

Faculty Affairs Committee  
Academic Senate

Minutes 11/26/13

**Present:** Abhijit Biswas, Poonam Arya, renee hoogland, Elizabeth Puscheck, Brad Roth, Beena Sood, Ellen Tisdale, Deborah Walker, Linda Beale, Delores Dungee-Anderson

**Absent with notice:** Mary Sengstock, John Vander Weg

**Absent:** Lobelia Samavati, Derek Wildman, Ewa Golebiowska

**Guest:** Louis Lessem from the General Counsel Office

Meeting started at 1:06 p.m.; quorum was reached at 1:08 p.m.

Abhijit Biswas requested Brad Roth to initiate the dialogue with Louis Lessem. Brad Roth raised the following issues/questions:

- Mackinac Center seeking information from Labor Studies faculty members.
- What is the position of the university on valid and invalid requests?

Louis Lessem summarized the key points of Freedom of Information Act (FOIA)

- Every state has a FOIA and the Feds have a FOIA although the rules differ between them
- In Michigan, there are two principles worth noting:
  - o 1. What is the point? Full and complete information regarding the affairs of the government and the official acts of those who represent them such as public officials and public employees.
  - o 2. What's public record? Anything concerning official function
- In recent times, there have only been two requests by FOIA for faculty emails
  - o 2005: requests for faculty emails regarding a faculty member involved in a project about the wetlands – request was denied
  - o Mackinac Center: request for labor studies faculty emails from Michigan State, University of Michigan and Wayne State involving a series of words
    - FOIA then asked faculty to sort out their private emails and leave only emails regarding employee or work in Labor Studies. The relevant Email chain was 50-60 pgs long.
    - U of M and MSU responded in a somewhat similar way
- FOIA does not produce information, it produces records
- Most FOIA requests are trivial and handled out of media relations
- Louis Lessem's office is the only one that can deny a FOIA request
- New FOIA laws increase the cost of non-compliance; possibility of civil and criminal penalties for non compliance
  - o Does not, however, amend exemptions or rules
- Most recent case of FOIA: Physicians Committee For Responsible Medicine requested records related to particular researchers and their research with dogs. A radical group that obtained the information threatened the researcher and a

member of the group was jailed. The Physicians Committee asked again for records and their request was denied arguing the privacy exemption which protects against publishing information that could cause someone to be threatened. Judge ruled that research on animals was public matter but that the group could not ask for information on researchers.

Questions asked following the above discussion:

- Linda Beale: In what ways did the University review the information categorized by faculty emails?
  - o Answer: the university took what the faculty gave them.
  - o General stance of the counsel's office: "That which is exempted you don't get to see."
- Brad Roth: What counts as an official function?
  - o Certain things are not available under FOIA: confidential research being one of them
- Linda Beale: Do you have in your office an internal guideline that categorizes things that you consider off limits to a FOIA request?
  - o Internal practice: Right to say no is restricted to General Counsel's Office
- renee hoogland: How did the Mackinac Center ask the right questions?
  - o They didn't; they believed there was a conspiracy
- Linda Beale: Would opinion discussions between faculty and student be released? In some ways, it is an official function, in some ways it isn't.
  - o FERPA protects student records so these records would not be released.
- Linda Beale: What about discussions with a faculty colleague? Personal communication?
  - o Look for a trigger of official function
- When is something that might be in your email discoverable?
  - o When you are doing something on an official capacity as an employee of the university
- Elizabeth Puscheck: So the public doesn't have access to our emails at any time?
  - o No
- Elizabeth Puscheck: What kind of protection do we have?
  - o Personal business is protected
  - o The first screen is done by employee, the second screen will be done by Louis Lessem (Louis Lessem's office)
- FOIA requests first goes to media relations, then the General Counsel's office
- Linda Beale: At what point would you alert the faculty?
  - o Immediately
- Brad Roth then gave a hypothetical situation and asked if a FOIA request would be approved for a group wanting emails regarding an event on campus or bringing a speaker to campus.
  - o One of the exemptions of FOIA is called the advisory exemptions - discussions that are leading up to something
  - o Do not want to disturb free flow of speech

Most of the time, FOIA requests are not controversial; requests for faculty emails are very rare.

At this time the FAC thanked Louis Lessem for discussing the FOIA related concerns with the Committee. Louis Lessem departed at this time.

Next, the Committee approved minutes from October 9, 2013.

The committee discussed the agenda for the next meeting on December 11 at 1:00 p.m.

- Mary Sengstock and Kelley Skillin will present on Faculty Mentoring Survey
- Online Education Committee will not be discussed at the next meeting; Abhijit Biswas will update the committee on the status
- John Vander Weg will report on the Tenure Factors

#### Old Business

- Retirement Presentations in Winter 2014
  - o Need to find recently retired faculty who would be willing to come in and talk about their experiences
- Student Liaison still has not been assigned to the Faculty Affairs Committee
- Regarding the issue of faculty governance mentioned by Poonam Arya (in the October 9, 2013 meeting), Linda Beale noted that the Policy Committee is trying to ensure that the President and Provost are more consultative and that they honor faculty governance. Linda Beale noted that President Wilson seemed to be more receptive to the idea of faculty governance.

#### New Business

- Elizabeth Puscheck: Anybody else having issues with the (seemingly long) faculty hiring process?
  - o Linda Beale: Med School hires more than any other school which may be the reason for the issues
  - o Abhijit Biswas: Business School has had similar issues. Hiring process at times seemed to have been very long, increasing the chances of losing good candidates.
  - o Linda Beale: Result of centralizing HR?
  - o Elizabeth Puscheck: How can we streamline this process?
- Winter 2014 Schedule
  - o Committee decided to meet on third Tuesdays of the month at 12:30
  - o The committee also decided to identify a “second best option” day/time for the meetings

The meeting was adjourned at 2:25.

Respectfully Submitted,

Abhijit Biswas  
Chair