160-0 **Policy**

a. The policy set forth in this section is intended to define the rights of individuals and entities to have access to academic personnel records. This policy is intended to protect academic employees from unwarranted invasion of their personal privacy, as well as to specify their rights of access to their own personnel records; and to make corrections, deletions, or additions to these records.

See also:

Appendix A — "Supplemental Information Regarding Academic Policy 160, including Interpretive Material Regarding the Need for "Confidential" Academic Records and Provisions for Procedural Safeguards Designed to Assure Fairness in the Academic Personnel Process."

Appendix B — Additional Academic Personnel Policies Pertaining to Academic Records.

160-20 **Access to Academic Personnel Records**

a. **Protection of the Individual's Right to Privacy**

University policy and State and Federal laws recognize the individual's rights to privacy, as well as the public's right to know about the governance of public institutions.

The State of California Information Practices Act of 1977 guarantees certain legal rights to privacy by establishing strict limits to access to information about an individual which is maintained by a public entity, such as the University of California, whether that access is by a governmental agency, a private corporation, a member of the public, or an employee of the same public entity.

Under the California Public Records Act, records maintained by the University generally are public records and are subject to inspection by any person upon request unless specifically exempted under the law from disclosure. One of the exemptions includes records the disclosure of which would involve an unwarranted invasion of an individual's personal privacy. 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, nonreappointment, 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, nonreappointment, 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.

(2) "Non-confidential academic review records" are:

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

(b) Reports, recommendations, and other related documents from administrative officers and standing personnel committees concerning evaluation of the individual under applicable University criteria in connection with an academic personnel action, such as appointment, promotion, merit increase, appraisal, reappointment, nonreappointment, or terminal appointment.

(3) "Confidential information," although generally not a part of an academic review file, is occasionally maintained by the University, and includes, but is not limited by law to, medical, psychological, or health care information about an individual.

(4) "Non-personal" academic personnel information is limited to that information which could not, in any reasonable way, reflect or convey anything detrimental to an individual's rights, benefits, or privileges, such as:

(a) Individual's name
(b) Date of hire or separation
(c) Current position title
(d) Current rate of pay
(e) Organizational unit assignment including office address and telephone number
(f) Full-Time, part-time, or other employment status
(g) Certain other employment information required to be released to the public as determined on a case-by-case basis by the General Counsel and the Senior Vice President—Academic Affairs

(5) "Personal" information is any information about an individual that is not defined as "confidential" or "non-personal," and the disclosure of which would constitute an unwarranted invasion of personal privacy of the individual.

c. **Access by the Individual**

(1) In any of the academic personnel records pertaining to an individual, including the individual's personnel review file, all documents other than confidential academic review records as defined in APM - 160-20-b(1) shall be accessible at reasonable times for inspection by the individual to whom the record pertains (including the right to receive the first copy of such material free, and subsequent copies at reasonable cost). Confidential academic review records shall be accessible, upon request, in redacted form as defined in APM - 160-20-c(4). Access to confidential information as defined in APM - 160-20-b(3) shall be in accord with legal requirements.

(2) During the departmental review of an academic personnel action, an individual's opportunity to inspect all documents to be included in the personnel review file is governed by APM - 220-80-d.

(3) In an ongoing personnel action, during the period between a departmental recommendation in a personnel action concerning the individual and the final administrative decision in that personnel action, access by the individual undergoing review to any letter of evaluation or report submitted by an individual, administrator, or committee shall be governed by APM - 220-80-d, -e, -h, and -i.

(4) When an individual requests access to confidential academic review records (as defined in APM - 160-20-b(1)), the records shall be subject to redaction as follows:

- For a letter of evaluation or statement from an individual evaluator, redaction shall consist of the removal of name, title, organizational/institutional affiliation, and relational information contained below the signature block of the letter of evaluation.

- For reports or recommendations of an *ad hoc* committee, redaction shall consist of the removal of the names of individual members of the committee.

- For information that references the scholarly credentials or relationship to the candidate of the authors of letters of evaluation, no access shall be provided to the individual.

- (Note: For confidential documents (including individual, departmental, and administrative letters, as well as committee reports and recommendations) placed in an academic personnel review file prior to September 1, 1992, campuses may either (a) redact such documents to remove the identifiers such as name, title, date, and organizational/institutional affiliation, or any relational statement or comment that would serve to identify the author(s) of the document, or (b) prepare a comprehensive summary.)

