the above policies, and provided that your agency has a statutory right to review these records and shall maintain their confidentiality, the University is prepared to make available for your authorized representative on-site review of academic personnel files relevant to your review.

In applying the general policies regarding use of confidential academic documents in the personnel process, and in order to balance the need to protect the confidentiality of certain records against the legitimate needs of access by governmental agencies, you should abide by the following guidelines dealing with representatives of government agencies who have requested material from peer review records:

1. You should allow the governmental agent to view on-site the complete files which are relevant to the governmental review, but only after the names of evaluators and any identifying particulars have been removed.
2. If the governmental agent asks to remove copies of, or make and remove notes about peer review documents from the physical custody of your campus or Laboratory, the following officers should be consulted prior to response:
 - a. the Senior Vice President--Academic Affairs, and
 - b. General Counsel.

III. Access by the U.S. Department of Labor to Confidential Academic Review (Peer Review) Records Relating to Complaints of Discrimination or to Compliance Reviews as Required by Consent Decree.³

If a representative of the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), requests access to material in University records which includes items the University characterizes as confidential pursuant to Academic Personnel Manual Section 160-20-b(1) (academic peer review records), the following procedures, as set forth in the Consent Decree, should be followed:

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1. The University shall provide OFCCP access for inspection and copying of such books, records, accounts, and other materials which OFCCP determines to be relevant and necessary whenever it is reviewing the University's compliance with Executive Order 11246, as amended, and the rules, regulations, and orders issued pursuant thereto (hereinafter Executive Order 11246 or the Executive Order). The University shall allow OFCCP to remove copies of said books, records, accounts, other materials, and notes from off campus or from any other place at which they are maintained.⁴
2. OFCCP will remove copies of books, records, accounts, and other University materials off campus where it concludes that said materials are necessary to its Executive Order review. However, where such books, records, accounts, or other materials concern the following, and are

³ An agreement between the University of California and the U.S. Department of Labor dated October 3, 1980 pertaining to the latter's access to University academic peer review records. The full text of the Consent Decree is available from the Office of the General Counsel

⁴ However, nothing in this Consent Decree shall be deemed to in any way limit the University's right under 41 CFR 60-60.4(c) (or its successor) to question the relevancy of documents removed off campus or from any other place in which they are maintained, and to seek their return, thereunder.

and have been maintained in confidence by the University, prior to making copies, the OFCCP investigator (EOS) will justify his/her decision to the appropriate OFCCP Area Office Director:

- a. Letters of evaluation or other statements pertaining to any individual received by the University in the academic peer review process with the understanding that the letter or statement will be held in confidence;
- b. Letters from the chairperson (or equivalent officer) in the academic peer review process setting forth a departmental recommendation; and,
- c. Reports, recommendations, and other related documents from administrative officers and campus ad hoc and standing committee in the academic peer review process concerning evaluations of individuals.

Only if the Area Office Director concurs, will copies of any of the above-listed documents be taken off campus or removed from any other place where they are retained by the University. If the Area Office Director concurs, the University shall be notified by the Area Office Director of the documents to be copied and removed. Copies will then be taken off campus, or from other locations where they are maintained by the University, in accordance with OFCCP's Executive Order compliance assessment needs.

4. Where OFCCP takes copies of any of the documents listed in paragraph 2, a-c, above, off campus or from other locations where they are maintained by the University, all copies of such documents (which have not been entered as hearing or trial exhibits) shall be returned to the University within a reasonable period of time after completion, as determined by the Department of Labor, of a compliance review, complaint investigation, other investigation, or administrative or judicial enforcement proceedings.⁵ The University will then maintain said copies for at least ten (10) years unless the parties mutually agree on a shorter period of retention, and will provide them to OFCCP whenever it requests them. When such documents are provided, OFCCP shall maintain and return them in accordance with this Consent Decree."

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IV. Access by the State of California Department of Fair Employment and Housing to Confidential Academic Review (Peer Review) Records Relating to Complaints of Discrimination as Required by Disclosure Agreement.

If a representative of DFEH requests access to material in University academic peer review personnel records which includes items the University characterizes as confidential pursuant to Academic Personnel Manual Section 160-20-b(1), the procedures set forth in the Disclosure Agreement (Appendix B) should be followed. This agreement concerns disclosure of University records when DFEH is investigating charges of employment discrimination, and details the specific steps to be followed when releasing all types of academic personnel records, including comprehensive summaries of confidential academic review records and actual review records.

V. Access by Governmental Agencies to Academic, Staff, and Other Employee Personnel Records Designated as Confidential (other than Confidential Academic or Peer Review Records).

Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information," Section VII.B.1. provides a complete definition of confidential information which includes, but is not limited by law to, medical, psychological, and investigative information about an individual. See Appendix C. Academic Personnel Manual Section 160-20-b(2) similarly defines confidential information and clarifies that such academic personnel information is generally not part of the peer review file, but is

⁵ The term "completion" includes, but is not limited to, Departmental reviews of such reviews, investigations, or proceedings.

occasionally maintained by the University. Business and Finance Bulletin RMP-8 provides the definition of confidential information for all staff employees.

If a representative of a governmental agency requests access to confidential academic, staff, or other employee personnel information, such request must be in written form and the information should be made available only if the governmental agency has a legal right to such access. Because of the sensitivity of confidential information and the University's policy of protecting individual rights of privacy, the requester should be informed that:

The University of California is in full support of (name of agency)'s need and duty to acquire information pertinent to carrying out its functions. Our personnel policies specify, however, that certain materials in personnel records are confidential documents, and take into account the rights of access of third parties, as well as the need to protect individual rights of privacy.

In light of these policies and in conformance with the law, the University is prepared to make available for your authorized representative on-site review of confidential personnel files relevant to your review, provided that your agency has a statutory right to review these records and shall maintain their confidentiality.

VI. Access by Governmental Agencies to Academic, Staff, and Other Employee Personnel Records Designated as Non-personal or Personal.

The preceding guidelines have dealt with access to confidential academic review (peer review) records, and the separately defined confidential information about academic, staff, and other employees. Following are guidelines for governmental access to that personnel information which the University considers non-personal or personal in nature.

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Business and Finance Bulletin RMP-8, Section VII.B.3, Academic Personnel Manual Section 160-20-b(4) and Staff Personnel Policy 605.18 specify those types of personnel information which the University considers to be non-personal, such as the individual's name, the date of hire, the current position title, the current rate of pay, the organizational unit assignment (including office address and telephone number), and the current job description. These types of records are public records and are available to governmental agencies upon request.

Personal information is defined in Business and Finance Bulletin RMP-8, Section VII.B.4, Academic Personnel Manual Section 160-20-b(5), and Staff Personnel Policy 605.19, as that information which is not confidential (Section V above and Appendix C) or non-personal, and the disclosure of which would constitute an unwarranted invasion of personal privacy of the individual. Examples of the most common types of personal information are included in the referenced section of Business and Finance Bulletin RMP-8. If a representative of a governmental agency requests access to personal information about any employee, it will be made available only if the governmental agency has a statutory right to such access, or if the individual to whom the information pertains has authorized release (Business and Finance Bulletin RMP-8, Section VII.G.3., Academic Personnel Manual Section 160-20-d(4), Staff Personnel Policy 605.22). The governmental agency should agree to not release personal information obtained from the University except to the subject of the information or to authorized individuals.

GENERAL UNIVERSITY POLICY APM - 160
REGARDING ACADEMIC APPOINTEES
Academic Personnel Records/Maintenance of, Access
to, and Opportunity to Request Amendment of

The Faculty Code of Conduct (Part II.D.3.) as approved by the Assembly of the Academic Senate and incorporated into the official document, "University Policy on Faculty Conduct and the Administration of Discipline," initially adopted by The Regents in June 1974, and subsequently amended, specifies that among types of unacceptable faculty conduct is "breach of established rules governing confidentiality in personnel procedures." This part of the Faculty Code recognizes the importance of the right to privacy of an individual undergoing a personnel review and of the right to privacy of persons who furnish, in confidence, evaluations of individuals under review.

b. Definition of Types of Records and Information Maintained by the University about Academic Employees

(1) "Confidential academic review records" are:

(a) A letter of evaluation or other statement pertaining to an individual received by the University with the understanding that the identity of the author of the letter or statement will be held in confidence to the extent permissible by law.

(b) A letter from the chairperson (or equivalent officer) setting forth a personal recommendation in connection with an academic personnel action concerning the individual, such as appointment, promotion, merit increase, appraisal, reappointment, non-reappointment, or terminal appointment.

(c) Reports, recommendations, and other related documents from campus and departmental *ad hoc* committees concerning evaluations of the individual under applicable University criteria in connection with an academic personnel action, such as appointment, promotion, merit increase, appraisal, reappointment, non-reappointment, or terminal appointment.

(d) Information placed in the review file by a department chair that provides reference to the scholarly credentials of individuals who have submitted letters of evaluation or their relationship to the candidate.

August 20, 1984

DISCLOSURE AGREEMENT

- A. The California Department of Fair Employment and Housing (hereinafter "DFEH") is responsible for investigating charges of employment discrimination filed with the Department. In the course of investigating such charges, DFEH often asks to inspect or obtain copies of certain information pertaining to the complainant in the custody of an affected employer in order to determine if there is merit to the charge. When investigating a charge brought against the University of California (hereinafter "University"), DFEH at times desires to inspect and copy personnel records which include academic review records for University academic employees or candidates. These academic review records are deemed confidential by the University. These academic review records are those listed in Academic Personnel Manual section 160-20(b)-1 (Rev. 8/1/92). (Appendix A of this Agreement.) Both parties recognize that in conducting its investigation DFEH has the legal right of access to University records, subject to certain legal limitations and restrictions. This Agreement sets forth the parties' understanding regarding DFEH's access to such records.

The University recognizes that DFEH has a statutory obligation to complete its investigation within one year of the date the complaint is filed. DFEH recognizes that the University needs sufficient advance notice in order to prepare certain documents for discovery pursuant to the terms of this Agreement. Therefore, the parties to this Agreement agree to the timetables specified as a general guide. These timetables shall not preclude earlier compliance or different timetables agreed upon between the parties in any individual case.

B. Access to Records.

- B-1. Whenever DFEH investigates a charge of discrimination brought by an academic employee or candidate about whom the University maintains academic personnel records which are confidential pursuant to University policy, DFEH may review all relevant existing University personnel records of the charging party which are not confidential academic review records. If a redacted copy of confidential academic review records exists, the redacted copies shall be included in the records reviewed. DFEH may also request copies of the records pursuant to Section D-1 of this Agreement without prior on-site review.

- B-2. If DFEH then determines that access to relevant existing University personnel records of non-charging parties which are not confidential academic review records is necessary for the conduct of the investigation for purposes of comparison, DFEH shall explain in writing the basis for its request to the Academic Vice Chancellor of the affected campus. The University will afford DFEH the opportunity to inspect those records on-site within twenty (20) days of receipt of the written request of DFEH. If redacted copies of

confidential academic review records exist, the redacted copies shall be included in the records reviewed.

B-3. If after review of records under B-1 or D-1 of this Agreement DFEH determines that access to the academic review records of the charging party which are deemed confidential by the University is necessary for the conduct of the investigation, DFEH shall explain in writing the basis for its request to the Academic Vice Chancellor of the affected campus. In response to such a request, if the University has previously provided DFEH with the comprehensive summary of the charging party under D-1, the University shall allow DFEH to review the originals confidential academic review records, or copies thereof, with the names and identifying particulars of reviewers deleted, on site in order to authenticate the accuracy of the summaries within twenty (20) days of DFEH's request.

If a redacted copy of confidential academic review records for the charging party does not exist or does not cover confidential academic review records applicable to the period of the complaint, the University shall first prepare and provide DFEH with redacted copies of the requested records, setting forth the substance of those records, except for information which would reveal the sources of the records and as specified in Academic Personnel Manual section 160-20-b(1) (Rev. 8/1/92). (Appendix A of this Agreement.) The University shall not consider such redacted copy confidential. DFEH agrees to allow the University up to four (4) weeks from the written request. to prepare the redacted copies of the requested records of the charging party.

If DFEH then requests, the University shall allow DFEH an opportunity to review the original confidential academic review records, or copies thereof, with names and identifying particulars of reviewers deleted, on site in order to authenticate the accuracy of the redacted copies upon twenty (20) days notice by DFEH of its request for said review.

B-4. If after review of records under B-2 or D-2 of this Agreement DFEH determines that access to the academic review records on non-charging parties which are deemed confidential by the University is necessary for the conduct of DFEH's investigation for purposes of comparison, the DFEH consultant shall notify his/her District or Regional Administrator and the Academic Vice Chancellor of the affected campus. The District or Regional Administrator of the DFEH office involved shall explain in writing, to the Academic Vice Chancellor the basis for the request and that access is in conformity with DFEH criteria used by consultants in such investigations.

In response to such a request, the University, if redacted copies of confidential academic review records for comparable non-charging parties do not exist or do not cover confidential review records applicable to the period of the complaint, shall first prepare and provide DFEH with redacted copies of the requested records, setting forth the substance of those records, except for information which would reveal the sources of the records and as specified in Academic Personnel Manual section 160-20-b-2 (Rev. 8/1/92). (Appendix A of this Agreement.) The University shall not consider such summaries confidential as to the party to whom the summary pertains. DFEH agrees to allow the University up to eight (8) weeks from the written explanation by the District or Regional Administrator of the DFEH office involved to prepare the comprehensive summaries of the requested records of the comparable non-charging parties.

