

CONFIDENTIALITY AND PERSONAL LIABILITY ISSUES FOR MEMBERS OF THE P&T COMMITTEE

Confidentiality Issues

- Information about specific individuals and matters brought to the attention of the Privilege & Tenure Committee is generally considered *highly sensitive and confidential*. You have a responsibility to maintain confidentiality to the greatest extent permitted by law and University policy. If asked about cases, your standard response should be “we can’t comment about P&T matters.”
- Note that there are circumstances under the policies in which P&T is expressly permitted to release personal information to other university officials (e.g. forwarding information about a grievance to the administration for resolution). Disclosure of confidential information to other university officials is legally permitted where the information is relevant and necessary for them to perform their official University duties.
- If you have any questions about whether it is appropriate to disclose information to another University employee or to a third party, you should contact the Academic Senate Office or OGC for advice.
- In general, *individuals have a legal right to access records pertaining to themselves*, under the California Information Practices Act. There are some exceptions to this general rule, however, so you should not automatically assume that a faculty member has a right to access all documents pertaining to him or her. Common exceptions to the rule of disclosure to the individual include:
 - attorney-client privileged materials,
 - confidential academic review materials,
 - the identity of confidential sources of information, and
 - personal information about other individuals.

If an individual requests information or records pertaining to himself, you should contact the Academic Senate office or OGC for assistance.

- Other departments are subject to the same legal confidentiality requirements. Therefore, other departments are sometimes reluctant to produce records requested by the P&T Committee, on these grounds. However, *the P&T Committee is authorized in the Bylaws to obtain records about a grievant or accused individual, including confidential personnel materials*, so in most cases

the other department should provide the records. If you need assistance in obtaining records from another department, you should contact the Academic Senate office or OGC for advice.

Personal Liability Issues

- This is an area of a lot of concern, but the number of cases where individuals are named in lawsuits related to P&T matters are very small. The unlikely prospect that you could be named in a lawsuit should not cause you significant concern, given the University's responsibility to protect your interests in such a case.
- The University is generally required to *defend* and *indemnify* University employees who are named as defendants in a lawsuit relating to their University activities. This is a *legal requirement* under the California Tort Claims Act, which governs tort liability of public entities and their employees. This is a requirement regardless of whether the University itself is named as a defendant.
- The only time that the University is not required to defend and indemnify its employees is if they are not acting within the "course and scope" of their employment. For example, a University employee who is found to have committed sexual harassment will not be defended by the University in any lawsuit against them based on the sexual harassment. This is because committing sexual harassment is not within the "course and scope" of employment.
- Participating in an administrative hearing, or otherwise undertaking your assigned role as a member of the P&T Committee is generally considered to be within the "course and scope" of P&T member's employment, for purposes of the University's obligation to defend and indemnify you.
- Defense and indemnification means that: (1) the University would provide you with a legal defense (including your own separate attorney if it turns out that your legal interests diverge from the University's); and (2) that the University would pay any judgment entered against you.
- As a practical matter, the University generally attempts to have individual named defendants dismissed as soon as possible, leaving the University itself as the sole defendant.
- Note that the University's obligation to defend and indemnify its employees applies only to University-related activities, and not to other personal activity. As discussed above, it also does not apply where the activity may have been

University-related, but was not within the course and scope of employment.

- Although the University is generally required to defend and indemnify its employees, that does not mean that there is no practical consequence to being named as a defendant in a lawsuit. Named defendants will be required to cooperate with the University legal counsel, are likely to have their deposition taken, may have to testify in court, etc. The time, resources and emotional energy involved can be substantial. But the University makes efforts to support its employees through this process.