



OHIO FACULTY COUNCIL MEETING MINUTES

FINAL Minutes – 13 May 2022

Approved, 10 June 2022, Leanne Petry

12:30 – 2:30 PM

Virtual via Zoom

MEMBERSHIP (ATTENDEES highlighted in yellow)

Bowling Green University: Allen Rogel (cycling on), Christopher Frey, David Jackson

Central State University: Leanne Petry (cycling off), Mitch Eismont (cycling off), Kenneth Hayes (cycling on), Lubna Abu-Niaaj, Anthony Milburn (cycling on)

Cleveland State University: Bob Krebs, Andy Slifkin, Anup Kumar

Kent State: Pamela Grimm, Ed Dauterich, Darci Kracht

Miami University: Jennifer Green, Thomas Poetter (cycling on), Rosemary Pennington

NEOMED: Patrick Gallegos, Natalie Bonfine, Charles Thodeti, George Litman

Ohio State: Ken Lee, Ben Givens, Amy Darragh

Ohio University: Robin Muhammad, Benjamin Bates, Nukhet Sandal (cycling off)

Shawnee State University: Tony Ward, Erik Larson, Drew Feight

University of Akron: Linda Saliga, Kate Budd

University of Cincinnati: Greg Loving, Dan Carl, John McNay

University of Toledo: Tony Bigioni, Linda Rouillard

Wright State University: Brian Boyd, Megan Faragher, Laura Luehrmann

Youngstown State: Chet Cooper, Mike Ekoniak

Ex-officio: Wright State University, Former Chair Dan Krane

Guests: (ATTENDEES highlighted in yellow)

Matt Ides from Ohio EA

Bridget Coontz, Section Chief, Constitutional Offices Section, Ohio Attorney General's Office

Mia Yaniko, Section Chief, Education Section, Ohio Attorney General's Office

Terry Filicko, Chair from Ohio Faculty Senate, Clark State

Sara Kilpatrick, AAUP

13 May 2022, 12:30 – 2:30 PM (12:31 PM called to order and quorum of institutions confirmed)

1. Agenda approved as distributed
2. Guest speakers: Ohio Public Records Laws and Shared Governance-Best Practices (12:32-1:18 PM)

Bridget Coontz and Mia Yaniko Ohio Attorney General's Office briefed the OFC members on Laws pertaining to Ohio Public Records and best practices. From the chat, to membership was directed to the following website: (<https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>) for information regarding the Sunshine Laws. A high level overview was presented as extracted from the 3-hour training course in public records the Attorney General's Office offers on a routine basis. Bridgit Coontz serves as the Chief of the Constitutional Offices Section, and her expertise is centered in Ohio's public records act and associated litigation whereas Mia Yaniko's experience is in education-related records (i.e FERPA, etc.).

The Ohio Public Records Act is codified in 1, 49, 43 and it says that a public record means records kept by a public office. Therefore as state institutions, we are to whom the act applies and our records because we are public offices. A record under the Ohio Public records act is defined to consist of three (3) parts:

- (1) A record must be on fixed media which includes paper and/or electronic storage. It also includes emails and text messages since it is stored information on a fixed medium.
- (2) The second part of the definition of a record is that the record is created, received by, or comes under the jurisdiction of a particular office.
- (3) The third part is when the record documents the activities of the office. This means a record could be a public record if the content of the information documents the activities of the office. Thus, whether something is the public record is determined by looking at what it, the document, says.

That being said, if a record does not document the activities of the office, even though it is on a fixed medium and was received unsolicited in the state email system, for example, then it is not a record of the office and can be deleted immediately.

OFC Member Question:

My university has argued that the use of an outsider search firm allows them to keep searches for deans and higher administration outside the public records.

Response:

This is not completely accurate. If the outside search firm gathered a series of resumes and did not use all of the resumes which they did not open, and they had not opened them yet, then this response would be right if somebody made a public records request for all of the resumes. Resumes that were received were not opened and had not been used and as such did not yet document the activities of the office. But if one gathers off the third party search firm, gathers all those records and is evaluating them, and is reviewing them for purposes of the university, then those records would be potentially public records and there is some case law in that respect where those records would be public record. Records request for the application materials that are received, reviewed/evaluated and then used have to be given out upon request. In effect what courts have said is that one cannot circumvent the Public Records Act by contracting with a third party to carry out those responsibilities.

In addition to the three items above, it is necessary to know information about contracting out of the Public Records Act. Sometimes people will try to slip this item into contracts and say this stuff is pursuant to the contract and therefore not a public record so that provision and contract is actually void under Ohio Law. So if it documents the activities of the office, and in the case of those applications received and evaluated by the university, it would meet that third part of the definition of a public record so applying the Public Records Act does not apply to non-records.