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If DFEH then requests, the University shall provide DFEH with an opportunity to review the original confidential academic review records, or copies thereof, with names and identifying particulars of reviewers deleted, on site in order to authenticate the accuracy of the summaries upon twenty (20) days notice by DFEH of its request for said review.

B-5. If after review of records under B-3 or B-4 of this Agreement DFEH then determines that information about reviewers is necessary for the conduct of its investigation, the District or Regional Administrator shall state in writing its need for the information. Within ten (10) days of receipt of DFEH's statement of need the Academic Vice Chancellor or designee shall consult with DFEH. Within five (5) working days of the consultation, the University will provide the information requested about, but not the names of, reviewers (e.g., gender, ethnicity, discipline). Nothing in this paragraph shall be interpreted to prevent DFEH and University from modifying the scope of the original request by agreement during the required consultation.

B-6. Finally, if the District or Regional Administrator of the DFEH office involved provides a written statement why access to the academic review records in unredacted form is necessary to the investigation and, that the result is in conformity with DFEH criteria used by consultants in such investigations, the Academic Vice Chancellor or designee shall consult with the District or Regional Administrator within ten (10) days of receipt of DFEH's statement. Within five (5) working days of the consultation, the University will afford DFEH the opportunity to review the original confidential academic review records in unredacted form on site. Nothing in this paragraph shall be interpreted to prevent DFEH and University from modifying the scope of the original request by agreement during the consultation.

The University reserves the right to raise legal objections to DFEH's request to review the documents specified in paragraph B-6 on the grounds that the information requested is not reasonably relevant to the matter under investigation or on such other bases as might be available under applicable law. Written notice of refusal to provide access to any part of the documents specified in B-6 shall be provided by the University to DFEH within five (5) working days of the consultation specified above, setting forth the reasons for such refusal.

C. Notes. The DFEH consultant shall be permitted to take notes of conversations as well as documents reviewed at the on-site review. In the event that the consultant takes notes, such notes will be regarded as information obtained under a promise of confidentiality, pursuant to the provisions of paragraph B-1 of this Agreement.

D. Removal of Copies of Records.

D-1. The University shall provide copies of all relevant existing University personnel records of the charging party which are not confidential academic review records within ten (10) days of DFEH's request. If a redacted copy of confidential academic review records exists at the time of DFEH's request, it shall be included in the copies of records provided to DFEH. If a redacted copy is prepared by the University pursuant to paragraph B-3 of this Agreement, the University shall provide the redacted copy immediately upon completion of the redaction.

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D-2. If DFEH determines that copies of existing University personnel records of non-charging parties which are not confidential academic review records are necessary for the conduct of the investigation for purposes of comparison subsequent to DFEH's review of those records on site pursuant to paragraph B-2 of this Agreement, DFEH shall explain in writing the basis for its request to the Academic Vice Chancellor of the affected campus. The University will provide the requested records within ten (10) days of DFEH's request. If redacted copies of confidential academic review records exist at the time of DFEH's request, they shall be included in the copies of records provided to DFEH. If redacted copies are prepared by the University pursuant to paragraph B-4 of the Agreement, the University shall provide the redacted copies immediately upon completion of the redaction.

D-3. If DFEH determines that removal of copies of confidential academic review records relating to the charging party or to non-charging parties which have been reviewed pursuant to paragraphs B-3 and B-4 of this Agreement is necessary to the conduct of its investigation, the District or Regional Administrator shall provide a written statement to the University why removal of copies is necessary to the conduct of the investigation. Within ten (10) days of receipt of DFEH's statement, the Vice Chancellor or his designee shall consult with the District or Regional Administrator. Nothing in this paragraph shall be interpreted to prevent DFEH and University from modifying the scope of the original request by agreement during the required consultation.

If the District or Regional Administrator so consults and affirms the need, the University agrees to provide copies of the requested records of the charging party and comparable non-charging parties as redacted pursuant to paragraphs B-3 and B-4 of this Agreement within five (5) working days.

If the case is forwarded to the DFEH Legal Unit for review for accusation, the University agrees to provide copies of the unredacted records requested within five (5) working days.

D-4. DFEH agrees to the following security measures for copies of records provided pursuant to section D-3:

- a. Copies provided by the University will not be duplicated in any form. DFEH will maintain only the copy provided by the University.
- b. All copies provided by the University will be maintained in a segregated, locked file.
- c. Only consultants, attorneys, and DFEH employees or agents with a specific need to know shall have access to the copies of records provided pursuant to this section.

