

Subpoenas and Other Requests for Information Policy

Section 1. PURPOSE AND SCOPE

This document is intended to help guide Clark University departments and offices in responding to subpoenas and other records/information requests it receives requesting information from a record in the normal course of business. The term record includes, but is not limited to, paper documents, electronically stored documents and information, photographs, video surveillance footage, information on hard drives, etc. Note that these are guidelines only and any questions should be raised with General Counsel before honoring a subpoena served upon the University.

If any employee receives a subpoena that relates to Clark University and its records or business practices, General Counsel must be consulted before any response is provided to the requesting entity. If the request for information is anything short of a subpoena, such as a request for medical or other records or an interview, General Counsel should be notified before responding.

As it relates to a subpoena request for a student educational record, FERPA states that a student's prior consent is not required for the release of information from a student's education record if the disclosure is made in compliance with a lawfully issued subpoena. 34 CFR 99.31(a)(9)(i). However, before making a disclosure, FERPA generally requires the University to make a reasonable effort to notify the student so that the student may seek protective action. 34 CFR 99.31(a)(9)(ii). There are some circumstances where the subpoena itself directs that such disclosure not be made. 34 CFR 99.31(a)(9)(ii)(A)(B). In such cases, consultation with Clark's General Counsel should occur to determine how to proceed. Determining whether a subpoena is "lawfully issued" has many facets. Some of the questions raised include whether the subpoena was issued on the authority of a court of competent jurisdiction. Was it properly served upon the University? Is the scope of information sought reasonable? Is the time for responding reasonable? Below are some general guidelines for a process to be used in meeting the requirements of both FERPA and a lawfully issued subpoena.

Section 2. PROCEDURES AND ENFORCEMENT

Was the subpoena properly served?

Generally, subpoenas will be served in person by a sheriff or U.S. Marshall. Under some circumstances, service by mail is appropriate. It is permissible for an authorized representative of the Registrar's Office or the Office of General Counsel to accept service of the subpoena and to then explore whether the service was proper.

Following service of the subpoena

- Immediately notify the Registrar (for all subpoenas involving student record requests) and General Counsel (for all subpoenas)

- General Counsel will provide advice on handling immediately if there are any questions about service, scope, timing or any other issues related to the subpoena itself
- Note the date for responding on the subpoena and use best efforts to meet it

Student Records Process

Contact General Counsel for Employee Records Subpoenas where a similar process will commence in collaboration with Human Resources and/or the Office of the Provost

Contact the student

- Verify the individual's current address
- Send the individual a copy of the subpoena and notify them of the University's intention to comply
- Send the letter by a method that will prove delivery and receipt - certified mail, return receipt requested or by overnight delivery
- Unless there is proper action by the individual to stop compliance with the subpoena, or a possible University-related privilege (i.e. counselor-patient or attorney-client) that might preclude disclosure, the University should move forward with responding

Gathering information

The scope of inquiry for education records potentially covered by a subpoena might include the following. It is the Registrar's responsibility to seek responses from the appropriate areas:

- Registrar's file and transcripts
- Student Affairs (disciplinary files, student activities, etc.)
- Department(s) where student majored
- Student Accounts
- Financial Aid
- Advising
- Academic Resource Services
- Athletics
- Admissions
- Title IX

NOTE: Records retained in the Health Services and Center for Counseling and Personal Growth offices are not generally within the scope of a student's education records, and a specific request for such information IN ADDITION to education records must be made.

Preparing information for response

- Verify response from each area from which information was sought
 - Make a copy of all information to be sent in response to subpoena
 - One for party issuing subpoena
 - One for the file from which you can verify what information was sent
- OR-**
- Prepare list identifying the documents contained within the pages to be sent
 - Complete any forms necessary to accompany subpoena response
 - When in doubt about the scope of the response necessary, consult with General Counsel to ensure the response is not overly broad or narrow

Responding to subpoena

- Send responsive documents and list summary to requesting party
- Send response by means that will prove delivery and receipt - certified mail, return receipt requested or by overnight delivery

Recordkeeping

You must retain among records of the University the following:

- A copy of the subpoena
- A copy of the letter to the student
- A copy of the response to the subpoena, including all documents forwarded

Other Information Requests and Visitors

At times, governmental employees, attorneys, and other individuals will request to receive records or meet with employees to discuss an issue related to Clark's business practices, an incident or accident, or to gather information relative to a current or former student or employee.

The request may include one of the following:

- A copy of medical records due to the employee or student being involved in a legal action that may or may not involve the University
- A copy of University Police (UP) records due to an individual being involved with an investigation, case, or other police-related process
- A copy of surveillance or other video or electronic data in the possession of UP, Information Technology Services (ITS), or some other department

- A copy of conduct records as a part of a background check for employment or graduate school admission
- An interview with an employee to support a current or former student's application for a job or similar assignment
- An interview with an employee who may have been a witness or has knowledge about an incident or accident

Before responding to any of the above or similar requests, General Counsel should be notified.

Individuals and entities, as a matter of policy, are not entitled to receive records from UP or ITS unless the request is accompanied by a lawfully served subpoena or in conjunction with some other legal process. However UP, in consultation with General Counsel, may comply with some records requests, with the exception that no records will be released during the pendency of an investigation, and records may be redacted to protect sensitive or personal information related to non-requesting parties. Similarly, if ITS receives a request for electronic information, information stored on a hard drive, surveillance footage, computer forensics, IP address or other location-related requests, it will work with UP and/or General Counsel regarding the appropriateness of releasing the requested records.

Visitors to campus for receipt of records can proceed directly to Registrar and Human Resource offices. These offices are adept at reviewing records releases and responding appropriately. However, when in doubt, sending the visitor to the Office of General Counsel (OGC) first is advisable. Likewise, all other departments and offices receiving visitors requesting records should send them to the OGC before responding.

Visitors to campus for interviews or other purposes should first be sent to the OGC before the employee speaks with the individual. This is especially true if the visitor is a governmental agent or an attorney. OGC will discuss campus protocol with the individual, receive and review a copy of their credentials and the records release, and subsequently provide advice to the employee in question regarding whether they should comply with the information request.

Related Information

FERPA Policy
Document Retention and Destruction Policy

History/Revision Information

Responsible Office/Division: Office of General Counsel

Effective Date: October 19, 2022

Last Amended Date:

Next Review Date: October 19, 2025

Also Found In: