

A University of Alberta Guide to Collecting, Using and Disclosing Information During the Student Discipline Process

1. Introduction

While records created during a disciplinary process are always subject to Alberta's *Freedom of Information and Protection of Privacy Act* (FOIPPA), there may be times when the sharing of information within the University of Alberta will happen in accordance with processes established through University policies, procedures and guidance documents. Doing so involves a careful balance between the duty of fairness required in our discipline processes and the collection, use, disclosure and protection of personal information as stipulated in FOIPPA.

Through the course of your investigation into a disciplinary matter and/or your discipline decision-making process, you are likely to collect or receive a great deal of personal information. For example, you may have the accused student's educational, disciplinary, and criminal record. You may also have information about the student's health, health care history or physical or mental disabilities. You may also have witness statements or complaints made about that student. These statements will likely contain the personal information (such as name, address, phone number) of the witness(es) or complainant(s). In some cases (such as where there has been an assault), you may have information about the complainant's health or health care history.

The following is intended to provide you with some guidance in terms of the kinds of factors you should be considering when deciding whether (and how) to use and disclose personal information within and throughout the discipline process. These procedures provide some flexibility internally to provide or share information appropriately with officers or employees of the University to allow them to perform their duties, without the need for a formal FOIPPA request. At times, where a file contains the personal information of multiple parties and/or witnesses, a formal FOIPPA request should be considered as a process in responding to a request for information. The Information and Privacy Office will provide guidance in deciding whether these guidelines are sufficient or whether a formal FOIPPA request would be more appropriate.

2. Collecting and Generating Records

Records that contain personal information are collected and generated at every stage of the disciplinary process. A student meets with an Instructor, who may take notes at the meeting, and include them with copies of assignments, exams or other items containing personal information, including possibly the personal information of a third party who may be directly or indirectly involved in the issue at hand (for example, a student whose exam was copied and forms part of the evidence against the accused student).

Information contained within Advisors' files, such as those of the Student OmbudService, are generally to be treated as confidential and should not be disclosed. These files would, however, be subject to the rules of disclosure if a student made a formal FOIPPA request. Anyone taking notes within the discipline process should be especially diligent in ensuring that notes are purely

factual in nature and contain only the information necessary to support the recommendation or decision made.

3. Guiding Principles

To decide whether and how to disclose personal information, you should be mindful of two key, and at times, competing principles: (1) the duty of fairness; and (2) the rights of access to information and protection of personal privacy under FOIPPA.

3.1 Duty of Fairness

The decision to discipline a student can obviously have serious consequences for that student. As a result, you have a duty to be fair in that decision-making process. At a minimum, this duty requires you to give the student reasonable disclosure of the case against him or her and an opportunity to respond to that case. Note that this duty of fairness must be considered in determining whether disclosure of a third party's personal information would be what is termed an "unreasonable invasion" of a third party's personal privacy.

Fairness and access to information can become even more difficult in cases where there are multiple accused students or a number of witnesses. In these cases, it is best to consult with the Information and Privacy Officer before disclosing any personal information.

3.2 Rights and Protections

3.2.1 Access to Information

Under FOIPPA, an accused student has a right to access records within the University's possession, including records containing his or her own personal information (freedom of information), subject to a number of exceptions. At the same time, the University is obliged to disclose personal information in a reasonable manner and only to the extent necessary to enable it to fulfill its duty of fairness.

While this Guide refers to those individuals involved in a disciplinary investigation or proceeding, including an appeal, a request for personal information may also be exercised by an appellant, a respondent, or any other person whose personal information is included in the file.

3.2.2 Protecting Privacy

Notwithstanding a right to access information, there may be situations in which the release of that information would do more harm than good or would breach the privacy rights of others ("third parties"). One or more of the following exceptions to disclosing information in your files may apply:

- a) ***Third party personal information*** - You must refuse to disclose third party personal information to an accused student if to do so would result in an unreasonable invasion of a third party's privacy. This requires the weighing of several relevant factors, both for and against disclosure, including the following:

<i>Considerations for disclosing information:</i>	<i>Considerations for refusing to Disclose information:</i>
The information will form part of your decision and is necessary for the student to know the case against him or her.	The third party will be exposed unfairly to financial or other harm.
The personal information was originally provided by the accused student.	The personal information was supplied in confidence ¹ .
	The personal information is likely to be inaccurate or unreliable.
	The disclosure may unfairly damage the reputation of any person referred to in the record requested by the student.

