

Minutes*

Senate Committee on Faculty Affairs
Tuesday, November 25, 2003
2:30 – 4:30
238A Morrill Hall

Present: John Fossum (chair), F. R. P. Akehurst, Carole Bland, Carol Carrier, Terence Collins, A. Saari Csallany, Janet Ericksen, Patricia Frazier, Richard Goldstein, Darwin Hendel, Theodor Litman, Wade Savage, Kathleen Sellew, Charles Stech, Larry Wallace, Timothy Wiedmann, Takeshi Yanagiura

Absent: Jesse Daniels, Robert Jones, Claudia Parliament, Aks Zaheer

Guests: Tom Schumacher (Director, Office of Institutional Compliance); Vice President Kathleen O'Brien, Associate Vice President Laurie Scheich (Auxiliary Services), Bob Baker (Director of Parking and Transportation); Dann Chapman (Employee Benefits)

[In these minutes: (1) privacy and security issues; (2) reserved parking; (3) miscellaneous business]

1. Privacy and Security Issues

Professor Fossum convened the meeting at 2:20 and welcomed Mr. Tom Schumacher to the meeting. He noted that the Committee has been talking about privacy and security; in that regard, Professor Savage contacted Mr. Schumacher, Director of the Office of Institutional Compliance, who has a strong interest in these issues.

Mr. Schumacher explained that as Director of Institutional Compliance, he tries to help improve the University's compliance with laws and rules, identify gaps in compliance, and to improve compliance activities. The President's Emerging Leaders (PEL), a program to identify talented administrators and help grow talent internally, picks the issues it wants to deal with and this year has identified privacy as one of its projects. The University has a number of offices that deal with private data. The PEL effort is focused on communication about privacy information and how to help the University organize its privacy management practices. He provided an overview of the project.

There is an expanding gauntlet of regulations regarding the privacy and security of certain data that require the University to develop and implement policies and procedures about its use, disclosure, and protection of these data. These regulations include; the Family Educational Rights and Privacy Act (FERPA), the Minnesota Government Data Practices Act, the Privacy Protection Act of 1974, the Computer Fraud and Abuse Act of 1986, the Gramm-Leach-Bliley Act (GLB Act), and the Health Insurance Portability and Accountability Act (HIPAA). As data regulations are mandated the University has responded appropriately by developing compliance programs to ensure the institution's regulatory compliance. As a general matter, the regulations listed above pertain to protecting the privacy of certain kinds of information. Because

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of the number of regulations, types of information involved and, the compliance programs overlap, a global privacy compliance program needs to be developed and implemented. Such a program would reduce confusion around data privacy compliance and practices, leverage the efforts and expenses of training workforce members about privacy issues, and leverage the dollars that must be spent to implement the regulations.

In light of the number and complexity of data privacy regulations and the common need for communications and education about the regulations, the University needs to craft a strategic response to the challenges of compliance that is multidisciplinary in its approach to data privacy. The response needs to encompass the requisite project components, requirements, and resources needed to leverage the University's institutional compliance efforts and tools.

In addition to the PEL activity, he has gathered a group of individuals who are responsible for student records, health care records, and so on, to look systematically at ways the University protects data. Mr. Schumacher also drew attention to a list of sample privacy-related University policies--of which, he emphasized, the University has many. But the most effective way to improve practices is to improve knowledge, he said; the policies are comprehensive but information about them needs to be communicated.

Mr. Schumacher said he also wants the faculty perspective on how well faculty understand the rules and how the administration can support faculty in their work while also meeting the obligations of privacy laws.

It is important to understand both the institutional and personal liability for the unauthorized release of private data, Professor Fossum said. Mr. Schumacher pointed out that he could not offer the Committee legal advice; for that they need to go to the Office of the General Counsel. He noted, however, that the Minnesota Data Practices Act imposes liability on the institution for the release of private data--the liability is automatic and claiming a mistake is not a defense. The law also provides for attorneys fees, which may create an incentive for attorneys to bring suits, bill hours, and win. At the personal level, if faculty are acting within the scope of their responsibilities, the University will defend them and pay any judgments pursuant to its defense and indemnification policy. Mr. Schumacher indicated that his experience was that the General Counsel vigorously defends private data. At the same time, however, the ability to capture electronic communications is staggering, including erased emails. His advice to people is to not send any email they are not prepared to read in public. There is little the University can do to protect an individual's use of e-mail on University computers if a court orders review and disclosure of that information, for example if it were deemed relevant to a civil dispute.

