

**Article 16: Confidentiality And Access To Personnel Files**

~~16.1—It is the understanding of the parties that this article is not inconsistent with the principles enunciated in the Senate/Board policy on Confidentiality, approved by the Executive Committee of Senate on October 8, 1975.~~

- 16.2 An employee shall have the right to examine all of his/her personnel files during normal business hours, provided that any confidential letters of recommendation solicited shall be held confidential except as provided for in this article. At any time, however, members may request and shall obtain the names of the authors of all confidential letters or assessments held in their personnel files.
- 16.3 Employees shall have the right to have all of their files supplemented or corrected in the event of error or inadequacy. In the event of alleged distortion, employees shall have the right to provide additional material for inclusion in their personnel files.
- 16.4 Employees shall have the right to have the employer prepare, at the employee's expense, copies of their files excluding confidential letters or assessments except as provided hereunder.
- 16.5
- (a) No anonymous material shall be kept by the employer concerning any employee. If introduced, such material shall be sufficient in and of itself to invalidate the proceedings. Statistical information gathered pursuant to Article 26 shall not be considered anonymous material. Non-statistical information gathered pursuant to Article 26, however, shall not be exempt from the provisions of this article.
  - (b) Where the employer places a signed student comment on an employee's file:
    - (i) the employee shall be promptly advised of the substance of the complaint in such a form as will preserve the confidentiality of the complainant(s);
    - (ii) the employee shall be given an opportunity to place a comment or rebuttal on the file;
    - (iii) the student's names shall only be disclosed with their consent;
    - (iv) the employer may only use the complaint in a career decision if the student's names are disclosed to the employee;
    - (v) if the students do not consent to the disclosure of their names, then upon completion of final grade reports the document, along with the employee's rebuttal, shall be removed from the file and destroyed;
    - (vi) if the students' names are disclosed, the employee shall, at that time, be given an opportunity to place a further comment or rebuttal on the file.

- (c) When written student comments are retained copies shall be placed in the employee's file in accordance with Article 16.5(b), and shall be forwarded to the employee.
  - (d) Where a document pertaining to an employee's performance or to a disciplinary matter, and which has not already been sent to the employee, is to be added to the employee's file held in the office of the Vice-President (Academic), the relevant Dean or Director, or the University Librarian, a copy shall, subject to any confidentiality restrictions set out in this Collective Agreement, be sent to the employee.
  - (c) Except for student complaints under Article 16.5 (a) – (c), when the university receives a signed written complaint filed with the employer against a CUASA member that results in a formal inquiry or investigation, the employee will be notified within fifteen (15) working days of the receipt of the complaint and advised to notify CUASA. A copy of the letter advising the member to contact CUASA shall be sent to the Association.
  - (d) For any formal inquiry/investigation, the employer shall notify the employee of any additional steps before they occur throughout the process and inform the employee when the process is concluded.
- 16.6 Personnel files of employees shall be kept only by the chairpersons, deans, directors of schools and institutes, University Librarian and the Office of the President of the University.
- 16.7 Letters or assessments received in relation to the appointment of an employee shall be confidential and shall not be shown to the candidate before or after his/her appointment. Such letters or assessments shall either be destroyed or returned to the sender within three (3) months of any appointment. Such letters or assessments, if maintained contrary to this policy, shall not be submitted as evidence in any subsequent proceeding involving an employee. Letters currently in the files, and over three (3) months old, in relation to appointment shall be either destroyed or returned to the sender within three (3) months of the signing of this Collective Agreement and shall not be used in any proceeding involving an employee of the bargaining unit.
- 16.8 (a) Letters or assessments in relation to promotion shall be solicited by the appropriate dean, University Librarian or their designates (hereafter in this clause the dean). The dean shall request a list of possible referees from the candidate. If the dean desires to solicit additional references or assessments, he/she shall so inform the candidate and submit the names of the proposed referees to the candidate who shall have the right to comment in writing on the names suggested and to have such comments included in his/her official dossier. In submitting letters of reference or assessments to the Promotion Committee whether the referees or assessors were suggested by the candidate, the chairperson or the dean shall be indicated. Such letters and assessments in connection with promotion shall be confidential and shall not be shown to the candidate except where the

candidate proceeds to arbitration under Article 4 (Academic Freedom) or Article 5 (No Discrimination) of the Collective Agreement. All letters and assessments in relation to promotion shall be destroyed at the end of the relevant period. Such letters or assessments, if maintained contrary to this policy, shall not be submitted as evidence in any subsequent proceeding involving any employee.

