____ ____ ____ ____ ____

Applicant Number

Georgia Essay Questions
February 2025

Do not touch this packet or start the exam until you are instructed to do so.

- Once the exam begins, you may work on the four essay questions in any order, but remember to type your answers in the appropriate answer window (or write your answer in the appropriate answer book if you are handwriting).

- For each of the four attached essay questions, there is one blank sheet for your use as scratch paper, and you may take notes on any of the attached pages if you wish. You may remove the staple or tear out any pages, but you will need to put the packet back in order when the exam session is over.

- On each essay question, remember to demonstrate not merely your memory but also your ability to think clearly and to analyze the issues.

- Assume the questions arise under the laws of Georgia unless otherwise indicated.

ESSAY 1

Laptop applicants: Answer this question in the **FIRST** answer window.

Handwriting applicants: Answer this question in the **BLUE** answer book.

Maggie is a stone mason, residing in Alabama. She was engaged as a subcontractor by Family Construction, Inc. to build several garden walls at the site of a new commercial building in Atlanta. Family is a Georgia corporation with its principal place of business in Georgia. Maggie completed her work on the project six months ago. While the work was ongoing, she received small progress payments, but Family still owes her $100,000. Family has never signed anything saying Maggie's work was satisfactory, but it also has never made any allegations that Maggie's work was in any way deficient.

Maggie filed an action in Georgia state court against Family to recover the $100,000. Family did not respond, and the court entered a default judgment in Maggie's favor. Family has stopped work on all its projects and currently has no cash with which to pay the judgment, although it has maintained its annual corporate registration with the Georgia Secretary of State.

Family is wholly owned by Joe Barker. Joe also wholly owns another corporation named JCB Services, Inc., which conducts environmental studies. It was Joe's consistent practice for Family to engage only in construction projects that would also engage JCB to be involved and receive payments. JCB has about 25 employees who are still working on several projects.

Maggie's contract was with Family and was signed by Joe as "President." All her work was supervised by Joe. Joe was never an employee of Family, but was employed by JCB, and Family reimbursed JCB for Joe's services. The partial payments to Maggie were made via checks issued on Family's checking account.

Maggie has credible evidence that: (1) when Family was doing business, it had only two employees, Joe's uncle and his brother-in-law; (2) both Joe and his wife (who is not involved with the business in any way) drove vehicles leased and paid for by Family for their personal use; (3) one reason Family has no cash is that Joe withdrew a substantial sum from Family's bank account and used the money to take his wife on an expensive trip to Europe for her birthday; (4) Joe let his wife use an American Express card in the name of Family to charge some treatments

at a luxury spa while in Europe; (5) on two occasions, Joe personally borrowed money from Family to pay some gambling debts, but he never executed any loan documentation; and (6) Joe, the sole director of Family, does not appear to have held board meetings or adopted bylaws. He also never held a shareholder's meeting. Maggie has no evidence that Family owes money to any other creditors, and Family has never been adjudicated insolvent.

Before she completed the work for Family, Maggie signed a contract with one of Family's competitors to perform some masonry work on its construction project also in Atlanta, which was to have begun about a month after Maggie completed her work for Family. Maggie needed the $100,000 from Family in order to purchase some necessary equipment and, because she didn't have the money, she had to back out of that new contract, giving up a substantial profit and subjecting herself to a breach of contract claim by the competitor. Maggie discussed this need for the money with Joe on multiple occasions, and Joe was aware that the competitor's success would suffer due to Maggie's cancellation.

Joe is well known in the philanthropic community and is believed to have substantial personal wealth. Maggie's cousin is a second-year law student and has advised Maggie that she should file an action seeking to pierce the corporate veil of Family, so that Maggie can collect the $100,000 from Joe personally.

1. Maggie has come to you for advice. Do you think Maggie will prevail on a claim to pierce the corporate veil? Provide a thorough analysis of why or why not.

2. Do you see any other claim Maggie might make against Family or Joe? If yes, explain thoroughly.

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ESSAY 2

Laptop applicants: Answer this question in the **SECOND** answer window.

Handwriting applicants: Answer this question in the **YELLOW** answer book.

Dante's Products Inc. is a food product manufacturer with many popular brands. In April 2024, Dante's launched a product promotion scratch-off game to be played on cards distributed to American grocery stores.

The cards displayed eight boxes, which corresponded to eight of Dante's most popular brands. Each box contained a small product photo, with multiple silver scratch-off spots below each photo. Each silver scratch-off spot covered a hidden number. The goal of the game was to scratch off only one of the silver spots in each box and hope that the number revealed matched the same number assigned to each product in Dante's television advertisements during the month of April. Cardholders would earn a prize for each matching spot, with a $10,000 prize for scratching the matching spot in all eight boxes, $5,000 for seven matches, and a variety of coupons for fewer matches.

The rules provided that if a cardholder scratched off more than one spot in any of the eight boxes, *that box* was no longer eligible for a prize, but the cardholder could play the other seven boxes on the game card. There was no limit on the number of game cards any one cardholder could play. The rules recited that no consideration was required to play, and the game was free. The deadline to mail winning cards was May 15, 2024.

Dante's believed the game would operate as a game of chance, with cardholders having no knowledge of what number was hidden beneath each spot. Dante's issued 3 million game cards, printed from 10 patterns, thereby issuing 300,000 identical cards from each pattern.

Francis May is a delivery truck driver who is not employed by Dante's. On one of his deliveries to a grocery store, he noticed a large stack of game cards in a rack. Francis took the cards and scratched off all the spots to determine if there were any patterns to the cards. Frances noticed that several of the cards were identical to each other. He concluded that the game cards must have been printed from a limited number of patterns.

Francis realized he could scratch off all the spots in the first box and identify which of the patterns was used to print that card. He would then be able to play the seven remaining boxes on each card.

Francis acquired as many cards as he could from grocery stores on his truck delivery schedule. Eventually, he acquired 4,000 cards. Francis watched Dante's advertising throughout April and jotted down the number assigned to each of the eight products in the game. Using the templates he generated, he was able to scratch the right silver spots for seven of the eight products on every game card, earning a $5,000 prize for each card. When he had completed the time-consuming task of scratching off the first 1,000 of his 4,000 cards, he called Dante's to let them know he had discovered the patterns used to print the game cards. "I broke the code and have 4,000 cards," he told Dante's. The promotion staff at Dante's was aghast.

Francis feared that Dante's would cancel the game. After calling Dante's, he packed up the 1,000 game cards he had scratched off at that point. He signed them and mailed them to Dante's. He filmed himself mailing the cards at the post office. One minute after Francis mailed the cards, Dante's placed national ads cancelling the game. After the cancellation was announced, Francis scratched off his remaining 3,000 cards. He then mailed the 3,000 additional winning game cards by the original May 15 deadline and claimed that Dante's owed him $20 million (4,000 x $5,000). Dante's refused to pay.

1. Francis sued Dante's for breach of contract in federal court in Georgia. Diversity jurisdiction and the amount in controversy are satisfied. Who will prevail on the contract claim and why? Separately discuss offer, acceptance, consideration, revocation, the mailbox rule, and mistake.

2. Under Georgia law, it is illegal for any person or entity—other than the State—to conduct a lottery. A lottery consists of a combination of prize, chance (as opposed to skill), and consideration. It is clear the promotion involved a prize; what arguments might Dante's and Francis make about the other two elements? Who do you think will prevail on this issue and why? And how would a finding that the promotion was a lottery affect Francis's claim for breach of contract?

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ESSAY 3

Laptop applicants: Answer this question in the **THIRD** answer window.

Handwriting applicants: Answer this question in the **PINK** answer book.

Fred and Mary Smith were married for 50 years and had three children together: Adam, Becky, and Chris. Adam was born one month before Fred and Mary's marriage; Fred signed Adam's birth certificate, but Adam has never undergone genetic testing to confirm that he is Fred's biological child. In addition, Mary had one child from a prior marriage: Donna Jones. Fred and Mary raised Adam, Becky, Chris, and Donna together as a blended family. All four children were close together in age, and they remained close over the years. Even though Fred was the stepfather to Donna and never adopted her, Fred always treated Donna as if she were his own child. Becky was unmarried and passed away two years ago, leaving her twin daughters, Emily and Erin (age 22), as her sole heirs.

Fred passed away last month. Mary, Adam, Chris, Donna, Emily, and Erin all are living. Fred did not have a will. Mary has engaged you as legal counsel to determine the appropriate way to handle Fred's estate pursuant to applicable Georgia law.

Fred's assets at the time of his death are as follows:

1. Primary Residence: Fred and Mary owned a home in Lumpkin, Georgia, valued at $500,000 as joint tenants with right of survivorship, and Mary continues to live in the house with Chris.

2. Individual Bank Account: Fred had a bank account in his own name with a balance of $180,000. There is no beneficiary listed on this account.

3. Joint Bank Account: Fred and Mary had a joint bank account with a balance of $240,000. The account is held by Fred and Mary jointly with right of survivorship.

4. Bitcoin Cryptocurrency: Fred held two units of Bitcoin cryptocurrency with a value of $420,000. The Bitcoin was owned solely by Fred.

5. Retirement Account: Fred had an IRA account with a balance of $90,000. The retirement account was held in Fred's name and lists Mary as the sole beneficiary.

For each of the five assets listed above, Mary has asked you to summarize (a) how much she, Adam, Chris, Donna, Emily, and Erin will receive, if anything, and (b) whether the applicable asset will be transferred through probate or outside of probate.

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ESSAY 4

Laptop applicants: Answer this question in the **LAST** answer window.

Handwriting applicants: Answer this question in the **TAN** answer book.

Our firm has been retained by Jake Scott, the surviving father of Lindsay Scott. Lindsay died from a motor vehicle crash involving an SUV—the Electron—designed and manufactured by Zephyr Cars, a company formed in Delaware and headquartered in California. Lindsay was a star athlete with a bright future, and his father purchased the SUV for him last year when he turned 17.

Zephyr advertises and sells its vehicles nationally. It wants to take advantage of favorable tax incentives and build its main manufacturing facility in Georgia, and it registered as a foreign corporation authorized to transact business in Georgia, with a registered agent in Athens-Clarke County. In a related 2023 press release, Zephyr said, "Georgians should know our home is the Peach State!"

Zephyr's Georgia manufacturing plant project has not broken ground and its only current presence in Georgia is a leased "regional receiving center" in an industrial park in Chatham County that is run by two people provided by a third-party staffing agency. Zephyr customers must order and purchase new vehicles through Zephyr's website, which is hosted by a California company. Customers then must meet with an "independent customer care guide" outside one of the regional receiving centers to take possession of their new vehicle. Vehicles are shipped to Chatham County from Zephyr's current manufacturing center in Virginia by a third-party company. The Scotts saw Zephyr's 2023 press release and used the system described above to purchase the Electron; it was one of only 190 Zephyr vehicles picked up in Georgia in 2024.

Lindsay and Jake were both Georgia residents, but the crash happened just after Lindsay crossed over the Florida border on his way to Jacksonville. It was nighttime, and as Lindsay drove over a hill on I-95 at the posted speed limit of 70 miles per hour, he encountered a truck driven by Tim Bell, a Glynn County, Georgia resident, going only 20 miles an hour with no working taillights. Based on skid marks at the scene, it is clear that Lindsay applied the brakes, but he could not prevent the Electron from crashing into the truck.

The Electron's driver's side front air bag did not deploy. The coroner found that Lindsay suffered severe head injuries. Jake believes Lindsay's death could have been prevented if the air bag had deployed. He wants us to show that there was a defect in the air bag system to support a lawsuit for wrongful death, product liability, and negligence. You are to assume that Jake (as Lindsay's only surviving heir) has the sole right to pursue such claims.

A few days after the crash, Jake went to Bubba's Tow Yard, the Georgia wrecker service that towed the Electron from the scene and lawfully stored it in Georgia. Jake told Bubba about how he was going to "have a billion dollar lawsuit" and wanted to take possession of the Electron. But Bubba refused to release the vehicle to him. Jake has since tried to contact Bubba, but Bubba's only response was a single text: "I know you own that vehicle, but if you don't pay my $20,000 in storage costs, I will sell the vehicle to a chop shop next week."

An automotive design expert familiar with Zephyr says that the Electron has sophisticated in-cabin camera systems and also has systems that could show exactly what happened with the air bag and why it did not deploy. The expert says he had another case recently that settled for millions of dollars where a nearly identical air bag failure occurred and they found a defective sensor, but the *only* way they were able to prove it was by getting possession of the vehicle to download the data from the sensor. Without the vehicle, there is no case to pursue.

Separately analyze and discuss the following:

1. What equitable, non-monetary, or injunctive remedies are potentially available under Georgia law against Bubba's Tow Yard to prevent the vehicle from being disposed of, to get possession of the vehicle, and to gain access to its data? Recommend remedies and an immediate course of action. Note any defenses Bubba has under Georgia law.
2. Jake hasn't settled with the truck driver (Mr. Bell) and is willing to sue him along with Zephyr, but he wants the case to go forward somewhere in Georgia. Focusing on Georgia procedural law that will apply to this case (without getting into the choice of law issue):
    a. What are the arguments for and against the ability to procure personal jurisdiction over Zephyr in Georgia given its contacts (or lack thereof) for a wreck that happened in Florida?
    b. Assuming jurisdiction in Georgia, analyze the venue options available for a case against Zephyr and the truck driver under Georgia's venue laws.