E. The sequence of access to inspection and/or removal of the academic review records, as described above in sections B, C and D, may be modified in any individual case upon agreement of both parties to this Agreement.

F. Pursuant to this Agreement, the parties hereto shall abide by the following conditions:

F-1. DFEH shall regard the notes taken by any DFEH consultant during the course of a review concerning academic review records and information deemed confidential by the University as well as any conversations concerning those records and information and/or any notes

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taken about academic review records and information deemed confidential by the University and provided to DFEH to be provided under a promise of confidentiality, and such records, information and notes shall be deemed to be received by DFEH as confidential pursuant to, but not limited to, Government Code section 12932, subdivision. (b) and DFEH Field Operations Directive No. 38 (6/16/83).

F-2. DFEH shall not release or otherwise disclose records and information provided under a promise of confidentiality or any notes or records relating to such records and information or to conversations concerning such records and information to any person or party requesting to inspect or copy such, except as follows. DFEH agrees that all records, information, and notes or copies thereof obtained pursuant to this Agreement with a promise of confidentiality and/or deemed confidential by the University and provided to DFEH and which are maintained by DFEH during an investigation are "confidential" as defined by Civil Code section 1798.3, subdivision (a)(4) and are therefore not disclosable to the complainant or third parties during a pending investigation, unless DFEH is ordered to do so by a court of competent jurisdiction. DFEH agrees not to disclose any University academic review information received by DFEH and provided under a promise of confidentiality or notes about such information or notes about conversations concerning such information that remain in DFEH's possession except under the terms of Civil Code section 1798.38. In response to a request for confidential academic review information by the subject of that information, DFEH will provide only the redacted copies concerning the subject provided to DFEH pursuant to the terms of this Agreement, unless DFEH is ordered to do so by a court of competent jurisdiction.

F-3. If DFEH officially ends the investigation of any complaint filed against the University without issuing an accusation, DFEH shall forthwith return to the University all records containing personal and confidential information about all parties including notes relating to said records and information received by DFEH for purposes of its investigation of said complaint pursuant to the terms of this

Agreement as well as any copies thereof. The University agrees to retain such records and notes for a period of seven (7) years after return.

- F-4. If DFEH determines that an accusation is warranted, DFEH may, notwithstanding the foregoing provisions, use records designated here under as confidential, as well as the matter contained therein, in the accusation and subsequent prosecutor of the case. Prior to introducing any of such records into evidence before the Fair Employment and Housing Commission, DFEH shall provide the University with the opportunity to seek a protective order from the Commission. If the Commission denies the protective order, the University shall retain its right to seek a protective order from the appropriate court of law.
- F-5. DFEH agrees to give the University adequate notice of any subpoena or deposition of a confidential reviewer whose name was revealed pursuant to section B-6 of this Agreement to enable the University to seek a protective order.
- G. Any discovery issues not specifically covered by the terms of this Agreement are outside the purview of this Agreement.
- H. This Agreement is binding on the whole University system and all employees and agents of DFEH.

Original document signed by Mark Guerra, Director, DFEH and James S. Albertson, Associate Vice President Academic Affairs.

RMP-8
Dec. 10, 1985

Section VII.B. (cont)

1. Confidential Information

Recent amendments to the Information Practices Act delete the term confidential information from Section 1798.3 but retain the limited access rights provided to information previously so defined by addition of a new Section 1798.40. Section 1798.40 provides that an agency is not required to disclose information to the individual to whom the information pertains if certain criteria are satisfied. The criteria listed correspond to those previously used to define the term confidential information. Thus, although the term has been eliminated from the Act, no substantive change has been effected regarding disclosure or access rights. The University will continue to use the term confidential information to mean any information which meets any of the following criteria:

- 1798.40 (a - c) a. Is compiled for the purpose of investigation of suspected criminal activities or identification of individual criminal offenders or alleged offenders.
- 1798.40 (d) b. Is maintained for the purpose of an investigation of an individual's fitness for University employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38. (See Section VII.H.1.)
- 1798.40 (e) c. Would compromise the objectivity or fairness of competitive examination for appointment or promotion in University service, or is used to determine scholastic aptitude.
- 1798.40 (f) d. Pertains to the physical or psychological condition of the individual, if the University determines that disclosure would be detrimental to the individual. The information shall be disclosed upon the individual's written authorization to a licensed medical practitioner or psychologist designated by the individual.