

Policy 1316
Employee Records - Release of Information

Date of Current Revision: March 2022
Primary Responsibility: Director of Human Resources

1. PURPOSE

This policy establishes guidelines for access to and release of personal information on employees that is maintained by the university.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia section 23.1-1600; 23.1-1301. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND / OR REGULATION

The university is required to comply with the Virginia Government Data Collection and Dissemination Practices Act (Va. Code Title 2.2, Chapter 38, sections 2.2-3800 et. Seq.) and the Virginia Freedom of Information Act (Va. Code Title 2.2, Chapter 37, sections 2.2-3700 et seq., hereafter "FOIA").

3. DEFINITIONS

3.1 Personal Information That May Be Disclosed with Employee's Consent

Certain personal information may not be disclosed to third parties without the written consent of the subject employee unless the third party has legal authority to access the records or has authority under section 3.3. This information includes, but may not be limited to:

- Applications for employment
- Credit or payroll deduction information
- Leave records
- Letters of reference or recommendation
- Material relating to Unemployment Compensation claims
- Material relating to Workers' Compensation claims
- Mental and medical records
- Performance evaluations
- Personal information such as race, sex, age, home address, home telephone number, marital status, dependents' names, insurance coverage or social security number
- Records concerning grievances or complaints
- Records of arrests, convictions or investigation
- Records of suspension or removal including disciplinary actions
- Results of pre-employment tests
- Retirement records
- Scholastic record

3.2 Personal Information That May Be Disclosed without Employee's Consent

Certain personal information must be disclosed to third parties upon request and may be disclosed without the knowledge and consent of the subject employee. This information includes:

- Dates of employment
- Employee's job classification title
- Employee's position title
- Employment contracts
- Official salary or rate of pay for employee, if such pay exceeds \$10,000 per year
- Records of allowances or reimbursements for expenses paid to employee

3.3 Individuals/Agencies That May Have Access to Employee Records without the Consent of the Employee

The following individuals/ agencies may have access to employee records without the consent of the subject employee. This list is not all-inclusive. See JMU Policy [1601](#) – Auditing Program/Charter.

- The employee's supervisor and higher-level managers in the employee's supervisory chain.
- The employee's agency head or designee and agency human resource employees and legal counsel, as necessary.
- Specific private entities that provide services to state agencies through contractual agreements (such as health benefits, life insurance, Workers' Compensation, etc.) in order to provide such service.

4. APPLICABILITY

This policy applies to all employees of the university. It applies to personnel information in the official university file and supervisor's files on the employee.

5. POLICY

The university is obliged to comply with applicable federal and state law, to disclose to residents of Virginia information that is open to the public and to safeguard the privacy of its employees when determining the release of employee-related information from its records. Personnel information, except for the categories listed in section 3.2, is generally not subject to disclosure under FOIA and is protected under the Government Data Collection and Dissemination Practices Act.

6. PROCEDURES

6.1 Requests for Information – General

- a. All requests for personnel information by third parties outside of the university should be directed to the Director of Human Resources, who will consult with the FOIA Officer in Office of Communications. Any employee of the institution who receives a request for personnel information, whether or not FOIA is cited in the request, must immediately contact the Director of Human Resources or the FOIA Officer in the Office of

Communications in order to meet the strict five-day timeline for response under the law. See Policy [1103](#) - Responding to External Requests for Information.

- b. Requests for personnel information by offices or individuals within the university should be directed to the Director of Human Resources, who will determine if the information should be released.
- c. If personnel information other than that listed in 3.2 is disclosed, the employee will be notified of the names of recipients, other than those with authority under 3.3, unless the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action; then, no disclosure of such access shall be made to the employee. Human Resources will maintain a record of those third-party entities who have had access to personal information in employees' files over the last three years.
- d. Employment references may be provided by past or present supervisors or co-workers or by the Office of Human Resources. See Policy [1320](#) - Providing and Obtaining Employment Reference Information.

6.2 Requests for Information – Court Orders

The university must comply with validly issued and served subpoenas, court orders and search warrants ordering employee records to be turned over to the court, or other office issuing the order. The university may inform subject employees of such subpoenas, but is not required to do so. Requests for personnel information by subpoena, court order or warrant should be directed to the Office of Legal Services. Any employee of the institution who receives a subpoena, court order or warrant must immediately contact the Office of Legal Services in order to meet the timeline for response under the law. The Office of Legal Services will determine whether the order has been validly issued and served, and whether the information must be released.

6.3 Reviewing Personnel Files

An employee may access information retained in all personnel files of which the employee is the subject. However, employees do not have access to recommendations or letters of reference, nor to any test or examination used for evaluation. Individuals seeking access to their own official personnel files should arrange an appointment with the Office of Human Resources. Employees are not required to obtain their supervisors' approval prior to reviewing their official personnel file. However, they must provide adequate notice to supervisors when they wish to obtain releases from work to review their files. Employees will not be charged for reasonable time away from work to review their files.

An employee may review supervisors' files of which the employee is the subject. Employees should make arrangements with their supervisors to review these files. The supervisor or a designee normally should be present during the review unless circumstances would preclude the supervisor's or designee's attendance.

6.4 Copying Records

The university may charge fees for providing information to individuals requesting copies of documents under FOIA. These charges may not exceed the actual cost of providing the information. Charges may include the actual copying costs plus the cost for labor involved in locating and copying the information.

7. RESPONSIBILITIES

The Director of Human Resources is responsible for the management, maintenance and protection of employee files.

Supervisors are responsible for managing and maintaining their own personnel-related files which may include notes, performance documentation and other employee information that is not required to be included in the employee's official Human Resources personnel file.

The FOIA Officer in the Office of Communications is responsible for coordinating responses to FOIA requests.

The Office of Legal Services is responsible for coordinating fulfillment of and advising the university concerning external requests for information related to matters subpoenas, court orders, and warrants.

All departments, offices and employees that generate, receive, or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) - Records Management.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment. In addition, individuals may be subject to civil penalties for violation of applicable laws.

9. EXCLUSIONS

Persons are only responsible for the management and dissemination of information over which they are custodian. In addition, the university is not required to create records it does not already hold or manipulate or report data in response to a FOIA request in a way that it doesn't already manipulate or report such data.

10. INTERPRETATION

The authority to interpret this policy rests with the president, and is generally delegated to the director of human resources.

Previous Revision: January 2018

Approved by the president: November 2002