(5) An individual's rights to access "confidential" information about himself or herself referred to in APM - 160-20-b(3) shall be in accordance with the legal requirements of the Information Practices Act of 1977.

(6) The provisions of APM - 160-20-c(2), (3), (4) apply only to the following academic personnel titles and title series: Professor, Professor in Residence, Acting Professor, Adjunct Professor, Visiting Professor, Clinical Professor, University Professor, Professor of Clinical _____, Agronomist, Astronomer, Lecturer, Lecturer with Potential Security of Employment, Lecturer with Security of Employment, Senior Lecturer, Senior Lecturer with Potential Security of Employment, Senior Lecturer with Security of Employment, Professional Research, Specialist, Cooperative Extension Specialist (Advisor), Supervisor of Physical Education, Librarian.

d. **Access by Third Parties to "Confidential" and "Personal" Information**

(1) **Access by University Officers and Employees**

Access by University officers and employees to confidential academic review records, non-confidential academic review records, "confidential" information or "personal" information as defined in APM - 160-20-b(1), (2), (3), (5) shall be strictly limited to those officers and employees who need such access in the performance of their officially assigned duties, provided that such access is related to the purpose for which the information was acquired.

(2) **Access by the Committee on Privilege and Tenure**

The Committee on Privilege and Tenure may request access to academic personnel records, including confidential academic review records, non-confidential academic review records, and "confidential" and "personal" information, to the extent necessary to permit thorough consideration of cases brought before it. The Chancellor shall provide to the Committee access to all such academic personnel records requested by the Committee, including confidential documents. Confidential documents provided to the Committee are subject to the provisions regarding maintenance of confidentiality set forth in APM - 160-20-a and 160-20-b. In considering a specific case, in conducting a hearing on a specific case, and in making its report and recommendations, the Committee shall not disclose to the individual or to any other persons, other than to University employees with an official need to know, the identities of persons who have supplied confidential academic review records, or "confidential" or "personal" information included in the individual's academic personnel records. (The Privilege and Tenure Committee's jurisdiction and procedures are described by Academic Senate Bylaws 195 and 335 and do not extend to evaluation of academic qualifications or professional competence.)

(3) **Access by Governmental Agencies**

Governmental agencies shall have access to confidential academic review records, non-confidential academic review records, and "confidential" and "personal" information when required by State or Federal law. The Senior Vice Presidents of Academic Affairs and Administration shall jointly issue procedural guidance for such access as needed.

(4) **Access by the Public and Non-Governmental Entities**

Members of the public and non-governmental entities shall not have access to confidential academic review records, or non-confidential academic review records, "confidential" or "personal" information, except as required by law.

e. **Access to "Non-Personal" Information**

"Non-personal" information is public information and is available upon request to any person or entity without limitation.

160-30 **Opportunity to Request Corrections or Deletions in Academic Personnel Records and to Make Additions to Such Records**

a. An individual may address to the Chancellor, or other appropriate administrative officer, a written request 1) that a statement of fact in an academic personnel record pertaining to the individual be corrected, 2) that a statement by the individual in response to material in an academic personnel record pertaining to the individual be included in that record, and/or 3) that specific material be deleted from such a record because that material is improperly included in the record and because neither correction nor responsive statement will adequately deal with the impropriety. Within a reasonable time period not to exceed 30 calendar days, the Chancellor, or other appropriate administrative officer, shall determine whether a requested correction in a statement of fact or a requested deletion will be made. The individual shall, in any event, have the right to have inserted in the appropriate record any statement the individual wishes in response to or commenting upon the challenged material.

b. Material included in the personnel review file of an individual shall not be deleted from academic personnel records pertaining to the individual pursuant to the preceding subsection unless the appropriate administrative officer has first solicited the advice of the Committee on Academic Personnel or equivalent committee.

c. If an individual has requested access to academic personnel records pertaining to the individual, material shall not be deleted from such records without the consent of the individual other than in accordance with the provisions of APM - 160-0 and 160-20.

d. If material is deleted from academic personnel records in accordance with the preceding subsections, care shall be taken to ensure that the same material is also deleted from copies of those records in all locations where such copies are maintained.

