

GEORGIA SOUTHERN UNIVERSITY
Intracampus Memo
OFFICE OF LEGAL AFFAIRS

Associate Vice President for Legal Affairs
P. O. Box 8020
Marvin Pittman Administration Building

TEL (912)478-7481
FAX (912)478-7488
<http://services.georgiasouthern.edu/legal>

AA/EEO Institution

TO: Dr. Michael Moore
FROM: Lee Davis *ed*
DATE: October 21, 2009
SUBJECT: Faculty Senate Request for Information: Open Records Act
File No. 100341

In connection with my duties as Associate Vice President for Legal Affairs, I serve as the University's custodian of records for purposes of compliance with the Georgia Open Records Act. Accordingly, the Request for Information submitted by Dr. Thomas Noland has been referred to me for a response.

As a general matter, the Georgia Open Records Act speaks for itself and no institutional policy is needed to expand upon it. Therefore I would refer Dr. Noland to the text of the Act as well as the opinions of the Georgia Attorney General, and judicial cases interpreting. However, Dr. Noland's questions may be answered in terms of the practices employed within the Office of Legal Affairs in responding to requests.

1. What is the policy to notify employees their records have been provided to an individual under the Open Records Act?
2. What is the policy to provide employees the name of the individual that has requested their records?

I will take these two questions together. The University does not have a policy or practice of notifying employees that personnel files, or other files containing information about employees, has been requested under the Georgia Open Records Act. The great majority of the materials contained in such files is, in fact, public documents and may be viewed by individuals requesting access to them under the Act. All documents that are not public in nature are redacted or withheld from the requester.

The Office of Legal Affairs handles over a hundred Open Records Requests a year. Many of these are for public documents contained in an employee's personnel file, or for public documents containing information about an employee that are contained in other files. Some requests are routine in nature, while others are associated with internal or external controversies and may be quite sensitive. In all cases, the Office of Legal Affairs avoids actions that tend to expose a requester to any retaliation for exercising his or her rights under the Georgia Open Records Act.

Neither does the University have a policy or practice of providing the names of requesters to individuals whose records have been requested. Aside from the fact that engaging in this practice could increase the likelihood of retaliation, in many cases the Office of Legal Affairs does not know who ultimately will receive the records produced. In many cases, individuals make requests through attorneys or other intermediaries who are not required under the law to reveal the identities of their clients. Nevertheless, whether or not the Office of Legal Affairs routinely provides such information, Open Records Act requests themselves are public

records, and the identity of individuals making requests, to the extent known, may be released pursuant to a subsequent request.

3. Has there been consideration for requesting legislators to pass legislation that would exempt an employee's annual evaluation from their supervisor to be exempt from the Open Records Act?

I am aware of no such discussions. In general, the Georgia General Assembly has been reluctant to place curbs on access to public documents. However, I would defer to the Office of Governmental Relations on the question of the feasibility and utility of such an effort.

C: Pres. Bruce Grube