

**DRAFT GUIDELINES ON CONFIDENTIALITY AND RELEASE OF  
INFORMATION BY SENATE COMMITTEES**

**February 2011**

**Executive Summary**

In general, the records of plenary meetings of the University Senate are public in order to involve the largest number of University Community members and further self-government and records of Senate committees are confidential in order to most fruitfully advance the work of these committees. It is intended that, in general, these committee records will remain confidential for 50 years. Additionally, a procedure is set forth in the event that a request is made for scholarly use of this material before this confidentiality period is over.

**A. Introduction**

1. The primary purpose of the Senate is to further self-government by the University community. Such self-government requires the involvement of the largest possible number of members of the University in discussion of problems before the University, and in the formation of a consensus. To surround deliberations of the Senate with secrecy would be to frustrate the intentions of the community in creating the Senate, and would exclude the rest of the University community from sharing in the making of decisions.

2. However, decisions and work within Senate committees are advanced more fruitfully without publicity at every stage. In initial discussions, before fixed positions are arrived at, the comments and the thoughts of the members of committees should not be inhibited by the fear of publication. That is, members of committees should be able to seek solutions without concern that everything said is subject to public scrutiny.

3. Additionally, information of a confidential nature may be presented to a committee by, for instance, the University Administration. For a list of examples, see section C.8. Such matters can be recognized and so designated by each committee. Reporting of the details of all such confidential material should be withheld unless the source of the information has deemed it acceptable to report. Individual committee members who do not agree with a committee majority with respect to confidentiality of an impending agenda item should feel free to absent themselves from its discussion.

4. Three Senate committees in particular, as per their mandates, are customarily required to maintain confidentiality in specific work they routinely consider. These are the Executive Committee, the Committee on Honors and Prizes, and the Committee on Faculty Affairs, Academic Freedom and Tenure. The Executive Committee considers decisions involving the selection of trustees and other personnel for leading positions and the recruitment of administrators. The Committee on Honors and Prizes recommends names for the bestowal of honors. The Committee on Faculty Affairs, Academic Freedom and Tenure hears grievances. This portion of the work of these three committee needs to be kept confidential, because (1) if,

for example, in the search for a president the names are made public, embarrassment could ensue if the person whose name has leaked out is either not asked or turns it down; (2) in the case of competition in the awarding of honors, the ones not honored but who have been rumored to be the recipients of honors suffer disappointment and public chagrin; and (3) confidentiality protects the reputations of all parties involved in the grievance process.

5. Within the limits outlined above, individual members of committees are free and encouraged to state their positions on current questions but not to release information on confidential matters as defined in the Senate By-Laws or by agreement of each committee.

## **B. Definitions**

1. **Committee:** Any form of a committee established by the University Senate or by any of its committees. Such committees include Standing Committees, Commissions, Ad Hoc Committees and Sub-Committees.

2. **Records:** Committee minutes, internal reports, and other documents prepared for, or by, or submitted to, a committee.

## **C. Specific Recommendations**

1. By default, committees operate in executive session, attended only by committee members and invited guests. Records from such meetings are confidential, following the guidelines laid out in Paragraphs A.2, A.3, and A.4.

2. Committees may vote beforehand that all or just a portion of a meeting be non-confidential. The records of that portion of the meeting would not be confidential. The allowed attendees at such meetings may be expanded beyond committee members to whatever extent deemed appropriate by the committee, following the guidelines laid out in Paragraphs A.2, A.3, and A.4.

3. Each committee should make available after each meeting a public version of the agenda for that meeting, follow the guidelines laid out in Paragraphs A.2, A.3, and A.4.

4. Each committee should make a public report on at least a yearly basis to the Senate to apprise the Senate and the University community of the issues the Committee has taken up during the past year. In making their reports, committees shall follow the guidelines laid out in Paragraphs A.2, A.3, and A.4.

5. If it is necessary for someone to speak on behalf of a committee as a whole, the chair should do this, unless someone else is specifically designated by the committee.

6. Recognizing the multi-decade career at the University of many Senate committee members, the only way to insure that members are uninhibited in their full participation in

committee work is to provide that their deliberations will not become public until long after the issues have ceased to be of current interest. With this document the Senate adopts a [50] year confidentiality rule (the length of which matches that which currently exists in the University Archives for the records of the University Board of Trustees), subject to the need to comply with lawful legal process.

