

Howling Counsel

NC STATE UNIVERSITY
OFFICE OF GENERAL COUNSEL

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LEGAL SPOTLIGHT: TIS THE SEASON!

OGC does not want to be the scrooge of the holiday season but there are many laws regulating gifts to State employees all year round. We bring you this friendly reminder during this high time for gift giving.

The university expects employees to conduct themselves with integrity and high ethical standards in order to prevent actual or perceived conflicts of interest, discourage attempts at undue influence and avoid violat-

ing the State laws on ethics in government service. Entities and individuals that do or have done business with the university or seek to do business with the university, or who are lobbyists or lobbyists principals are prohibited from giving gifts and university employees are prohibited from accepting such gifts under most circumstances. Gift giving among ourselves, the other constituent institutions and General Administration is considered within the "UNC

Family" and is permissible. OGC has created a [summary of gift laws and prohibitions](#). Any questions should be directed to Internal Auditor Cecile Hinson at 515-8862 or General Counsel Eileen Goldgeier at 515-3932.

Happy Holidays! This will be our last issue in 2011. Please send us your ideas, suggestions and questions that you would like to see us cover in Volume 2 (2012 to 2013).

A User's Guide to Celebrating Google Day

In conjunction with Google Day, OIT and the Office of General Counsel have worked together to develop a "Best Practices for Data Security in Google Apps @ NC State." These *best practices* explain the appropriate use of private and sensitive data utilizing Google Apps @ NC State as it relates to your role at the university. The *best practices* have broad applicability, and address how to appropriately

use Google Apps @ NC State to maintain the security, privacy, and confidential nature of information relating to student educational records, personal identifiers, export controls, financial data, health records, public records, and intellectual property. Failure to follow these best practices could result in a violation of university policy, state and/or federal law. So on November 30th, as we all sit

around our computers, exploring the brave new world of Google Apps, and wondering what it means to be "in the cloud," please remember to check out the [Best Practices for Data Security in Google Apps @ NC State](#), to understand how you may use Google Apps @ NC State to conduct business appropriately and protect and maintain certain information, documents, and data.

LEGAL BRIEFS

Did You Know? In light of the recent events at Penn State, many of you may be wondering what the law is in North Carolina for reporting child abuse. In North Carolina, if you have reason to suspect that any form of child abuse is taking place by a parent, custodian, or caretaker of a child, the law mandates that you report this information to the Department of Social Services. Any person who makes a good faith report of

child abuse is immune from any civil or criminal liability. Regardless, if you witness or have knowledge about a crime, including crimes committed against a child, you should report it to the proper authorities. If on campus or university sponsored trip, report to University Police. If off campus, report to local law enforcement. When in doubt, report. Leave the investigation to trained law enforcement officers.

New Title II Regulation—The Department of Justice has issued new direct threat regulations under Title II of the Americans with Disabilities Act ("ADA"). Read the review in [NACUANOTES](#) (National Association of College & University Attorneys) on the new federal guidelines that recognize an institution's ability to discipline or dismiss students that pose a direct threat to others.

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We make house calls!

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

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When Should You Consult with OGC?

1. When a serious injury or death occurs on property owned, leased or managed by the university, or occurs in a university-sponsored activity, program or field trip;
2. When any property owned, leased or managed by the university is significantly damaged or destroyed;
3. When an involuntary separation of an employee is being contemplated;
4. When there is information or evidence of misuse of state-owned personal or real property, including attempted arson, arson, damage, embezzlement or theft;
5. Upon receipt of a request to see a student's education or medical records from anyone other than a university employee or the student;
6. Upon receipt of a public records request;
7. When a government inspector or investigator contacts or visits a university office or facility;
8. When contact is received from an attorney outside of the university regarding a matter relating to the University;
9. Upon receipt of any official court documentation, such as a subpoena, court order, summons, civil complaint, criminal case papers, etc;
10. Upon notice or threat of a lawsuit, claim, investigation, contract dispute, or other action potentially adverse to the university;
11. Upon receipt of a notice or complaint from an administrative agency such as the Equal Employment Opportunity Commission (EEOC), the Office of Civil Rights (OCR), the Department of Labor (DOL), the Department of Environment and Natural Resources (DENR), the Environmental Protection Agency (EPA), the Office of Inspector General (OIG), Office of Federal Contract Compliance Programs (OFCCP), and/or the Office of Administrative Hearings (OAH);
12. When measures are being developed to comply with any applicable law, regulation or policy; or
13. When training or seminars (e.g., live or web-based) related to "legal" or "compliance" matters are of interest.

When in doubt . . . call OGC. We are YOUR law firm, and we are here to help you.

NOTE: If you witness any suspected criminal activity or someone reports a crime has occurred on campus, **immediately** contact University Police (515-3000) or the local authorities (911).

QUESTION OF THE MONTH

"What is the attorney-client privilege?"

The attorney-client privilege is one of the oldest rules of evidence for confidential communications in our legal system that generally protects communications between attorneys and their clients made in confidence about the client's legal matter or when seeking legal advice. At NC State, our client is the university and its agents – those trustees, executive officers and numerous individuals at the senior officer level or other employees acting on the university's behalf. Perhaps the most

significant aspect of the privilege is also the least understood: The client holds the privilege, not the attorney. That means that only the client can waive the privilege. Since the communication must be kept confidential for the privilege to apply, it is critical that the client not share or forward any of the OGC attorney communications (e-mails, voice mails, etc.) with others, including university officials who don't have a need to know or with anyone outside of the university. The sub-

stance of the attorney client communications, whether oral, written or electronic, must also not be disclosed to others. Otherwise, the privilege may be waived and in only very limited circumstances can the waiver be "taken back" – referred to as "claw back." It's hard to put the cat back in the bag.

We'd like to hear from you. Send your questions to howlingcounsel@ncsu.edu or any member of OGC.

NEWS & NOTABLES

E-mail Tag Lines: In response to requests to notify others that university emails may be public and thus released if the university receives a public records request, on the recommendation of OGC, executive officers approved use of the following tag line on employee signature blocks for university e-mail communications: *"All electronic mail messages in connection with state business which are sent to or received by this account are subject to the NC Public Records Law and may be disclosed to third parties."*

Academic Freedom: OGC recommends reading a new scholarly handbook titled "[A Guide to Academic Freedom](#)" which provides a brief introduction to the principles and legal challenges of academic freedom. The work was commissioned in connection with the "Difficult Dialogues initiative," a joint project of The Thomas Jefferson Center for the Protection of Free Expression, the Association of Governing Boards of Universities and Colleges (AGB) and the Ford Foundation.

OGC Supports NCSU Veterans Day Event: Eileen Goldgeier and Clifton Williams participated in the annual early morning run around campus on November 11th lead by ROTC students and cadre. This is an annual event hosted by the Division of Student Affairs and the ROTC unit to recognize our Armed Forces Veterans.

OGC inspires our clients to win! Recent winners of the bocce' ball challenge are the Environmental Health & Safety team and the Real Estate Office.