How far can someone go with the Freedom of Information Act, Mr. Stech asked? That refers to University data kept in the ordinary course of work, Mr. Schumacher said. There are exceptions for trade secrets, confidential information, and so on--there is a list of what is excepted. Anyone requesting information under FOIA must pay for its production. If a Committee member has a specific question, he urged that they speak with the General Counsel's office. He noted that the Minnesota Data Practices Act authorizes sweeping disclosure, unless the information fits an exception.

Professor Savage said he believed the University's policies were adequate for searches with notice. What is less clear is how to handle the case when the employee does not know about the search, when a department chair is told that he or she should look into files or a computer. Mr. Schumacher said

he believed the General Counsel would have to be involved if it were a secret search. The standard is what is reasonable, based on the circumstances. If there were no articulable reason, Professor Savage said, such a search could be the subject of a lawsuit. That is covered by the University's policies, Mr. Schumacher responded; there must be reasons, which are identified in the policy. Who decides what is reasonable, Professor Savage asked? There must be authorization, Mr. Schumacher said, although he did not know off the top of his head who would have to grant the authorization. But a search cannot occur just because someone is interested. He suggested again that if the Committee has specific questions, it should speak with Tracy Smith in the General Counsel's office.

When is research data accessible, Professor Bland asked? It is protected from disclosure to the extent it is intellectual property, Mr. Schumacher said. It is private data before it is made public (e.g., through publication of an article). Several faculty are moving their data out of the country because of FOIA, Professor Bland said; they fear that they promised confidentiality to research subjects but may not be able to keep their promise. The data could be confidential but the law is pretty sweeping, Mr. Schumacher said; again, he counseled that people speak with Ms. Smith about specific instances.

Is there a difference in data from subjects in medical research and other types of research, Professor Fossum asked? There is, Mr. Schumacher said; HIPAA is the federal law protecting the privacy of medical data, and to the extent it conflicts with state law, HIPAA controls, unless the state law imposes more strict requirements. So in the case of medical research on individuals, data cannot be disclosed even after the research has been published, commented Professor Fossum. That is generally true, Mr. Schumacher agreed, although the information could be released by court order and perhaps under other limited circumstances. It is the data about individuals that is protected, Professor Chapman observed; once the data have been aggregated and made public, the summary data are not protected. Mr. Schumacher pointed that even then, one of the research subjects may be able to get access to the data, for example if it were relevant to a lawsuit. The situation is not black and white.

Professor Hendel asked how many inquiries the University receives annually for access to research data. Mr. Schumacher said he did not know; he said the Committee should ask Susan McKinney, the University's data custodian. The most common request is for employee salary data.

Mr. Schumacher explained that his office is looking more at the culture of privacy and trying to help constituents understand what information is public and what information the University is obligated not to release. Is there a brochure on this subject, Professor Savage asked? The PEL participants are considering it, Mr. Schumacher said. If the responses of Committee members are any indication, Professor Savage said, there is much that the faculty do not know. When might the information be available? He hopes in the next 5-6 months, Mr. Schumacher said, but cautioned that he is not driving the process.

There is a fair degree of sentiment among Committee members, Professor Savage said, that this Committee should perhaps issue a general policy statement, something that says privacy is important and that people have a general expectation of privacy. If it were try to craft something, what should it address and where would it fit in institutional policies? Mr. Schumacher said that a set of guidelines that reflect faculty perceptions on privacy may help inform the administration about the faculty's views. For example, in some areas the University must use surveillance cameras--parking lots, tunnels, etc.--and it would be negligent if it did not. In other areas, the tenants of the space help decide where the cameras should be used. He said that if there is another policy on privacy--which he hoped there would not be--he

urged that it not say the University must do something, which creates more risk, expense, and bureaucracy, and potential for policy violations.

In terms of where it would fit in institutional policies, the Committee was informed that in the University's policy library, there are administrative policies, Regents' policies, and Senate policies. They are often related. The concern is that they not conflict or be redundant.