7. The Senate recognizes that

- a. Some information the disclosure of which might expose the University to adverse legal consequences should not be made available;
- b. Information from individual educational records of living students or living former students should not be available unless the student or former student grants access in writing. Information about deceased students is not available for a period of 25 years;
- c. Information from individual employment records of living, current, or former faculty members, administrators, or other employees should not be available unless the person in question grants access in writing. Information about deceased faculty, administrators, or other employees is not available for a period of 25 years.

8. Information of a uniquely confidential nature is occasionally presented to committees of the University Senate with the understanding that this information is not to be disseminated to non-members of the committee. Such information may include, but is not limited to:

- a. subject matter required to be kept confidential by the Board of Trustees, the Senate Bylaws, or University Statutes;
- b. discussions regarding proposed, pending or current litigation, or intra-university conflict-resolution processes and external arbiters pertaining to matters that can be resolved outside of court;
- c. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- d. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by the University;
- e. matters relating to negotiations of labor, vendor and other agreements;
- f. matters of budgeting and finance;
- g. matters of public safety of the University and its environs or personal safety of its affiliates where public disclosure would threaten either;
- h. discussions surrounding potential candidates for honors and prizes awarded by the University.

- i. or information regarding an ongoing law enforcement investigation where public disclosure would endanger the investigation or violate applicable state or federal law.

#### **D. Procedural Considerations**

The University promotes research through the use of the University's historical records. As a part of the University committed to the expansion of the world of ideas and knowledge, the Senate endeavors to meet the needs of scholarly inquiry. These needs must be balanced against the right of the University Senate committee members and those appearing before such committees to a reasonable degree of privacy. With these considerations in mind, these policies are proposed to the University Senate to guide the administration of Senate committee records.

1. Committee records shall remain confidential for a period of 50 years to facilitate maximum cooperation with the Trustees and University administration, subject to the need to comply with lawful legal process.

2. Records are always available to the committee of origin, or in the case a committee has been discontinued, to the parent committee or to the committee assuming the functions of the discontinued committee.

3. Access will be given to individual items in a collection of records if they are at least 50 years old. If an item which is more than 50 years old is included among records less than 50 years old, access will be given to that item if it can be isolated from the collection.

4. Restrictions are not meant to hinder legitimate Senate use of records.

5. Requests may be made to view restricted records for purposes that are deemed to benefit the University as a whole, including those related to research. The Senate will respond to requests in the following manner:

- a. For senators requesting access to restricted records of committees on which they do not serve:

- i. The request must be submitted in writing to the committee in question. The request must discuss the rationale for the request.

- ii. The chair of the committee will, as a courtesy, forward the request to the chair of the Executive Committee and keep him or her informed throughout the process.

- iii. A decision must be reached by the committee and communicated within a reasonable time to the requestor. In the event that the decision is to deny access, it must be accompanied with a brief explanation.

iv. In the event of a denial of access, or of restrictions upon and conditions to access, after two years the committee may consider requests for reconsideration by the requestor accompanied by a detailed and particularized justification for reconsideration.

b. For non-Senators engaged in scholarly research requesting access to restricted records:

i. The request must be submitted in writing to the Senate staff, to be referred to the chair or co-chairs (hereafter, collectively referred to as chair) of the Executive Committee. The request must explain the nature of the proposed use and demonstrate both the seriousness of the scholarly effort as well as the importance of the requested materials.

ii. The request will be referred by the chair of the Executive Committee to the relevant Senate Committee or Committees.

iii. The relevant committee or committees shall review and vote on the request.

iv. The request then will be considered by a Review Committee consisting of the Chair of the Executive Committee, the Chair of the relevant Senate committee or committees, and an attorney from the University's Office of the General Counsel. The Chair of the relevant committee or committees shall express the views of his or her committee. The decision to grant or deny access will be based on the merits of each case, weighing the needs of scholarship against the privacy rights of individuals and the legal interests of the Senate and the University.

v. In order to reach a decision, the Review Committee shall review the proposal, examine materials to which the requestor is requesting access, and discuss the case.

vi. A decision must be reached by the Review Committee and communicated within a reasonable time to the requestor. In the event that the decision is to deny access, it must be accompanied with a brief explanation.

vii. If the request is granted, restrictions may be placed upon access to and use of the requested materials. The requestor must respect these conditions.

viii. Decisions reached by the Review Committee shall be final, unless the requestor seeks reconsideration in accordance with paragraph ix below.

ix. In the event of a denial of access, or of restrictions upon and conditions to access, after two years the Review Committee may consider requests for reconsideration by the requestor accompanied by a detailed and particularized justification for reconsideration.