- b) *Safety concerns*** - You may refuse to share information from your files if the disclosure could reasonably be expected to threaten any individual's safety or mental or physical health or interfere with public safety.
- c) *Interfering with an open investigation*** - You may refuse to share information from your files if the disclosure could reasonably be expected to interfere with or harm an ongoing or unresolved University investigation. For example, if a student requests the names of the witnesses to an alleged offence before a decision-maker has had the chance to talk to them, it would be reasonable to withhold that information until it could be established that information provided by the witnesses was relevant.
- d) *Legal advice*** - You may refuse to share personal information from your files if it is related to confidential legal advice (either being sought or given).
- e) *Advice from other University officials*** - You may refuse to disclose information if it is the result of consulting, proposals, recommendation, analyses, or deliberations about a case among University officers or employees. Information presenting background explanations or analysis for consideration in making a decision need not be disclosed.
- f) *Quasi-judicial processes*** - FOIPPA does not apply to a "personal note, communication or draft decision created by or for a person who is acting in a...quasi-judicial capacity". Although the courts have not entirely settled the issue, the University takes the position that our discipline processes are quasi-judicial in nature. Therefore, personal notes, drafts, and correspondence in which a decision-maker is consulting an expert or a colleague on a case may be considered to be outside the application of FOIPPA and therefore may be withheld. It is important to note that this quasi-judicial status may not extend to instructors; therefore, extra care should be taken to record in notes only what is necessary and relevant to the issue at hand.

¹ Refer to the Student Concerns and Complaints Policy – Records and Privacy

If, under these guidelines, you decline to disclose information that you believe should remain confidential, a student always has the right to make a formal request for information contained in your files under FOIPP by contacting the Information and Privacy Office.

3.2.3 Applying these Principles

Below are some questions and considerations that may assist in weighing the above principles:

1. Is the information relevant to my decision and/or recommendation? *If you come into possession of personal information that is only peripheral or irrelevant to the decision to be made, disclosure issues can be avoided altogether if you ensure from the outset that that particular information plays no role in your decision making. A student does not have a right or need to receive disclosure of irrelevant information. He or she has a right to “reasonable disclosure”.*
2. Is the information necessary for the student in order to fully understand and respond to the charges against him or her? *Because your duty of fairness requires you to give the student an opportunity to meet the case against him or her, the more vital the information is to the student’s ability to defend him or herself, the more the balance will tip in favour of disclosing the personal information.*
3. Do you have reason to believe that disclosure of the information could threaten the safety of the public or an individual? *If you believe that disclosing the personal information will threaten the safety of the public or an individual, you may refuse to disclose the information. However, because FOIPP uses “may” instead of “must” you have the discretion to disclose the information where you feel it is necessary to do so even if it poses a threat. When in doubt, consult with the Information and Privacy Officer.*
4. Is the information about the student or a third party? *A student has a greater entitlement to information about him or herself than to the personal information of a third party. Remember the considerations for and against releasing third party information and ensure that you have given them adequate thought before deciding whether or not to disclose the information, ensuring that your disclosure is not an unreasonable invasion of that third party’s privacy. If the third party consents, then disclosure is not an unreasonable invasion of their personal privacy. **Note that if you are considering disclosing third party personal information, you should notify the person whose information you are disclosing.***
5. Can the information be disclosed in a way that is consistent with the protections under FOIPPA? *For example, where a document contains personal information as well as other relevant information, it may be sufficient to release the relevant information contained within the document, as opposed to the entire document itself. Alternatively, if you decide to disclose the document itself, black out irrelevant third party personal information.*

FOIPPA

For information on the application of FOIPPA to the University or formal FOIPPA requests, please visit www.ipo.ualberta.ca or call 492-9419.

Resources

Determining whether or not to disclose personal information is a complex process. Contact the University's Information and Privacy Office at 492-9419 for assistance with any aspect of your disclosure obligations in relation to student discipline and student appeals.

EXAMPLE SCENARIOS

1. Either a Faculty or an accused Student wants access to, or wishes to rely upon another student's relevant personal information (this could be a witness statement or a letter provided by a complainant), in order to argue their case:
 - See Guideline 3.2.2(a) - *Third party personal information*
 - Need to determine if it is "an unreasonable invasion of a third party's personal information." If so, they must refuse to disclose. (Examples of "unreasonable invasion" of privacy include disclosing medical records, banking/financial records, or employment or educational history. Other examples of what are and are not considered "unreasonable invasion" are provided in Section 17 of the FOIPP Act.)
 - Black out irrelevant protected third party personal information.
 - Can consent to disclosure be obtained from the third party?
2. An appellant, respondent or their advisor requests documentation regarding legal advice that was provided to the Appeal panel during an appeal:
 - See Guideline 3.2.2(d) – *Legal advice*.
 - No need to disclose information regarding legal advice either sought or given.
3. A student (not a party to an Appeal) requests documents about him or herself that are in the possession of Campus security:
 - See Guideline 3.2.2(c) – *Interfering with an open investigation*.
 - May refuse to disclose information if the disclosure could reasonably be expected to harm an ongoing investigation.
 - May refuse access to all or part of record if release would be an unreasonable invasion of the privacy of a third party.
4. An accused student is escorted off campus because of threats made to a number of students. The student appeals a finding made under the COSB and wants disclosure of a

written statement made to Campus Security by one of the threatened students. The statement includes home contact information of the threatened student:

- See Guidelines 3.2.2(a) - *Third party personal information* and 3.2.2(b) – *Safety concerns*.
- If the information belongs to a third party you must refuse to disclose that information if to do so would result in an unreasonable invasion of a third persons privacy.
- If the information may be harmful to individual or public safety you may refuse to disclose the information.
- The accused student, however, is entitled to know the case being made against him or her, and is entitled to test that evidence through the evidence of third-party witnesses.
- Need to determine if it would be harmful to individual or public safety and whether you wish to exercise your discretion in refusing to disclose it. This should be a high level decision based on a thorough analysis of the nature of the harm.
- Black out irrelevant protected third party personal information (e.g. home contact info.).

5. A student wants the notes taken by committee members during her appeal.

What to do:

- see Guideline 3.2.2(f) - *Quasi-judicial processes*.
- FOIPPA does not apply to personal notes, communications or draft decisions created for or by a person who is acting in a quasi-judicial capacity. This includes all of the committees under the GFC Policy.
- Can refuse to disclose this information on that basis.

6. Student charged under COSB as a result of allegation of sexual assault. Victim refuses to allow her information to be used and the victim is the only source of information concerning the incident.

What to do:

- See Guideline 3.2.2(a) - *Third party personal information*.
- Must refuse to disclose the information if it is an “unreasonable invasion” of third party information.
- COSB 30.1.1(e) stipulates that the accused student has the right to reasonable disclosure of the case, including the name of the person making the allegation.
- Black out to remove irrelevant protected third party personal information.
- Note that the victim also has rights under Code as noted in Section 30.1.1.(2)
- **In this circumstance, may be able to rely on the third party information without consent of the third party if that information is necessary to the furtherance of the safety, security or integrity of the University Community during the discipline process. In any case where a decision maker is**

considering releasing third party information without the consent of that party the FOIPP Office and Office of General Counsel should be consulted before disclosure occurs.

7. A student is appealing the finding that he submitted an assignment in a course which had been submitted by another student in a previous term. The Faculty's response includes a copy of the assignment in question, and is distributed to all participants.

What to do:

- Black out all irrelevant third-party information, such as the name and ID number of the student who originally submitted the assignment

8. A student allegedly sexually harasses other students. There are numerous complainants. Several author written complaints. Police are called, attend, investigate, advise, say that a law has been broken; but while they have not laid charges, they have not yet made a final decision on whether charges should be laid. The University decides to expel the student. The student appeals the expulsion. What, if any, records of the events can be released to the panel hearing the student appeal?

What to do:

- COSB 30.1.1(e) stipulates that the accused student has the right to reasonable disclosure of the case, including the name of the person making the allegation.
- Information not submitted as part of either the appeal or the response may not inform the decision of the University Appeal Board.
- See Guideline 3.2.2(a) - *Third party personal information*.
- Must refuse to disclose information that is an "unreasonable invasion" of third party information.
- Black out to remove irrelevant protected third party personal information.
- Consult appropriately with police to determine whether disclosure would interfere with an open investigation.

9. A student requests information from the Assoc. Dean after the case has been forwarded with recommendations to the Discipline Officer.

What to do:

- See Guideline 3.2.2(c) – *Interfering with an open investigation*.
- May refuse to disclose information if the disclosure could reasonably be expected to harm an ongoing investigation.
- Since investigation is now underway by the Discipline Officer, refer student to Office of Student Judicial Affairs to request information.
- Note: Requests for information should be directed to the office in which the investigation is currently active (e.g. Campus Security Services, Assoc. Dean's

office or Office of Student Judicial Affairs). An investigation is active until a written decision has been sent to the student.

- The University Appeal Board (UAB) hears appeals based on information provided to them by the appellant and respondent. Any requests for information pertinent to the appeal must be directed to the Chair of the Appeal Board.