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February 2025
MPT-1 Item

Turner v. Larkin

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Turner v. Larkin

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Tan & Singh Law Offices LLC
740 East Broadway, Suite 200
Centralia, Franklin 33402

MEMORANDUM

To: Examinee
From: Elise Tan
Date: February 25, 2025
Re: Peter Larkin—Defense of housing discrimination claim

Our firm has been retained to defend landlord Peter Larkin in a housing discrimination claim brought by Martin Turner. Turner, a single parent with three minor children, applied to rent a two-bedroom apartment from Larkin. Larkin declined Turner's application. Turner claims that Larkin refused to rent to him for discriminatory reasons in violation of the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq*. Larkin claims that he declined the rental application for nondiscriminatory reasons, that he has a long-standing preference for renting to married couples, and that he has a policy of only renting this apartment to a maximum of three people.

Turner filed an administrative complaint with the US Department of Housing and Urban Development (HUD) alleging that Larkin had violated the Fair Housing Act by refusing to rent because of Turner's familial status. The matter has been assigned to an administrative law judge. I attach the factual narrative from Turner's HUD administrative complaint. I also attach a summary of an interview that I conducted with Larkin and a text exchange that Larkin had with a previous prospective tenant for the apartment.

Please draft an objective memorandum to me analyzing the legal and factual arguments that we should raise in Larkin's defense and the legal and factual arguments that Turner may raise in support of his claim. Your memorandum should clearly state the legal test(s) that will be applied to Turner's claims, and you should evaluate the likelihood of success of Larkin's arguments. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your conclusions.

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Excerpt from HUD Administrative Complaint form

February 11, 2025

How were you discriminated against? State briefly what happened: I was moving from San Francisco to Centralia in Franklin so that I could be closer to my parents. My spouse died two years ago, and I am a single parent of three children: Martha, age 16; Maura, age 12; and Max, age 6. On November 6, 2024, I saw an advertisement online for a two-bedroom apartment in downtown Centralia that was close to my parents' place. I am employed as a data analyst, and I can easily afford that apartment on my income. I have a good rental history and good credit. I texted the number listed and asked if the apartment was still available. The landlord texted back, leading to this exchange:

Me: Hi. I saw the listing for the apartment in Centralia. Is it still available?

Landlord: Hi. This is Pete Larkin, the landlord. Yes, it is still available. Are you married?

Me: No, I'm widowed.

Landlord: Would anyone else be living there?

Me: Yes, my three kids. Two girls and a boy, ages 6, 12, and 16.

Landlord: I don't know. I need to think about that. I'll get back to you.

The landlord never got back to me. I'm convinced he wouldn't rent to me because I have kids. I checked back on Craigslist over the next two months. The apartment continued to be listed for rent.

Do you feel that you were discriminated against because of your race, color, religion, sex, national origin, familial status (families with children under 18), or disability? Yes, familial status.

Martin Turner

Martin Turner

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Tan & Singh Law Offices LLC

FILE MEMORANDUM

From: Elise Tan
Date: February 24, 2025
Re: Interview with client Peter Larkin

I met with our client Peter Larkin this morning to discuss the Fair Housing Act administrative complaint filed by Martin Turner. Larkin verified that the text exchange described in the complaint is accurate and complete. The following summarizes Larkin's answers to my questions.

Tell me about your experience as a landlord. I've owned rental apartments for about 20 years. I first got into it to supplement my salary as an accountant. I now do it full time. I own seven buildings, all in the Centralia area. This building is one of the larger ones I own. It's a five-floor building with 20 units.

Do you live in the building? No. I live in a townhouse about a mile away.

Where did you place the advertisement for the apartment? What, exactly, did the advertisement say? I placed it on Craigslist. It said this: "Two-bedroom apartment for rent in downtown Centralia. New kitchen appliances. Sunny second-floor walkup. $2,200/month rent, utilities included. Call or text 555-2346."

Why did you say that it would be a problem to rent to Turner? There were two problems. First, he's single. I really don't like to rent to unmarried people because I like to have two incomes for each apartment that I rent. It just makes me feel more comfortable that the rent will be paid on time. Second, I have a policy of renting that particular apartment to a maximum of three people, and with his kids, there would have been four people.

Did you rent the apartment to another person? When? It took me a couple of months, but ultimately I was able to rent the apartment to a married couple.

Can you tell me more about your preference for married people? Again, it is a financial and stability thing. I want to have married couples with two incomes, and I want to reduce the likelihood that one person is going to move out in the middle of the lease. If they are married, it's less likely that only one of the tenants will pay their rent. I've been a landlord for a long time, and I have a bunch of other apartments that I rent

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out. Based on my experience, married people are just more stable in their relationships and are more likely to pay their rent on time. They are just more financially stable than single people. I've turned down single people and unmarried couples who have applied for that apartment before.

Did you think that Mr. Turner could afford to rent the apartment? I didn't get to the point of asking him for financial information. He might have had a good job. He might have good credit. I don't have any reason to think otherwise. But as I said, I prefer to rent to married couples because in my experience they are more stable financially. A couple of years ago, I rented to a single guy with a good income. He lost his job and left town, and I was left with no rental income for months. I learned that people who have good jobs sometimes lose them. It doesn't matter how good your credit is if you lose your job. Couples break up. Sure, married people sometimes get divorced, but they are more likely to stay together than unmarried people.

What about your policy of having a maximum of three people in that apartment? It is a pretty small apartment—only 500 square feet. But for me, the major issue is the character of that neighborhood. There are a lot of younger people in their early 20s who live there. It's close to Slate Street, which has a lot of nightclubs. I've had problems with young people cramming four people into a two-bedroom apartment to keep their housing costs down. So for two bedrooms in that area, my policy is to rent to at most three people, ideally including a married couple.

Did you have any problem with Turner having minor children? Not specifically. As I mentioned, I want to rent to married couples for financial reasons, and my policy of having at most three people in that apartment is about the total number of people in the apartment. I wouldn't want four people in there, whether they are adults or children.

Have you rented to married couples with children before? Yes. I do that often. For example, I'm renting an apartment in this same building to a married couple with two children right now. But that's a much bigger three-bedroom apartment on the fifth floor. I wouldn't mind having a married couple with one child in the apartment that Turner wanted to rent.

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Have you applied your policy to other potential renters? Yes. I turned down a group of four single people in their 20s for this same apartment two years ago. Here is the text exchange that I had with one of them:

Jake: Hello. My name is Jake. I'm looking for apartments in Centralia. Is the apartment that you listed still available?

Larkin: It is. Tell me about yourself. Are you married? Would it be just you in the apartment?

Jake: I'm single. It would be me and three of my friends.

Larkin: Oh. Sorry. I really prefer to rent to married couples. And I want at most three people in that apartment—it is pretty small.

Jake: You seriously care about whether I'm married?

Larkin: Yes. I've found that married couples pay their rent on time and are less likely to flake out on me.

Jake: That's stupid. But whatever—I'll find another place.

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Excerpts from the United States Fair Housing Act, 42 U.S.C. § 3601 *et seq*.

§ 3602 Definitions

As used in this subchapter . . .

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 3603 Effective dates of certain prohibitions

. . .

(b) Exemptions. Nothing in [section 3604] shall apply to—

. . .

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

§ 3604 Discrimination in the sale or rental of housing and other prohibited practices

[I]t shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

. . .

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Excerpt from the Centralia Municipal Housing Code

§ 15 Maximum Occupancy of Dwellings

(A) No dwelling shall be occupied by more than the number of people permitted in this section.

(1) 300 square feet or less: no more than two people.

(2) 301–450 square feet: no more than three people.

(3) 451–700 square feet: no more than four people.

(4) 701–900 square feet: no more than five people.

(5) 901–1,100 square feet: no more than six people.

(6) 1,101–1,300 square feet: no more than seven people.

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Karns v. U.S. Department of Housing and Urban Development
(15th Cir. 2006)

Angela Karns filed an administrative complaint with the US Department of Housing and Urban Development (HUD) claiming that property owner Fiona Dickson had violated the Fair Housing Act (FHA), 42 U.S.C. § 3604(a). At issue is whether Dickson's comments to Karns indicated a refusal to rent to Karns on the basis of "familial status." After a hearing, the administrative law judge (ALJ) concluded that Karns had failed to prove that Dickson's statements indicated a refusal to rent on the basis of Karns's familial status. Karns petitioned for review of the ALJ's decision. We hold that Karns proved her claim of discriminatory conduct and therefore reverse.

BACKGROUND

Karns filed an administrative complaint with HUD alleging that Dickson violated 42 U.S.C. § 3604(a) by engaging in discriminatory conduct when she told Karns that she would not rent an apartment to her because Karns was not married and had two children.

At the hearing, Karns testified that, in 1998, she was looking for an apartment for herself and her two children (then ages five and nine) when she saw a newspaper advertisement for a two-bedroom apartment for rent in Smithtown, Franklin. On August 21, Karns spoke by phone to Dickson. Karns wrote detailed notes of the conversation:

Karns: I was calling about the apartment in Smithtown.
Dickson: How many are in your family?
Karns: Three. 1 adult & 2 small children.
Dickson: Are you married?
Karns: No.
Dickson: (Long pause) I don't know. I've got to pay my mortgage. I'll think about it and get back to you.

Dickson never called Karns back. On September 17, Karns noticed another newspaper advertisement for the same apartment that listed the same telephone number. She again called Dickson to inquire about the apartment, but unlike before, Karns stated that she was single and had no children. She again took detailed notes:

Karns: I called about the apartment.
Dickson: How many are in your family?
Karns: One—just me.
Dickson: Do you work?

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Karns: Yes, at Smithtown Bank.
Dickson: Well, the apartment has a large dining room, kitchen, two bedrooms. It's on the 1st floor. . . . I can show the apartment on Monday . . .

The ALJ concluded that Karns had failed to show by a preponderance of the evidence that Dickson had violated § 3604(a) because Karns had not proven that the telephone calls with Dickson indicated discrimination based on familial status rather than a concern over financial matters. Karns claims that the ALJ erred.

DISCUSSION

Karns Established Her Claim for Discrimination Based on Familial Status.

We apply the three-part burden-shifting test set forth in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), for evaluating claims of discrimination under 42 U.S.C. § 3604(a). First, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of discrimination under the FHA, plaintiffs must show (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available. The term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling. "Qualified to rent" means that the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background.

Second, if a plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent or someone with an equivalent custodial relationship. 42 U.S.C. § 3602(k).

It is undisputed that at all relevant times, Karns had two children under the age of 18 who resided with her. Karns demonstrated that she was denied housing. She inquired

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about renting the apartment and was qualified to rent the apartment. Dickson, the property owner, refused to negotiate with her. The apartment remained available when Karns made her second call on September 17 to inquire about the apartment. Thus, Karns has made a prima facie case of discrimination based on familial status under the FHA.

The ALJ accepted Dickson's argument that she "was clearly more concerned with financial matters than the makeup of Karns's family" because Dickson expressed her need to "pay [her] mortgage." Karns argues that Dickson's financial argument is pretext for discrimination based on familial status. We agree.

Dickson asserts two nondiscriminatory reasons for her refusal to negotiate with Karns: (1) she was concerned about Karns's finances and (2) she was concerned that Karns was unmarried. The evidence shows that both of these asserted reasons are pretextual. Dickson's statements in the August 21 conversation do not support the ALJ's conclusion that Dickson's only concern was Karns's ability to pay the rent. After learning that Karns was an unmarried mother of two small children, Dickson declined to negotiate with Karns for the rental. In fact, that Karns was an unmarried mother of two small children was all that Dickson knew about Karns at that point. Dickson had not asked a single question about Karns's finances (nor did she at any point in the conversation). She possessed no information whatsoever about Karns's income, credit history, assets, or liabilities. For all Dickson knew, Karns could have been a multimillionaire. Under these circumstances, substantial evidence does not support the ALJ's conclusion that Dickson refused to rent to Karns on August 21 because she was concerned about Karns's ability to pay the rent. Rather, Dickson's refusal to rent the apartment armed only with the knowledge that Karns was a single mother of two small children indicates that Dickson assessed Karns's ability to pay rent based on her familial status, not on her financial situation.

Dickson's argument that the August statements indicate a nondiscriminatory reason for denial based only on Karns's *marital* status, not one based on her familial status, is also unsuccessful. The FHA does not include marital status among its protected classifications. *See* 42 U.S.C. § 3604(a) (omitting "marital status" from categories of protected classes under the FHA).

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In support of this argument, Dickson points to her question in the August call about Karns's marital status. During the September call, however, Dickson agreed to show the apartment, thinking that Karns was single. The evidence thus demonstrates that in the August conversation it was Karns's representation that she had children, not the fact that she was unmarried, that constituted the reason for Dickson's refusal to rent to her.