Professor Fossum asked about the destruction of records. HIPAA requires the University to do certain things with health records, for example, so they are not found in a dumpster. It would be helpful to have guidance on what to do with confidential data--and some of the guidance, he noted, would be legally binding. Departments develop reams of paper (e.g., in promotion and tenure cases) that have private information about employees. What is the obligation of a faculty member with respect to such documents? Mr. Schumacher said the University would prefer that they be destroyed, and individuals are REQUIRED to take reasonable steps to protect them.

There are layers of employees, Professor Collins observed. There should be episodic transmission of links to information so that, for example, TAs understand from day one rudimentary information about student data. He said he worries about training; there is nothing that uniformly indicates students have a right to privacy and that they (TAs) must maintain that privacy--so they should not leave a gradebook open on a worktable. There is a need to get information to everyone, transmitted annually, in a way that they can rely on it. Mr. Schumacher said they are thinking about a web-based training module on privacy; would he assign it to a TA, he asked Professor Collins? He would, Professor Collins said. That would be the preferred approach, Professor Bland said. The feedback he has received, Mr. Schumacher told the Committee, is that people have had enough and do not want any more instruction.

Professor Akehurst said he could offer the perspective of a department chair who is responsible for keeping data private. If told that he should look at so and so, it would be helpful to have a one-stop or a 911 number to call to get immediate help. If he does something wrong, both he and the institution could be in a bad situation. Mr. Schumacher agreed and said faculty should not be in that position. He said they should call the General Counsel's office to get an answer.

Professor Fossum thanked Mr. Schumacher for joining the Committee and said it would look forward to the work of the PEL group. Mr. Schumacher encouraged suggestions on how to improve what the University is doing with respect to privacy.

2. Reserved Parking

Professor Fossum next welcomed Bob Baker, Director of Parking and Transportation, and Associate Vice President Laurie Scheich to the meeting to discuss the reserved parking program. He noted that several ramps had signs installed indicating spaces were reserved and that the Committee had questions about access for evening students and issues of equity. Mr. Baker agreed to report on the program.

Mr. Baker distributed a one-page handout summarizing the reserved parking program by facility. The reserved parking program started in September, he said. They had received several isolated requests for a number of years for reserved parking. Reserved spots are a common practice in the parking

industry, he said, and one sees them in Minneapolis, St. Paul, and across the country. Historically, they resisted a reserved parking program because there were not enough parking spaces to meet demand, but with new parking facilities, excellent mass transit, more on-campus and near-campus student housing, the demand for parking has declined. It seemed to them an appropriate time to consider a reserved parking program in order to add revenue to a budget that was cut \$1.56 million this year.

There are not reserved parking spaces in all facilities, Mr. Baker said. They put them where they thought they could manage them. In some facilities they cut back on the number of reserved spots because of a lack of demand. At present they are authorized to create 500 reserved spaces as a pilot program; thus far they have reserved 370 spaces, of which 357 have been reserved.

Ms. Sellew said the Committee was also concerned about the public relations impact. People will see a lot of empty reserved spaces, which makes it look like no one is working. She said she did not know if the spaces are being monitored. Professor Fossum said he counts the number of occupied reserved spaces each day and has never seen more than 25 at any one time, out of a total of 41. When they started the program, they made a guess at demand at each location, Mr. Baker said, and they tried to choose the most attractive spots in a facility (because the users are paying more). Based on demand, they have removed some reserved spaces from some facilities. They plan to make the spaces available as demand fluctuates.

To what extent do the reserved spots reduce the ability of the public to park, Professor Fossum asked? Mr. Baker said he did not believe it reduced it at all. The spaces were given to existing contract holders and no spaces were taken away. There is plenty of space available, depending on the location.

Another question that Professor Fossum had raised, Vice President O'Brien recalled, was about the extent to which some facilities might be full and having reserved spaces could make it impossible for evening students to park (for example, in the 19th Avenue ramp adjacent to the Carlson School). They do occupancy counts by hour in all parking structures, Mr. Baker said, and they took a careful look at this issue to be sure there was no negative impact on evening school classes. They also limited the hours that the reserved spaces are reserved, from 6:00 a.m. to 6:00 p.m. The end time could perhaps be moved back to 5:00. Most evening students on the West Bank have classes starting at 5:45 and try to arrive by 5:15, Professor Fossum said. His guess, he said, is that someone who has a reserved space who is not using it at 5:15 is unlikely to come back. Mr. Baker agreed, and said they are not enforcing the reserved spaces after 5:00 anyway.