**Supplemental Information Regarding Academic Policy
Including Interpretive Material Regarding the Need for
"Confidential Academic Review Records" and Provisions for Procedural
Safeguards Designed to Assure Fairness in the Academic Personnel Process**

The use of "confidential academic review records" as set forth in APM - 160 is justified by two factors: (a) the need in the academic personnel process for candid evaluations of individuals under review, and (b) the provision of safeguards in the process to assure that confidentiality does not cloak abuse or unfairness.

(a) The University must, in the appointment, advancement, and retention of academic personnel, make informed and objective judgments about their qualifications and performance. This is especially important in decisions on the granting or withholding of tenure. Judgments and evaluations are here involved, as distinguished from determinations of issues of fact. All who participate in the multi-tiered academic personnel review process in the University will best be able to perform their functions if the degree of confidentiality set forth in APM - 160 is recognized, for without such confidentiality the candid judgments of the best qualified evaluators would no longer be as extensively available. Experts in an academic field, able to provide useful appraisals of the qualifications and performance of an academic appointee in the University, are less likely to provide these indispensable critical evaluations if their written statements are not considered to be confidential documents. Many valuable intramural and extramural sources of expert judgment would be, quite understandably, anxious to avoid impairing personal relationships with professional colleagues by making candidly critical evaluations. An intramural source of expert judgment concerning an individual may, under the University's peer review process, in turn be evaluated in the future by the individual under review. An extramural source of expert judgment does not have an obligation, in the sense of being a member of the University community, to respond to a request for an evaluation of an individual, and may also, in the future, have professional relationships with or be evaluated (e.g., through national scientific review panels) by the individual under review. Without the degree of confidentiality described in APM - 160 there is substantial likelihood that qualified evaluators would refuse to provide evaluations, or would provide bland and non-candid, and, therefore, far less useful evaluations. Confidential evaluations are, then, necessary in order to make effective the continuing effort and obligation to preserve and increase the quality of the academic personnel of the University.

(b) There are several elements in the academic personnel process of the University which provide safeguards to assure that the use of confidential documents in that process, as described in APM - 160, does not cloak abuse. There are understandable concerns that the use of confidential evaluations may sometimes produce unjust results. Various elements in the personnel process provide safeguards against potential injustice, while retaining the benefits to that process from the receipt of confidential evaluations.

These safeguards are:

1. An academic personnel process in which, as set forth in APM - 200-30, final administrative decisions are based solely upon the personnel review file, which contains only documentary material relevant to consideration of personnel actions concerning the individual under applicable University criteria.

2. A multi-tiered process of academic review, as set forth in APM - 220, typically involving (and in particular in cases of decisions concerning tenure) three different faculty review agencies (departmental faculty, campus ad hoc committee, and standing Committee on Academic Personnel or equivalent Committee), and two or three different administrative reviews (department chairperson, Dean or Provost, and Chancellor's Office). Thus this is a process in which there are many participants, including the individual's colleagues. It is a process in which evaluations received in confidence are considered by various reviewing agencies and weighed with other evaluations (those of departmental faculty, administrative officers, and campus ad hoc and standing committees). All of the persons involved in the academic personnel review process (departmental faculty, departmental chairperson, Dean or Provost, members of campus ad hoc and standing committees, Chancellor's Office), in considering confidential letters from extramural evaluators, are entitled to know the identities of those evaluators. All participants in the review process are required to base their judgments solely on official University criteria. Under Part II.D. of the Faculty Code of Conduct, it is unacceptable conduct to evaluate the professional competence of faculty members "by criteria not directly reflective of professional performance," or to discriminate against a faculty member "on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), service in the uniformed services as

defined by the Uniformed Services Employment and Reemployment Rights Act of 1994, or, within the limits imposed by law or University regulations because of age or citizenship, or for any other arbitrary or personal reasons."

3. Opportunity for the individual to receive, upon request, a redacted copy of all confidential academic review records in the personnel review file, as provided in APM - 160-20-c(1), (2) and (3).

4. Opportunity for the individual to contribute to the personnel review file, as set forth, for example, in APM - 220-80 and 220-84.

5. Clearly defined grievance procedures through which individuals can have their complaints inquired into concerning allegations of failure to comply with applicable procedural requirements in the academic personnel process, or allegations of the use of impermissible criteria in the process.

APM - 160-20-c(1), (2) and (3) provide the opportunity for an individual to receive, upon request, a redacted copy of all confidential academic review records in the individual's academic personnel records which are described in APM - 160-20-b(1). This opportunity to receive redacted copies provides a means for the individual to learn the content of confidential documents in the individual's academic personnel records.