Karns has demonstrated that Dickson's asserted reasons for nondiscrimination were pretexts for her refusal to rent to Karns due to her familial status. Accordingly, the ALJ's conclusion that Karns failed to establish a violation of § 3604(a) is not supported by substantial evidence.

Reversed.

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Baker v. Garcia Realty Inc.
United States District Court for the District of Franklin (1996)

This matter is before the court on plaintiffs' motion for summary judgment on their housing-discrimination claim, brought pursuant to 42 U.S.C. § 3604. The plaintiffs, Sheldon and Peggy Baker, are a married couple with five minor children. The family decided to relocate to Creekside, Franklin, because Sheldon Baker had been accepted into a graduate program at nearby Aberdeen University. On June 9, 1994, he traveled from Olympia to Creekside to obtain an apartment for his family. Upon his arrival in Creekside, Baker approached employees of defendant Garcia Realty and requested to see an apartment. Soon thereafter, employees of Garcia showed him two apartments located at 632 Hinman Avenue in Creekside. Baker completed an application for Unit 1A, a three-bedroom apartment. In his application, Baker disclosed that he intended that his spouse and five minor children would live with him, for a total of seven people in the unit.

Around June 23, an employee of Garcia informed Baker that his rental application had been rejected. The stated basis was Garcia's occupancy policy, which provided for a maximum occupancy of four people in a three-bedroom apartment. Under Garcia's "bedrooms plus one" occupancy policy, a maximum of three people may occupy a two-bedroom apartment, a maximum of four people may occupy a three-bedroom apartment, and a maximum of five people may occupy a four-bedroom apartment.

DISCUSSION

The Fair Housing Act (FHA) makes it unlawful to "refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . familial status." 42 U.S.C. § 3604(a). "Familial status" refers to the presence of minor children in the household. 42 U.S.C. § 3602(k).

The Bakers are claiming that Garcia's occupancy policy, while facially neutral, had a disparate impact on them because of their familial status. In this type of case, the Fifteenth Circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant first must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff makes this prima facie showing, the burden then shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if the

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defendant landlord meets the burden at step two, the burden shifts back to the plaintiff, who may then prevail only if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect. Courts apply this disparate-impact analysis when we are analyzing a facially neutral policy. This analysis resembles, but is distinct from, the *McDonnell Douglas* test that is used to analyze claims that a landlord discriminated against a tenant through specific actions that may be ambiguous.

A. Prima Facie Case

Here the Bakers have established a prima facie case of disparate impact. Garcia's "bedrooms plus one" policy clearly impacts families with minor children more than it does the general population. Minor children frequently share bedrooms, and families with minor children tend to have larger households than families without minor children at home.

B. Nondiscriminatory Reason for Policy

Thus, the burden now shifts to Garcia to articulate one or more substantial, legitimate, nondiscriminatory interests served by its policy. Garcia asserts that its occupancy policy avoids the risk of large groups of Aberdeen students overpopulating units in an attempt to reduce their rental payments. Garcia has articulated a substantial, legitimate, nondiscriminatory interest served by its practice—avoiding renting to groups of college students.

C. Overbreadth and Less Restrictive Means

Accordingly, the burden now shifts back to the Bakers to demonstrate that Garcia's policy is overbroad or that there is a less restrictive means to achieve Garcia's goal of avoiding renting to groups of college students. The Bakers argue that Garcia's policy regarding the number of people living in apartments of various sizes is overbroad because it is far more stringent than the requirements of the Creekside Municipal Code. Like many municipalities, the City of Creekside sets maximum occupancy limits on the number of people who can live in housing units of different sizes. Unlike Garcia's policy, which is stated in terms of number of people per bedroom, the Municipal Code is stated in terms of number of people per square foot of living space. Unit 1A is a 1,700-square-foot, three-bedroom apartment. The Code permits up to eight people to live in an apartment of this size. Occupancy of the unit by the seven members of the Baker family would therefore

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be permitted under the Code. In contrast, the Garcia policy states that three-bedroom apartments like Unit 1A can be occupied by a maximum of four people.

The Fifteenth Circuit has held that in cases of alleged familial-status discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad. Although there is no specific mathematical formula, Fifteenth Circuit case law indicates that a significant mismatch would occur, for example, where a landlord limits occupancy to two people in an apartment that, under the applicable local housing code, can be occupied by four people. Here, the number of people permitted to occupy Unit 1A under the Creekside Code—eight—is significantly greater than the number permitted under Garcia's policy—four. The Bakers therefore are correct that this difference constitutes a significant mismatch and provides evidence that the Garcia policy is overbroad.

The Bakers can also show that Garcia could use a less restrictive means of meeting its stated goal of avoiding renting to large groups of college students. Among other things, the Bakers have demonstrated that the information collected by Garcia's rental application easily allows the rental company to tell the difference between a group of college students and a family with minor children protected by the familial-status provisions of the FHA. Garcia offers no explanation for why it applies the occupancy policy regardless of whether those seeking to inhabit its apartments are college students as opposed to families with children far too young to attend Aberdeen University.

The Bakers could have met their burden either by showing that Garcia's "bedrooms plus one" policy is overbroad or by showing that the goals of that policy can be achieved with a less restrictive means. They have shown both. Accordingly, the motion for summary judgment is GRANTED.

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February 2025
MPT-2 Item

In re University of Franklin

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In re University of Franklin

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University of Franklin
Office of University Counsel
Howler Hall
10 Campus Drive, Ste. 100
Franklin City, Franklin 33701

MEMORANDUM

To: Examinee
From: Loretta Rodriguez, General Counsel
Date: February 25, 2025
Re: Professor Eugene Hagen matter

We have been asked to advise regarding an Inspection of Public Records Act (IPRA) request for records relating to Professor Eugene Hagen. The purpose of IPRA is to allow inspection of records that are normally maintained by public entities in order to provide transparency and insight into public operations and functions. Fr. Civil Code § 14-1 *et seq*. The University of Franklin (UF) is subject to IPRA requests as a public institution. We were contacted by Cheryl Williams, Dean of the UF School of Law, and Chip Craft, Chief of Police of the UF Campus Police Department. They were copied on the request.

Professor Hagen has taught at the law school since 2012. Last fall, the Faculty Misconduct Review Committee (FMRC) conducted a faculty peer hearing. The FMRC suspended Professor Hagen from UF for one year without pay, pursuant to UF disciplinary policy C07, which allows for suspension of a faculty member for "illegal use of drugs or alcohol." Professor Hagen was suspended based on a conviction for driving under the influence (DUI) and a positive test for cocaine.

The suspension of Professor Hagen has received a fair amount of attention from the academic community and the media. The requestor, Paul Chen, is a student reporter at the UF student newspaper, *The Daily Howl*. Mr. Chen has already published one article (see attached) about Professor Hagen.

Please write a memorandum to me addressing whether we must produce each of the requested documents. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your conclusions.

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The Daily Howl
The Independent Voice of the University of Franklin Since 1922

What Is UP with Professor Eugene Hagen?

By Paul Chen, staff writer

September 19, 2024

Once-beloved University of Franklin (UF) law professor Eugene Hagen will face UF's Faculty Misconduct Review Committee this Friday. A confidential source reports that Hagen is scheduled to appear before the committee on charges that he violated UF's disciplinary policy C07, which allows for suspension of a faculty member for "illegal use of drugs or alcohol." Hagen was arrested by the Franklin City Police on May 25, 2024, for driving under the influence (DUI). At the time of arrest, Hagen tested positive for cocaine. Hagen was convicted of DUI on September 17, 2024, in Franklin City municipal court.

The UF School of Law community is still shocked by Hagen's arrest and subsequent conviction for DUI. "Professor Hagen was my favorite professor 1L year. I can't believe this happened. He's brilliant," said Susan Ellwood. "I actually enjoyed getting cold-called by Professor Hagen," said Thomas Kennedy. However, another student, 3L Kate Rogers, noted that her mother had written a letter complaining about Hagen to UF Law School Dean Cheryl Williams. Rogers added, "I thought there was something wrong with Hagen. I thought that he was a drunk. How was I supposed to know that he was using cocaine?" Pamela Rogers, Kate Rogers's mother, echoed her daughter's statement and said, "Last year I wrote a letter to Dean Williams complaining about Professor Hagen, and I wrote, 'that man has a substance abuse problem and should not be teaching our children.'"

UF's Faculty Misconduct Review Committee has a reputation for being strict. We will keep you informed as the Eugene Hagen story continues to unfold.

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The Daily Howl
University of Franklin
30 Campus Drive
Franklin City, Franklin 33701

February 24, 2025

Custodian of Records
University of Franklin
Howler Hall
10 Campus Drive
Franklin City, Franklin 33701

Re: Professor Eugene Hagen, Inspection of Public Records Act request

Dear UF Custodian of Records:

I am a student reporter at *The Daily Howl*. I am writing to request records pursuant to the State of Franklin's Inspection of Public Records Act. The requested items concern the UF School of Law and Professor Eugene Hagen.

I intend to write and publish a follow-up article about Professor Hagen. The public and the UF community have a right to know whether the university knew about Professor Hagen's drug use prior to his DUI arrest.

The requested items are

1. Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law from 2019 to the present.
2. Any complaints about Professor Hagen submitted by members of the public to the UF School of Law.
3. A chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen.
4. Any records involving Professor Hagen in the possession of the UF Campus Police Department.

Sincerely,
Paul Chen

Paul Chen, staff writer

cc: Dean Cheryl Williams
Chief of UF Campus Police Chip Craft

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From: Dean Cheryl Williams
Sent: February 25, 2025, 8:15 a.m.
To: General Counsel Loretta Rodriguez
Subject: PRIVILEGED AND CONFIDENTIAL – IPRA request re: Eugene Hagen

Dear Loretta,

The university received the attached IPRA request from Paul Chen at *The Daily Howl*. He is asking for records from Professor Eugene Hagen's personnel file. I need your advice. As you know, Professor Hagen was suspended for one year without pay on September 20, 2024, under disciplinary policy C07 for "illegal use of drugs or alcohol" related to his September 17, 2024, conviction for driving under the influence (DUI).

Eugene's last two annual performance reviews, which I completed, were mixed. His teaching is strong, and he's a popular teacher. That said, he hasn't been showing up for faculty or committee meetings or his office hours, and I did note concerns about these absences in his annual review both this year and last year. I also referenced Eugene's student course evaluations in his annual reviews. There are a lot of negative comments in the student course evaluations from the past two years to the effect that Eugene has been late for classes and has been moody and erratic in class. Students have noted that Eugene often misses office hours and doesn't respond to students' emails. The student course evaluations themselves are not attached to the annual performance reviews.

The annual performance reviews contain a lot of general information—what classes Eugene taught, the quality of his teaching, the committees he served on, what publications he completed, and the quality of his publications. While Eugene has tenure, annual reviews are still required so that we can assess his ongoing performance as a faculty member.

While I have received several complaints from students about Eugene, I have only received one complaint from a member of the public. It is a letter from Pamela Rogers, the mother of a current law student. I placed the letter in Eugene's personnel file.

We don't have a chart containing the names of people who have made a complaint about Eugene. It would take some time to make one, but we can do it.

Honestly, we knew that something was off about Eugene, but we didn't know what it was until his DUI arrest. I want to ensure that we comply with the law in producing records pursuant to this IPRA request, but I'd also like to protect as many documents as possible from disclosure.

Thanks so much for your help with this.
Cheryl

Cheryl Williams
Dean and Professor of Law, UF School of Law

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From: Chief of UF Campus Police Chip Craft
Sent: February 25, 2025, 9:05 a.m.
To: General Counsel Loretta Rodriguez
Subject: PRIVILEGED AND CONFIDENTIAL - IPRA request

Dear Counselor Rodriguez,

I am writing to request your advice regarding the attached IPRA request that the university received yesterday from a student reporter at *The Daily Howl*.

We are aware that Professor Eugene Hagen was arrested by the Franklin City Police for DUI last May. We do not have any records related to that arrest. Those records are kept by the Franklin City Police Department.

However, we do have records here at the UF Campus Police Department related to a recent arrest of Professor Hagen for possession of marijuana. Just two weeks ago, on February 11, 2025, we received a confidential tip that Professor Hagen was smoking marijuana in his office. UF Police Officer Sharla Marx was at the UF School of Law and went immediately to Professor Hagen's office to investigate.

Officer Marx found Professor Hagen and another UF law professor, Hope Sykes, smoking marijuana from a bong in Professor Hagen's office. Officer Marx discovered 8 ounces of marijuana in the office. She then called the Franklin City Police Department, which sent an officer to apprehend Professor Hagen. The District Attorney's office has charged him with possession of marijuana. Professor Sykes was not arrested because, while she was smoking, she was not in possession of a sufficient amount of marijuana to be charged with a crime. While Professor Hagen was suspended at the time of the incident, he was not barred from being on campus or using his office.

