

Howling Counsel

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LEGAL SPOTLIGHT: CAMPUS SAFETY AND THE CLERY ACT

The [Jeanne Clery Campus Security Policy and Campus Crime Statistics Act](#) requires universities to publish annual crime statistics and an annual crime and fire report by October 1st of each year.

Over the past several years, the U.S. Department of Education has assessed hefty fines for violations of the Clery Act. Eastern Michigan University received the largest fine of **\$350,000** for failure to notify the campus community in a timely manner about a murder in a residence hall. Last Spring, Virginia Tech was assessed **\$55,000** for its failure to issue a timely warning to campus during its tragedy. In August 2011, Washington State was assessed **\$89,000** for failing to provide statistical information on two forcible sex crimes and for omitting required policy statements in its annual crime report.

Among many requirements, the law requires that “**Campus Security Authorities**” report certain crimes to law enforcement. In addition to police and security officers, this term also includes “officials of the university who have significant responsibility for student and campus activities, including but not limited to student housing, discipline and campus judicial proceedings.” NC State has designated coaches, directors, athletic trainers, student organization advisors, and staff in Greek Life, campus recreation, student affairs, housing and residential life, career and coop, scholarships and financial aid, study abroad and international services, Institutional Equity & Diversity Centers, and the Division of Undergraduate Programs as Campus Security Authorities.

Campus Security Authorities **should not and are not responsible for investigating crimes,**

but must report a crime to the University Police as soon as you have information that a crime may or has occurred. Campus Security Authorities may report anonymously using the [University Police form](#).

NC State’s annual statistics are listed here: <http://campuspolice.ehps.ncsu.edu/news/stats/>.

NC State’s annual security and fire safety report can be read at this link: <http://campuspolice.ehps.ncsu.edu/news/stats/annual-security-report/>.

If you have questions about the university’s compliance with or your responsibilities under the Clery Act, please contact either University Police Major Jon Barnwell at 515-5916 or General Counsel Eileen Goldgeier at 515-3932.

LEGAL BRIEFS

Electronic Job Ads—Great news about hiring foreign faculty – some electronic job ads are now acceptable when conducting recruitment. After a decade long struggle by higher education groups and a ruling this summer by the Board of Alien Labor Certification Appeals in a case brought by University of Texas at Brownsville, the U.S. Department of Labor has agreed that print advertisements are no

longer required for foreign labor certifications. Instead, universities may now use electronic or web-based national professional journal ads (not a job board) which are “**viewable to the public without payment of subscription and/or membership charges.**” The electronic job ads must be “**posted for at least 30 calendar days**” on the web. Please note that departments must maintain proof of the 30

day posting showing the content along with the start and end dates of the electronic posting. Due to the specifics regarding electronic job ads, departments should contact Jill Guzman Blitstein, International Employment Manager, at 515-4518, **before** placing an electronic ad to ensure all requirements are met for green card application purposes.

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We make house calls!

Send your inquiries to: howlingcounsel@ncsu.edu or call (919) 515-3071

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Howling Counsel

Responding to Fake Twitter Account of a University Employee

Twitter accounts can pose potential risks to the reputation or image of NC State or a university official. Twitter allows parody if it falls under the guidelines set forth in the [Twitter Parody, Commentary, and Fan Accounts policy](#). If a twitter account or feed is likely parody, Twitter will allow the user to continue the parody.

If you determine that a twitter account and feed is an impersonation and will likely be found to be misleading or deceptive, OGC suggests you follow these steps to get it removed:

1. Go to [Twitter's Impersonation Policy](#) which lists all the information you will need to report the impersonation.
2. Scroll to the bottom of the Impersonation Policy, under the heading "**How do I report an Impersonation violation,**" and follow the instructions, including clicking on "**submit a ticket request.**"
3. After clicking on "submit a ticket request," you will be directed to a webpage entitled "**Dear Twitter, someone is impersonating me!**" Fill out the fields indicated on this page. Most likely, you will select "**I am being impersonated,**" followed by "**I am an authorized representative of the person being impersonated.**"
4. After completing the fields, click "**submit**" at the bottom of the page.
5. To check on your ticket request, go to [Twitter's help center](#).
6. Once on this page, click on "**Check your tickets**" found at the upper-right hand corner of the page.
7. You will be directed to sign onto Twitter if you have an account (so it may be easier to find someone in the office to check the ticket for you). Once you are signed in, you will be directed to a page providing an update as to the status of your request.

For assistance in addressing a fake twitter account, contact Assistant General Counsel Shawn Troxler at 515-1527 or shawn_troxler@ncsu.edu.

FERPA Update: Ed Chief Considers Change to 'Directory Information' Student Privacy Rules

The Department of Education has proposed changing its regulations pursuant to the Family Educational Rights and Privacy Act (FERPA), a federal law designed to protect student education records from unconsented release. The proposed changes address a number of issues, including a school's discretion related to information release once it defines the student data it considers directory information. 'Directory Information', according to the Department of Education, is student information "that would not generally be considered harm-

ful or an invasion of privacy if disclosed." Such information includes a student's name, email address, phone number and academic major, and may be released by a school without the student's consent. If approved, the new rules would allow schools to adopt limited directory information policies, which would authorize them to disclose directory information only to specific parties, or for specific purposes, or both.