Although this is really a question for the Finance and Planning Committee, Professor Fossum said, he wondered about the real impact of the reserved parking space program on revenues. The job of the parking department is to put cars in spaces; is any additional revenue coming at the expense of public parkers? Mr. Baker said he could assure the Committee it was not; demand has declined, depending on the facility. Some are simply unattractive and they cannot give away parking spaces. There are about 2000 spaces available per day, however, so the reserved parking program should not affect availability. There is a slight positive effect on revenue.

Professor Bland inquired about the Washington Avenue Ramp, which is often full but also serves a lot of transient parkers. That was the case prior to the last couple of years, Mr. Baker agreed; more recently, they have seen demand slacken in the ramp, so he said he is comfortable with the situation.

Professor Hendel said that part of the earlier Committee discussion was about values; reserved parking adds a new dimension that was not there before, because now ability to pay affects who gets what. He said it is important not to create more divisions among important employee groups at the University. He said he understood that reserved parking is a common practice in business, but the sentiment of this group is that higher education does things differently. Mr. Baker said he understood the point but that he also needed to respond to customer needs and requests and try to balance the two interests. Their intent was well-founded but the program has not taken off as they expected it might. With three months' experience, they do not see a need to eliminate the program but they also do not see it using up the parking inventory. It will probably stay at around 500 spaces, which is less than 3% of the total number of parking spaces available (which is over 20,000).

Do they expect to change the charge for reserved parking, Professor Goldstein asked? Would they obtain more revenue if they charged less? The charge is low at \$10 per month, Mr. Baker observed. They will leave the option open, but there are issues of supply and demand as well as internal politics. They do not envision raising the price unless people start beating down the doors for reserved spots.

What is the motivation for people to pay for a reserved spot, Vice President Carrier asked? They were told that people go on and off campus a lot and want to be able to find their car quickly, Mr. Baker said. The Academic Health Center has made the most requests for reserved parking, for physicians who work at several different sites.

Professor Fossum said that he had received a number of comments from colleagues about the resolution the Committee adopted concerning the reserved parking program, and they were not all negative. The positive responses dealt with the issue of those who need to go on and off campus and the value of knowing where one's car is all the time. He also received a comment that this was a "cranky committee." He said he appreciated the quick change that parking had made in the number of reserved spots, given the increased dependence of a number of programs on offering a convenient environment for evening students. He recalled again that the Carlson School has been in competition with other programs for years, and mostly over services, not curriculum--this was seen as a difficult place to come to for classes. He said they no longer have a problem competing on services and hoped that they would not be put in that position again.

Mr. Baker said he had talked with the Dean of the Carlson School about the evening program. He is willing to work with any college that has issues in order to be sure that parking is NOT a problem.

Professor Bland said she wished there were a way to park in various ramps during the day. That is possible with a budget charge card from the department, Mr. Baker said, but it is necessary to pay. Professor Bland said that if one is already paying for a space on campus, one should not have to pay more to move around. Parking is like all auxiliary services at the University, Vice President O'Brien pointed out, in that it must be self-supporting, it receives no tuition or state funds, and pays the IRS tax. It does not try to make money but it also does not draw money from the University.

Professor Fossum thanked Mr. Baker and Mss. O'Brien and Scheich for joining the meeting.

3. Other Business

Professor Savage inquired if anyone else had had trouble filling out the REPA form on the web. It took him an hour to do so. Professor Bland said that it depends on the browser and the version; the form can work on 1,000 computers but not his. On a show of hands, it appeared that only two members of the Committee had had any difficulties with the form.

Professor Fossum then addressed a question to Mr. Chapman. It appears that recent federal legislation may revive the opportunity for individual post-retirement health care plans. Mr. Chapman said he did not know anything more than what he read in the newspaper. Professor Litman asked if the University receives any money to maintain the current retiree benefit program. Professor Akehurst suggested the question be referred to the Benefits Advisory Committee, chaired by Professor Morrison. Both the Benefits Advisory Committee and the Retirement Benefits Subcommittee should look at it, Professor Goldstein said.

Professor Fossum adjourned the meeting at 3:40.

-- Gary Engstrand

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