In our records, we have only three items: an incident report and two photographs. The incident report contains details about the incident including the time, the date, the location, and the name of the confidential source. It also includes a description of what Officer Marx observed in Hagen's office and the statements made by Hagen and Sykes to Officer Marx. The two photographs are "selfies" showing both Hagen and Sykes with the bong in Hagen's office on the night in question.

Our investigation and the Franklin City Police Department's investigation are ongoing. What, if anything, do I need to produce in response to the request?

Thanks for your help with this.

Chip

Chip Craft
Chief of Police
University of Franklin Campus Police Department

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FRANKLIN INSPECTION OF PUBLIC RECORDS ACT
Franklin Civil Code § 14-1 *et seq*.

§ 14-1 Definitions

(a) "Public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of physical form or characteristics, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

. . .

§ 14-2 Right to inspect public records; exemptions

(a) Every person has a right to inspect public records of this state except

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning licensing or permits;

(3) letters or memoranda that are matters of opinion in personnel files;

(4) portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations to the extent that it contains the information listed in this paragraph;

(5) trade secrets, attorney-client privileged information, ...

. . .

§ 14-5 Procedure for requesting records

(a) Any person wishing to inspect public records shall submit a written request to the custodian.

(b) Nothing in this Act shall be construed to require a public body to create a public record.

§ 14-6 Procedure for inspection

(a) Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.

. . .

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Fox v. City of Brixton
Franklin Court of Appeal (2018)

Plaintiff Robert Fox made a written request to the City of Brixton pursuant to the Franklin Inspection of Public Records Act (IPRA) asking to inspect and copy all citizen complaints filed against John Nelson, a police officer employed by the City. The City denied the request on the ground that the information sought consisted of "letters or memoranda that are matters of opinion in personnel files" under § 14-2(a)(3) and were therefore exempt from disclosure. Fox then sued the City of Brixton, alleging that it had violated IPRA by denying his request. The district court granted summary judgment to the City, finding that there were no material facts in dispute and that the citizen complaints requested were not subject to inspection. The sole issue on appeal is whether the district court erred when it held that Fox was not entitled to inspect citizen complaints concerning the on-duty conduct of a police officer.

Franklin courts have long recognized IPRA's core purpose of providing access to public information, thereby encouraging accountability in public officials. A citizen has a fundamental right to have access to public records. The public's right to inspect, however, is not without limitation. IPRA itself contains narrow statutory exemptions. In ruling that the City was not required to provide Fox with access to the requested citizen complaints, the district court relied on § 14-2(a)(3), which states that "letters or memoranda that are matters of opinion in personnel files" are exempted from disclosure under IPRA. Interpreting this provision requires us to determine what the legislature intended to include within "matters of opinion in personnel files." We agree with the district court's assessment that the location of a record in a personnel file is not dispositive of whether the exemption applies; rather, the critical factor is the nature of the document itself. To hold that any matter of opinion could be placed in a personnel file, and avoid disclosure under IPRA, would violate the broad mandate of disclosure embodied in the statute.

Construing § 14-2(a)(3) in a manner that gives effect to the presumption in favor of disclosure, we conclude that the legislature intended to exempt from disclosure "matters of opinion" that constitute personnel information of the type generally found in a personnel file, i.e., information regarding the employer/employee relationship such as internal evaluations;

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disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews. The purpose of the exemption is to protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of the working relationship between them.

This interpretation is also consistent with *Newton v. Centralia School District* (Fr. Sup. Ct. 2015). In *Newton*, a journalist sought access to all nonacademic staff personnel records held by the Centralia School District that were not specifically exempt from disclosure under IPRA. The journalist sought a ruling from the court that no portion of the personnel records of the employees was exempt from disclosure. The court held that the exemption applies to "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion." The documents listed by the *Newton* court are all documents generated by an employer or employee in support of the working relationship.

Here, Fox argues that the citizen complaints at issue are not personnel information within the meaning of the exemption because the complaints arise from the officer's role as a public servant, not from his role as a city employee. Fox asserts that as a public servant, the officer has a statutory duty to conduct himself in a manner that justifies the confidence of the public. The City, on the other hand, argues that the citizen complaints are in fact personnel information because they relate to the officer's job performance, and the subject matter of the complaints might lead to disciplinary action against Officer Nelson.

We note that Fox is not requesting information regarding the City's investigative processes, disciplinary actions, or internal memoranda that might contain the City's opinions in its capacity as Officer Nelson's employer. The complaints in question were not generated by the City or in response to a City query for information; rather, these documents are unsolicited complaints about the on-duty conduct of a law enforcement officer, voluntarily generated by the very public that now requests access to those complaints. While citizen complaints may lead the City to investigate the officer's job performance and could eventually result in disciplinary action, this fact by itself does not transmute such records into "matters of opinion in personnel files" for purposes of § 14-2(a)(3).

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The City also argues that police officers are "lightning rods for complaints by disgruntled citizens" and that, therefore, information in a complaint may be untrue or have no foundation in fact. This argument is unavailing. The fact that citizen complaints may bring negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure. City of Brixton police officers are without question "public officers," and the complaints at issue concern the official acts of those officers in dealing with the public they are entrusted with serving. It would be against IPRA's stated public policy to shield from public scrutiny as "matters of opinion in personnel files" the complaints of citizens who interact with city police officers. Accordingly, the citizen complaints requested by Fox are not protected from disclosure under § 14-2(a)(3).

We conclude, therefore, that citizen complaints regarding a police officer's conduct while performing his or her duties as a public official are not the type of "opinion" material the legislature intended to exclude from disclosure in § 14-2(a)(3).

Reversed.

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Pederson v. Koob
Franklin Court of Appeal (2022)

This appeal is brought under Franklin's Inspection of Public Records Act (IPRA). Nancy Pederson appeals from an order denying her petition to compel the Franklin Livestock Board, a public agency, to make available for inspection an investigative report concerning one of its employees. Pederson claims that the court erred in concluding that the report in its entirety is exempt from disclosure under IPRA § 14-2(a)(3), the exemption for "letters or memoranda that are matters of opinion in personnel files." We affirm.

BACKGROUND

Pederson filed a complaint with the Franklin Livestock Board (the Board) alleging that Kenneth Larson, who was employed by the Board as a livestock inspector (a law enforcement position), had engaged in timesheet fraud by billing the Board for his time while working at a second job. The Board retained an outside firm to investigate whether the Board's rules on the billing of time had been violated, to investigate Larson's general job performance and compliance with the Board's rules of conduct, and to advise the Board on whether disciplinary action should be taken. After the investigation had been completed, Pederson sent an IPRA request to the Board's custodian of records, Julie Koob, asking for a copy of "the Investigation Report pertaining to Kenneth Larson [the Larson Report]."