The recognition in APM - 160 of the limited use of "confidential academic review records" as described above is confined to the academic personnel process and the review in that process of the qualifications and performance of individuals.

In addition to the recognition in APM - 160-20-b and -c(1) of the use in the academic personnel process of the described confidential academic review records, APM - 160-20-b(1)(a) is also intended to include other types of documents pertaining to an individual which occasionally can, for good reason, be received by the University in confidence. An example would be an unsolicited letter from a student, describing allegedly inappropriate (though not necessarily unprofessional) conduct by a member of the faculty. The author of such a letter may request that his or her identity be held confidential, because of fear of retaliation. (The identity of an individual who makes allegations of unprofessional conduct by a faculty member leading to invocation of formal disciplinary procedures is not held confidential.) The University has a responsibility to receive such letters, and to take

whatever investigatory and corrective steps may be wise. Investigation may establish that the alleged conduct did not occur, or that the conduct was not inappropriate. Such documentary material, if irrelevant to the academic personnel process, would not, and could not, be made part of the personnel review file. But the material may nevertheless responsibly be retained, to provide for the future, if needed, a record of the complaint and the inquiry made. Circumstances in which confidential academic review records described in APM - 160-20-b(1)(a), (b), and (c) will be maintained—other than for inclusion in the personnel review file—are unusual.

APM - 160-20-d(2) describes access by the Committee on Privilege and Tenure to academic personnel records including confidential documents.

An academic appointee has a right to request that the campus Committee on Privilege and Tenure or other appropriate body inquire into whether, in the course of a personnel review of that individual, the procedures followed were in consonance with applicable requirements (e.g., APM - 220) and whether the decision was based on impermissible criteria, including (but not limited to) race, sex, or political conviction. Such an individual may also complain that the provisions of APM - 160, related to access to personnel records, have not been complied with. This right to make a complaint may lead to a formal investigation and hearing in appropriate cases. (See By-Law 335 of the Academic Senate and APM - 140.)

APM - 160-20-d(2) sets forth the power of the Committee on Privilege and Tenure to have access to academic personnel records, including confidential academic review records, to the extent necessary to permit thorough consideration of the complaint.(APM - 140-80-c(5) makes the provisions of APM - 160-20-d(2) applicable to hearing procedures in grievances of non-Senate academic appointees.)

APM - 160-30 contains provisions concerning the opportunity for an individual to request corrections or deletions in academic personnel records and to make additions to such records.

Additional Academic Personnel Policies Pertaining to Academic Personnel Records

APM - 200-30 **Academic Personnel Actions — Personnel Review Files**

This section *defines* "personnel review file" and sets forth the basic principles that final administrative decisions in personnel actions shall be based solely upon the material contained in the individual's personnel review file, and that the personnel review file shall contain only material relevant to consideration of personnel actions under applicable University criteria set forth in the Academic Personnel Manual.

In addition to the personnel review file, other academic personnel records, pertaining to an individual as an employee of the University, may include materials such as miscellaneous correspondence, leave records, and documents related to administrative appointments, employment history, retirement, payroll, Academic Senate matters concerning the individual, and the like. Such materials shall not be referred to or considered in connection with a recommendation or decision in a personnel action involving an individual unless they are made part of the individual's personnel review file by an appropriate administrative officer.

APM - 210 **Appointment and Promotion — Review and Appraisal Committee**

APM - 210-1-b(1) Reports of the Review Committee are "confidential."

APM - 210-1-c(2), 210-1-c(3) Requirement for letters of evaluation.

APM - 220 **Professor Series, Appointment and Promotion**

APM - 220-80-c, 220-80-d, 220-80-e, 220-80-h, 220-80-i, 220-84-b. These sections of the Academic Personnel Manual set forth the rights of an individual to be informed about and to contribute to the academic personnel process in connection with specific personnel actions concerning the individual. The principle embodied in these sections is that at the departmental level the individual should have the opportunity to be informed about the content of the personnel review file, including to receive, upon request, a redacted copy of confidential academic review records in the file and to comment on the file; and subsequently, to have access, upon request, to records in the file as augmented during later stages of the review. Provisions are added to other sections of the Manual to make these portions of APM - 220 applicable to other academic personnel titles or title series in which criteria and procedures are similar to those for the Professor series.

APM - 158 **Rights of Academic Appointees Including Rights Regarding Academic Records**