Public comment on the proposed change has been mixed, although proponents of

the change applaud it as a step toward allowing increased privacy protection. "This change would allow NC State to adopt tailored policies geared toward stopping identity theft and other improper uses of directory information," said NC State Associate General Counsel Sarah Lannom.

For more guidance on this topic, please contact Clifton Williams, University Records Officer, at 515-1526 or clifton_williams@ncsu.edu.

NIH Makes Significant Changes to Financial Conflicts of Interest Regulations

On August 25th, the National Institutes of Health (NIH) published the first significant changes since 1995 to its financial conflict of interest regulations. A summary of the major changes can be found here http://grants.nih.gov/grants/policy/coi/summary_of_major_changes.doc.

Although NIH Director Dr. Francis Collins stated emphatically that the NIH wants to see "flourishing collaborations" between NIH-funded researchers and in-

dustrial partners which lead to important advances in biomedical research, the new regulations seek to preserve the objectivity and integrity of NIH-funded research by requiring researchers to disclose the significant financial interests related to their institutional responsibilities. In addition, the new rules require recipient institutions to implement plans to manage any resulting financial conflicts of interest.

The Office of Sponsored Programs and Regulatory Compliance (SPARCS) will lead NC State's efforts to timely comply with the new regulations over the next year. Please contact Richard Best, SPARCS Compliance Officer, at 515-0158 or richard_best@ncsu.edu, with any questions about the new regulations.

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President Signs America Invents Act—Most Significant Patent Reform in 60 Years

On September 16, 2011, President Obama signed the America Invents Act, a patent reform bill that makes important changes in U.S. patent law that will have immediate and long term impact on the securing and protecting of patents in this country.

“First to Invent” changed to “First to File” —One of the most important changes for University faculty is the change to a “First to File” system of priority used in most industrialized countries outside the U.S. Because of this change, inventors will no longer have the

benefit of the “one year grace period” for filing after the disclosure, sale or offer for sale. Effective 18 months after September 16, 2011, an inventor will retain the one-year grace period for the inventor’s own public disclosure, but will lose all rights in the invention if it is sold, offers it for sale, or uses it publicly before filing an application.

New options for challenging patents Another important change would allow challengers to petition the Patent and Trademark Office (PTO) for review of a newly issued patent on any grounds

within nine months of the patent grant. A benefit to small companies, this change will permit challenges in the PTO rather than later in litigation.

These legal changes highlight the importance of having well written materials transfer/confidentiality agreements in place before allowing access to your invention. For more on this subject, contact Billy Houghteling, Executive Director in the Office of Technology Transfer, at 515-7199/billy_houghteling@ncsu.edu or Judy Curry, Associate General Counsel, at 515-2696/judy_curry@ncsu.edu.

QUESTION OF THE MONTH

“Is my data a ‘public record’, and if so, how long do I need to keep it?”

Generally, any document you create, work on, receive, send or are copied as an NC State employee is a ‘public record’ under state law. As such, it must be protected and preserved until you have the authority to destroy it.

Who provides that authority, you ask? The UNC System has agreed to abide by a public record retention and disposition schedule commonly called the [University General Schedule](#) which provides reten-

tion timelines for public records commonly found on all UNC system campuses.

So what, right? Wrong. Unauthorized destruction of public records is actually a crime in North Carolina and could, under certain circumstances, subject NC State to fines and attorney’s fees. Before you throw something away, check the [University General Schedule](#) first or call OGC for advice to ensure that there is no

other legal or regulatory retention requirement.

For more information on this topic, please see the [Records Retention](#) page on OGC’s website.

Have questions but afraid to ask? Send your questions to howlingcounsel@ncsu.edu.

NEWS & NOTABLES

Records Retention Schedule —Ever ask yourself, “How long do I have to keep these old records or data?” If so, check out the [University General Record Retention & Disposition Schedule](#) applicable to NC State. For workshops or instruction on records retention and disposition, give OGC a call or visit our website at http://www.ncsu.edu/general_counsel/legal_topics/RecordRetention.php.

For additional guidance on records retention contact University Archivist Todd Kosmerick at 513-3673 or University Records Officer, Clifton Williams at 515-1526.

Clifton Williams, OGC University Records Officer, has been elected to the NC Central University Law School Alumni Association Board of Directors and appointed the organization’s treasurer. He will serve a four-year term. Clifton graduated from the law school in 2009, and was licensed to practice law in April, 2010.

Shawn Troxler, Assistant General Counsel, and **Clifton Williams** volunteered to serve as staff advisors to the NC State Pre-Law Student Association (PLSA). PLSA sponsors several annual law-related events including the Showcase of NC Law

Schools which took place on August 30th. Representatives from the seven North Carolina law schools were on hand to answer questions from NC State students who are considering a law career.

Bocce’ ball, anyone? OGC can’t be beat! OGC challenges all-comers to a Bocce’ ball game on the Court of North Carolina. Contact OGC staffer Denise Hall at 515-3071 to schedule a game between OGC and your office, school or college.