Discussion on record versus non record information: If a document is a non-record unsolicited email or something that the office does not use, then it does not have to be produced in response to a public records request. Also, if someone in the office gives out non-record information then that is okay if it is not necessarily confidential by virtue of the fact that it is a non-record (i.e. email correspondence examples discussed: lunch plans, a non-record vs. financial report status, a record which was created and received by the office documenting the activities of the office, between two office colleagues).

Suggestions for pairing down the volume of daily records by determining: (a) Is this a record; (b) Is this personal; (c) Can it be deleted; and (d) Should it be retained? If a record is typically retained by the office in the ordinary course of its business, then it is a public record. It is subject to the Public Reference Act which refers to the concept of records, retention, and schedules. For example, an email regarding the financial report sent by Dean and a comment noting "He's such an idiot" would identify the first part of that email as a record of the office and the second part could be redacted as non-record. There is actually a case, however, where a coworker sent another coworker an email which was a derogatory. It was a racially derogatory comment that one coworker made to another coworker. A media outlet found out about it, and made a public records request for it. The public office, denied it, and said, the racially derogatory comment did not document the activities of the office and that it was, therefore, not a record of the office. But if the public office took that racially derogatory email and implemented discipline as a result of it, it actually then becomes a public record. It all comes back to does this record "document" the activities of the office.

Under Ohio Law, public offices can only destroy records, pursue into records, retention, schedule, or statute. In the Attorney General's office, general correspondence emails can be deleted after 6 months. There is also a transient records retention schedule. A transient record is a record that can be in an office which can be deleted as soon as it is no longer of administrative value. The record is no longer kept by the office because it is appropriate and allowed to be deleted and therefore under no obligation to have to give it out. If a public records request for it is made, however, and it gets kept by the office and one did not comply with the records retention schedules, and the record is kept, and it is requested then one would potentially have to give it when requested. Notation: it is very important to be familiar with and to comply with the office's records retention schedule. Identify the retention schedules set by each individual institution or by the State of Ohio.

OFC Member Question: Does each institution have a separate retention schedule? Response: They do, but most of them are based off of the IUC policy which came out several years ago, and most of the 4 year institutions adopted a version of that for their own institutions. If memory serves, the original version of the IUC model that went out did not have transient documents included and this is the part people were tailoring to their own institutions. In general for comparative purposes: if you have it vs. if you have gotten rid of it pursuant to schedule, then you have to give it out in response to public records requests. Also if an office is creating new types of records that do not fall under an existing records retention schedule, then the office has to adopt a new records retention schedule to cover those records. An office can only get rid of records pursuant to schedule or a statute, so if there is no schedule the office has to keep the records forever.

Other types of documents discussed as record or non-record under Sunshine Law: (a) performance reviews of administrators (i.e. upper level, deans and chairs); (b) personnel files; (c) video recordings, transcriptions and live feed; and (d) personal vs state issued email and/or cell phones used to conduct professional business (i.e. emails, chats, ims, video conference recordings and/or messages). Moral to today's

presentation: Does this communication document the activities of the office, if so then it is a public record under Ohio law. One cannot circumvent the Public Records Act by simply using a personal cell phone or email address to conduct state business. A live feed would be considered a transient record if one is not actually recording it. For unrecorded transcriptions, it depends on what one is going to do with it and use it or not. Is it a record or is it a non-record? It is the same scenario as if one has notes and/or document drafts. Personal notes are not records if one keeps them to oneself. The notes would not be a record of the office because one them for one's own personal convenience, and they do not document the activities of the office. So, personal notes are not records, and one does not have to give them out in response to a public records request. On the other hand, when it comes to public records requests drafts are records managed through the transit records, retention schedule. Notes are not records so long as they are not shared with everybody.

Making a public records request: (a) There is no special writing or format or language involved. If the requester makes a request it has to be honored and request cannot be forced to use a specific form. Typically, they are email requests but sometimes they are verbal. They can be made to anybody in the office. (b) A proper public records request seeks existing records. If the record is kept by the office, then it has to be given if requested and that is a proper public records request. If it is a public records request for something that does not yet exist, then that is not a proper public records request because it does not seek existing records. (c) A proper public records request is also not a request for research or information. (d) Records request can be made by a business, government entity, anonymously, and using fake names. Anybody can make a public records request and one does not have to self-identify or identify the motive or for what purpose the records will be used. One can be out of state or out of country and the public records request has to be honored.

Exemptions: records such as FERPA, redacting vs. withholding, transcripts for accommodations

OFC Member Question: Are meetings in executive session considered an exemption?

Response: No, as this question relates to the Open Meetings Act. When a group goes into executive session, to exchange a bunch of documents are those documents confidential and the answer is no since there is nothing in the Public Records Act, and nothing in the Open Meetings Act that makes those documents confidential. There is a misconception that people sometimes think that stuff can be shielded if it is done and exchanged in executive session. This is the case if it is privileged information. It is not the Open Meetings Act or the Public Records Act that would prevent the document from being released. It would be the Ethics Wall.

