

## Chapter 21. Legal Questions

The growing interest of the government and the courts in the way that institutions of higher education manage their affairs requires the department Chair to be cognizant of, and sensitive to, the legal implications of institutional behavior.

### 21.1 What Kind of Records to Keep?

In general, any document which bears upon the professional qualifications of a member of the departmental faculty should be kept in departmental files. This is particularly applicable to those members of the department who face reappointment or promotion decisions in the future, most of all to the non-tenured faculty. The documents which are generally part of such a person's file include: an up-to-date curriculum vitae, the appointment history of that person as registered on all department copies of the appointment recommendations forms; the written record of the annual review of status, which the person in question, as well as the Chair, will have had a chance to see; all salary letters; all solicited letters of reference from within and without the University; the results of any evaluation by students that had been requested for the purpose of preparing for a contract renewal decision, and any other information about the individual's service to Brown and the department.

Brown has a records policy <https://library.brown.edu/info/collections/archives/records-policy/>, which applies to all records created or received by an office or department of the University in transaction of its proper business or in pursuance of its legal obligations. Brown has implemented a records management program to provide systematic retention of its important documents. <https://library.brown.edu/info/collections/archives/records-management/> This program addresses both the maintenance of non-current records for specific periods of time to meet Brown's legal and fiduciary responsibilities, as well as permanent retention of those documents of historical importance to the institution.

### 21.2 Maintaining Confidentiality

During the course of their employment at Brown University, faculty and staff members may participate in confidential processes and have access to confidential and privileged information. Examples of confidential matters include, but are not limited to, faculty/staff hiring and promotion processes, student evaluation and disciplinary records, and faculty and staff performance reviews.

Brown's Code of Conduct <https://policy.brown.edu/policy/code-conduct> has a section regarding maintaining the confidentiality and privacy of University records.

Faculty and staff members who have questions about the confidentiality expectations of any specific university process are encouraged to consult with their department chairs or supervisors.

### **21.3 Faculty Access to Files**

Although a faculty member has the right to access the files maintained by the University, department (Division) or Chair which directly concern his or her employment at Brown, solicited and unsolicited letters of recommendation are considered confidential and thus are not accessible. It is appropriate, however, in soliciting letters of recommendation on a faculty member, to let the individual being written about know that the letters have arrived; that individual should also know if letters that have been solicited do not arrive. The same applies to student evaluations. Under no circumstances should the candid comments that have been requested from other people or provided voluntarily by other people be revealed to the subject of a dossier.

### **21.4 Student Access to Files**

The Family Educational Rights and Privacy Act of 1974 (FERPA) provides students certain rights of access, privacy, and protection of education records. Brown's FERPA Policy <https://policy.brown.edu/policy/ferpa-policy> provides information relating to the rights of students under FERPA and Brown University's policies and procedures when complying with FERPA.

### **21.5 Copyright and Fair Use**

Before reproducing and/or distributing copyrighted works, consideration must be given to which practices may constitute "infringement" under current copyright laws. There are many factors which may determine whether or not you can use a copyrighted work for a particular purpose without infringing someone's ownership rights. Please refer to the Brown University [Copyright and Fair Use Policy](#). The library has [resources](#) to assist in determining if your intended use qualifies as Fair Use.

### **21.6 Use of General Counsel**

The Office of the General Counsel is responsible for all of the University's legal affairs and advises the Corporation, the President, senior officers, other university administrators, and faculty and staff who are acting within the scope of their employment. The OGC provides advice and counsel on legal and risk management areas, as well as major policies, initiatives and programs of the University. For Attorney assignments, please visit the [Practice Areas](#) Section of the OGC webpage. The OGC is the only office that is authorized to hire outside counsel.

## **21.7 University Indemnification of Faculty**

Brown University may defend employees against lawsuits brought against them personally or in their official capacities for acts or omissions in the course and scope of their employment. Grounds for refusing a defense include, but are not limited to, the existence of fraud, corruption, actual malice or the person was acting outside the course of employment (e.g. sexual harassment), or if the University determines that it would not be in the best interests of the University. Please contact the OGC directly if you have further questions regarding this matter.