The Board denied Pederson's request, stating that the report was exempt from disclosure under § 14-2(a)(3). Pederson filed a complaint in district court seeking a court order compelling the Board to produce the Larson Report. The district court granted the Board's motion for summary judgment, finding that "the undisputed evidence shows that the Larson Report concerns a potential disciplinary action against Larson, an employee of the Board" and concluding that "evidence is sufficient to shield the Larson Report from disclosure" under IPRA § 14-2(a)(3). This appeal followed.

DISCUSSION

Pederson argues that the Board's custodian of records was required to divide the Larson Report into "factual matters concerning misconduct by a public officer related to that officer's role as a public servant" and "matters of opinion constituting personnel information" that are related to the officer's role as an employee. Pederson agrees that

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the "matters of opinion" concerning discipline are exempt from disclosure under IPRA § 14-2(a)(3) but claims that "matters of fact" must be disclosed. We disagree.

In *Newton v. Centralia School District* (Fr. Sup. Ct. 2015), the Franklin Supreme Court described this IPRA exemption as applying to letters or memoranda *in their entirety*. It reasoned that the legislature intended the phrase "letters or memoranda that are matters of opinion in personnel files" to include items such as "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion." The court characterized these documents as a whole as "opinion information," a reading that is consistent with the plain language of the exemption.

Moreover, the full document exemption under § 14-2(a)(3) overrides the requirement in § 14-6 that nonexempt matter in that document be disclosed. Thus, Pederson is incorrect in asserting that, even if § 14-2(a)(3) applies to "letters or memoranda" in their entirety, under § 14-6(a) the Board must separate "matters of fact" from "matters of opinion" and produce the matters of fact for inspection. Section 14-6(a) requires the custodian of records to separate exempt records from nonexempt records. When an exemption applies only to certain portions of a document, such as the § 14-2(a)(4) exemption related to *portions* of law enforcement records, then separating the exempt from nonexempt material demands redaction of the exempt material in that document. However, when an exemption applies to a document *as a whole*, as § 14-2(a)(3) does, the entire document is exempt from disclosure and matters of fact in that document do not have to be separated from matters of opinion and disclosed.

We agree that under IPRA the entire Larson Report is exempt from disclosure. Affirmed.

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Torres v. Elm City
Franklin Supreme Court (2016)

Section 14-2(a)(4) of the Franklin Inspection of Public Records Act (IPRA) creates an exemption from inspection for certain law enforcement records. Plaintiff James Torres filed an IPRA enforcement action against Elm City after it denied his request for records related to his sister's arrest on the ground that the records were part of an ongoing investigation. The court granted summary judgment to Elm City, finding that the requested records were exempt from disclosure under IPRA, and dismissed Torres's IPRA enforcement action. The Court of Appeal affirmed. Torres filed a petition for a writ of certiorari, which we granted.

Francine Ellis was arrested by Elm City police officers for aggravated assault on March 5, 2015. On April 1, 2015, Ellis's brother James Torres sent a written IPRA request to Elm City seeking various records relating to the arrest. Elm City responded 14 days later, agreeing to produce a primary incident report and one subpoena. But Elm City denied production of all other pertinent records in its possession, citing § 14-2(a)(4), which exempts from the general IPRA disclosure requirement "portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime." Elm City stated that its police department was investigating the crime and therefore "release of the requested information posed a demonstrable and serious threat to that ongoing criminal investigation" and that the requested records would be released "when the release of such records no longer jeopardized the law enforcement investigation." Elm City claims that, in enacting § 14-2(a)(4), "the legislature intended that records pertaining to ongoing investigations remain sealed until the investigation is complete."

DISCUSSION

As declared by our legislature, the purpose of IPRA "is to ensure . . . that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." § 14, *Declaration of Policy*. The legislature has limited this general rule by providing specific exemptions to the right to inspect public records. *See* § 14-2(a)(1–8). Central to this case is § 14-2(a)(4), which provides certain exemptions for law enforcement records.

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Nowhere does § 14-2(a)(4) exempt *all* law enforcement records relating to an ongoing criminal investigation. Rather, the plain language of § 14-2(a)(4) indicates that the legislature was not concerned with the stage of the investigation as such: "[L]aw enforcement record[s] that reveal confidential sources or methods or that are related to individuals not charged with a crime" are exempt, even if the law enforcement records relate to "*inactive matters or closed investigations*" (emphasis added). Contrary to the conclusion of the district court, the plain language of § 14-2(a)(4) indicates that the ongoing Elm City investigation was not, of itself, material to whether the requested records could be withheld. Instead of focusing on whether there was an ongoing investigation, the legislature was concerned with the specific content of the records. The district court seems to have required only that the requested records relate to an ongoing criminal investigation, or perhaps that inspection of the records would "interfere" with an ongoing investigation. Either standard is untethered from the plain language of § 14-2(a)(4).

Section 14-6(a) provides that requested law enforcement records containing both exempt and nonexempt information cannot be withheld in toto. Rather, when requested public records contain a mix of exempt and nonexempt information, the "exempt and nonexempt [information] . . . shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection." § 14-6(a); *see Wynn v. Franklin Dept. of Justice* (Fr. Sup. Ct. 2011) (Attorney General's audio recording relating to financial investigation required to be made available for inspection after redacting 90 seconds related to confidential informant information). Read together, the plain language of §§ 14-2(a) and 14-6(a) provides that Elm City was required to review the requested law enforcement records, separate information that did not "reveal confidential sources or methods or that [did not relate] to individuals not charged with a crime" from that which did, and provide the nonexempt information for inspection. By contrast, and incorrectly, the district court allowed Elm City to broadly withhold law enforcement records simply because there was an ongoing criminal investigation. Such an interpretation is overbroad and incongruent with the plain language of § 14-2(a)(4). *See Dunn v. Brandt* (Fr. Ct. App. 2008) ("The exemptions to IPRA's mandate of disclosure are narrowly drawn.").

We now examine whether the district court was correct to find that the records were exempt from inspection pursuant to § 14-2(a)(4). It is undisputed that there is an

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ongoing law enforcement investigation; however, Elm City did not present evidence that any of the specific records that it refused to produce revealed "confidential sources or methods or [were] related to individuals not charged with a crime." § 14-2(a)(4). Nor did Elm City present any evidence that, as required pursuant to § 14-6(a), it had reviewed the requested records to separate exempt from nonexempt information, or that it had provided any nonexempt information. For these reasons, the district court incorrectly determined that the requested records were exempt from inspection pursuant to § 14-2(a)(4).

Reversed and remanded for further proceedings.

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