



OFFICE OF THE PROVOST

August 18, 2006

Faculty Personnel Files Record Maintenance and Retention

The University complies with all federal and state legal requirements for the retention of personnel records, including personnel records of faculty.

Faculty personnel files should be retained for six (6) years following the date of retirement, resignation, or termination of the faculty member's employment.

The Office of the Provost maintains and stores the University's personnel file for each member of the faculty. While it is recognized that some faculty personnel records may be created and retained in the faculty member's academic department and College Dean's Office, the retention of such records in these offices should be regarded as temporary in order to meet the daily administrative need for such records. These records should be transmitted (original or copies) to the Office of the Provost for inclusion in the faculty member's official personnel file (Note: Employee benefits records of faculty members are an exception. These records are retained separately in the Office of Human Resources to ensure compliance with specific confidentiality policies pertaining to employee benefits information. These are not to be transmitted to the Office of the Provost.)

Pursuant to the Pennsylvania Personnel File Inspection Act (the "Act"), a faculty member has the right, as a University employee, to inspect his/her personnel file as permitted by the Act. When a faculty member requests an opportunity to inspect his/her personnel file, the Office of the Provost, with the assistance and cooperation of the faculty member's academic department and Dean's Office, will ensure that all personnel records have been included in the faculty member's official personnel file. (A faculty member should be referred to the Office of Human Resources for inspection of his/her employee benefits records.)

Please contact the Office of the General Counsel if you have any questions regarding the maintenance and retention of faculty personnel files. The following summary of the Pennsylvania Personnel File Inspection Act is provided as guidance but should not be considered all-inclusive. Please contact the Office of the General Counsel for advice and assistance with questions regarding interpretation and application of the Act to the University's faculty personnel files.

Pennsylvania Personnel File Inspection Act (the “Act”)

A Brief Outline for Faculty Personnel Files
(Office of the General Counsel, August 2006)

Please note: This is only a summary and does not include all provisions of the Act. Since the Act is directed to all employers, terminology may differ from that used by the University. Please contact the Office of the General Counsel for advice and assistance with questions regarding interpretation and application of the Act to the University’s personnel files.

- I. “Personnel File” – Definition: (keep items marked with * in college or department file until requested by Provost’s office for inspection by faculty member)
 - A. Includes:
 1. application for employment: letter of application, CV
 2. wage or salary information: annual salary letters*
 3. notices of commendations*
 4. notice of warning or discipline
 5. authorization for a deduction or withholding of pay
 6. fringe benefit information (Human Resources file only)
 7. leave records (academic leaves, not FMLA leaves)
 8. employment history with the employer, including salary information, job title, dates of changes, retirement record, attendance records and performance evaluations; these records will include reappointment, tenure, and promotion documents (see Guidelines on Confidentiality of Evaluation Letters for more information)
 - B. Does NOT include:
 1. records related to the investigation of a possible criminal offense
 2. letters of reference
 3. documents which are being developed or prepared for use in civil, criminal or grievance procedures
 4. medical records
 5. materials which are used by the employer to plan for future operations
 6. information available to the employee under the Fair Credit Reporting Act
 7. attorney-client privileged documents
- II. “Employee” – Definition:
 - A. Includes:
 1. currently employed
 2. can be on leave of absence or laid off with re-employment rights
 - B. Does NOT include:
 1. applicants for employment
 2. agents or any other person

III. Inspection of Personnel Files: Office of the Provost (The Provost's office will contact the college and department for their files when a faculty member submits a request to inspect his or her official personnel file.)

- A. Employer shall permit inspection:
 - 1. by employee or an agent designated by employee
 - 2. upon request by employee
 - a) employer may require written request
 - b) employer may require written designation of agent of employee
 - c) employer may require statement of purpose of inspection of records or particular parts of personnel file to be inspected (purpose: so employer can provide correct records)
 - 3. at reasonable times
 - 4. during regular business hours
 - 5. at office where records usually maintained
 - 6. employer may require employee/agent to inspect records on employee's agent's free time (i.e., not during work hours)

IV. Other Limitations or Requirements

- A. No requirement that employee be permitted to remove personnel file or any part of it
- B. Employee is permitted to take notes
- C. Employer may protect files from loss, damage, or alteration to insure integrity of files
- D. Employer can require employee's inspection of personnel files in presence of an official of the employer
- E. Employer must allow sufficient inspection time based on volume content of file
- F. Employer may limit inspection of employee/agent once every calendar year except for reasonable cause

August 17, 2011

Statement on Confidentiality of Evaluation Letters in Reappointment, Tenure, and Promotion Files

Guidelines for confidentiality of evaluation letters in reappointment, tenure, and promotion files must reflect a balance of legal requirements, which provide for employee, litigation-related, or government inspection of materials in certain situations, and provisions of *Re&P*, which govern the tenure and promotion process at Lehigh University and promise confidentiality of peer reviews. Legal mandates include the U.S. Supreme Court's decision in *University of Pennsylvania vs. EEOC* (1990) and the Pennsylvania Personnel File Inspection Act. Confidentiality considerations include both the express promises of confidentiality in *Re&P*, but also the implicit understandings arising from the peer review process. The evaluation letters in question include the individual letters of department faculty, individual letters of college tenure and promotion committees, and the letters of external reviewers.

Re&P 2.2.6.3, 2.2.6.6, 2.2.6.11, 2.2.7.2, 2.2.9.4, 2.2.9.6, and 2.2.9.11 all require that when the department chairperson and dean consult with the candidate, they "must not disclose the identities of individual evaluators." On the other hand, in the event that a reappointment, tenure or promotion candidate alleges arbitrary or capricious action and appeals to the Faculty Personnel Committee (*Re&P* 2.2.1.6 and 2.3) or initiates litigation against the University, then reappointment, tenure, and promotion materials may be subject to review by other persons, any of whom may learn the identity of evaluators. These other persons could include, for example, the Faculty Personnel Committee in internal appeals under *Re&P*, or the candidate, lawyers, judges, government non-discrimination agencies, and even the public during the discovery process of a lawsuit. This can happen as part of a case for which the letter was written or as evidence for comparison in another case.

On this basis, the Provost's office will follow the following guidelines:

1. After the Board of Trustees decision, at the faculty member's request, he or she will have access to his/her file under the provisions of the Pennsylvania Personnel File Inspection Act. The faculty member will have access to the internal and external evaluation letters after redaction of all information identifying the authors. (For more information, see the Statement on Faculty Personnel Files Record Maintenance and Retention.)
2. As required by law, if litigation ensues, all letters, with identifies intact, may be subject to discovery.