OFC Member Question: Are Faculty Senate meetings subject to the Open Meetings Act, and then, further, many of the institutions have senate leadership groups that are smaller and meet separately, so that in effect it is a Senate Cabinet. Most do not keep minutes and consider it a closed meeting and there is no record. So, this goes to the notes versus drafts thing. A secretary keeps notes to generate minutes, and the meeting is recorded as a backup. Which of those items are required to provide, and are they open meetings in the sense that anyone can demand to be present at the Senate meetings?

Response: Regarding the notes, the recordings and then the final minutes, because somebody takes notes while the meeting is going on and then they also record it to be able to use those to transcribe and create the minutes then the notes would be personal notes so long as one keeps them to oneself. For the recording, it is a transient record because it is no longer of administrative value. Once under the schedule the minutes are made then that recording is no longer needed. It is a recording of an oral communication but it is no longer of administrative value. Once the minutes are made it is a business decision to be made to always keep

those minutes in order to always be able to self-check. Then maybe it is not transient so it is kind of sometimes we have.

Additional Training: The Attorney General's Office is doing training virtually and in person for all the state universities. The Office is coming to campuses and using university spaces in order to be able to provide the three-hour training.

3. Discussion and approval of minutes from 8 April 2022 (1:19 PM)
Moved, seconded, motion to approve carried and minutes adopted as distributed with no corrections.

4. Report of the OFC Executive Committee
 - a. Membership: This is the time of year that we begin to have new members join, as well as when veteran members depart. Help us keep membership communication list and webpage updated, and please double check that your university delegation is receiving all communications. **Please make sure at least one person from your university delegation has reviewed and updated (if necessary) the membership list** in our [shared document](#).
General reminder to update Google document with new Senate Chairs and Representatives cycling in to Ohio Faculty Council (OFC) and remove those members cycling off for the 2022-2023 Academic Year (AY)) in order for list serve and website updates to occur.
Introduction of new and returning members to OFC. New and returning affiliate members from Central State University: Dr. Kenneth Hayes and Dr. Anthony Milburn, respectively.
Orientation and onboarding for new and returning members will occur in September. Email OFC Secretary Leanne Petry with any changes (lpetry@centralstate.edu).

 - b. Old Business
 - 1) Boards of Trustees: *Reminder:* Connect with Board of Trustee leaders to affirm or decline their support of a textbook auto adopt policy, *decided in consultation with faculty leaders*, no later than August 15, 2022. [HB110](#) (see p. 147).
 - 2) Updates on pending legislation: Resolution at UC
 - 3) OFC Technology Commercialization Award: Review proposed criteria changes-licensing agreement, revenue projections, more detail about the creative and innovative aspects of the inventions, more specifics about the societal market and the need for the invention as well as some of the impact that it will have in society and on Ohio and its citizens. Note: Nomination deadline is August; please be reaching out for nominees from your campus. There is a form that the applicants will fill out and two (2) different names can be submitted from each institution where one comes from the Provost/Research Office and one of which can come from the elected Chair of the Faculty Senate.
 - 4) Teaching and service awards on our campuses
We continue to collect and review data on university-wide [teaching and service awards](#). OFC working on plans to honor awardees.

c. New Business

1) OFC elections (see OFC [Bylaws](#))

Vice Chair-Ben Givens (OSU) has agreed to continue on another year.

Secretary-Ken Hayes (Central State) has self-nominated to serve in this capacity.

(OFC Chair is a 2-year term; Laura Luehrmann will be continuing until Spring 2023)

Motion to approve nominees moved, seconded, no extensive discussion needed, motion approved by OFC membership.

2) Revisions to OFC website this summer: seeking suggestions (and volunteers)

3) OFC meetings for AY 2022-2023: proposed dates will be shared in June; preferences for best mix of in person and remote? In Person Pros: Membership commented on the comradery of being able to network in person; In Person Cons: Travel time; Suggestion: Rotate among institutions with hybrid option; Perhaps one a semester (October and February), maybe one a year; In Person when joint meeting with Ohio Faculty Senate; Present awards in person; Lobbying day.

4) [Barbara Gellman-Danley](#), HLC President, will join us for the June 10 OFC meeting

5. Campus examples of shared governance successes and challenges: divisive concepts resolution at UC; policies and procedures to handle student complaints in this regard to be discussed at May Senate meeting at Central State as faculty are concerned with how they will be protected; institutional administration changes; shared governance missteps; faculty office hours; topics to discuss with HLC President regarding online learning assessment, assessment of DEI curriculum, program review and refreshing, new trends on the horizon in assessment; continuation of mask mandates, college reorganizations

6. Announcements and Adjournment (2:35 PM):

a. One (1) remaining meeting date for AY 2021-2022 (at 12:30-2:30) - June 10 (no July meeting)

b. Other