- (b) An employee may, however, request in writing to his/her dean or the University Librarian within thirty (30) days of the date of the President's letter which informs him/her of the final disposition of his/her candidacy for promotion that the dean or the University Librarian retain the letters or assessments received concerning his/her candidacy. If an employee so requests, the dean or the University Librarian shall retain all letters or assessments concerning the candidacy in question and shall submit them at the next consideration of the candidate. Such letters shall not be retained beyond the next consideration of the candidate, unless a new request is received. An employee may, in order to determine whether he/she should request the retention of his/her letters and/or assessments, consult the chairperson of his/her department or departmental promotion committee or equivalent committee in the Library who may, in order to preserve confidentiality, limit his/her advice to a simple statement in favour of or against the retention of the letters or assessments in question.
- 16.9 The employee shall have the right to submit names of referees to the appropriate chairperson and dean, or in the case of professional librarian employees the University Librarian, who shall solicit letters or assessments from the names provided in regard to renewal of a preliminary appointment or to the confirmation of appointment or to the granting of tenure. Letters or assessments or any other written material presented as evidence in regard to the renewal of appointment, confirmation of appointment, or the granting of tenure shall, in the event of a tentative negative recommendation, be made available as a true copy to the employee concerned prior to any final decision by the department or by a faculty review body or by the Peer Evaluation Committee or by the University Librarian. At the level of the Senate Tenure Appeal Committee or the Grievance Sub-Committee as applicable all written assessments in regard to a negative recommendation shall be made available to the employee concerned at the time they are presented to the committee or, at the discretion of the employer at any earlier date.
- 16.10 Letters of reference and/or assessments shall be made available in their entirety when called for by the provisions of this agreement, to the relevant departmental, faculty, or library committees and, in the case of appeal or grievance, to the Senate Tenure Appeal Committee, the Promotions Appeal Committee or the Grievance Sub-Committee, as appropriate. The members of such committees shall treat such letters and assessments as confidential.
- 16.11 Letters or assessments or any other material presented as evidence in a proceeding for dismissal for cause shall be made available to the individual faculty employee concerned, according to the procedures of C3 of the *Tenure and Dismissal Document-Appendix A*. In the case of Instructor employees and/or professional librarian employees all such material shall be made available to the employee or his/her advisor at the commencement

of the formal grievance stage pursuant to Article 30.7 or, at the discretion of the employer, at an earlier date. True copies of letters or assessments shall be supplied to the employee concerned.

16.12 The parties agree that employees of Carleton University and employees of the Association have a right to privacy in their personal communications and files, whether on paper or in electronic form, and the parties undertake to respect that right to the fullest extent possible. Personal files mean those which are not maintained for university purposes or business, and personal communications includes those that are stored or transferred electronically on university computer systems. Personal files and communications do not include the official file of employees of Carleton University, materials pertaining to students, or official records of university committees and are intended to include files respecting or associated with research conducted or proposed by an employee except where governed by rules of disclosure. Nothing herein shall interfere with the employer's rights and responsibilities including the need to guard against illegal activities, the need to meet concerns about liability, the need to comply with the law or an order of a court, or the need to protect the security or health of individuals.

**16.13 In accordance with article 16.12, Carleton University agrees that it will not contract out its electronic information management, including but not limited to, email, calendar, disk access, text chat, wiki, bookmarking, collaborative working environment, video conferencing, data conferencing, knowledge management, information sharing tools, systems and servers to a third-party nor to external providers.**

16.13 In accordance with Article 7, the employer has a right to confidentiality in its documents, files and official records so designated whether on paper or in electronic form with respect to the responsibilities and functions of the employer.

#### **16.14 Access to Information Requests**

**When the Employer receives a request (hereinafter "the request") pursuant to access to information legislation requests for records of, or relating to, a member of the bargaining unit, the Employer shall:**

- (a) Immediately advise the member that it has received the request with a copy sent to the Association at the same time; and**
- (b) Immediately provide the Association with sufficient information to enable the Association to understand the nature of the request, so that the Association can effectively represent its members in accordance with its obligations.**

**16.15 Following disclosure to the Association of the documents referred to in 16.14.(a), the Employer shall meet with representatives of the Association to discuss the request.**