

BOARD OF REGENTS  
BRIEFING PAPER

**1. Agenda Item Title: Production or Inspection of Records and Requests for Information by Regents**

**Meeting Date: June 6-7, 2013**

**2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

Pursuant to Board of Regents *Handbook* Title 4, Chapter 1, Section 4, unless otherwise prohibited by law, all books, records and documents, except material related to restricted access research, that are in the custody of an NSHE institution or unit must be made available to Regents for inspection or copying upon request for reasons germane to the performance of their duties as Regents. The policy further provides that if in the opinion of the Board Chair, requests for information are beyond the production or copying of books, records or documents and require more than a minimal use of an institution's or unit's personnel or resources, the request must be approved by the Board of Regents. The policy does not define "minimal" for purposes of determining when it is appropriate for a request for information to be subject to the prior approval of the Board.

Existing Board policy also provides that the written response by the institution or unit to approved information requests shall be sent to all Regents, with copies to the Chancellor, the applicable President and the Board office. However, the current policy is ambiguous regarding whether or not the requesting Regent should be identified. The proposed revision includes a provision requiring identification of the requesting Regent but this issue should be determined by the Board.

**3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

The Board of Regents is asked to approve the proposed *Handbook* revision to Title 4, Chapter 1, Section 4, addressing production or inspection of records and requests for information by Regents, to allow for a request anticipated by an institution or unit to require in excess of 6 hours to prepare be subject to the Board's prior approval to occur at a public meeting of the Board and to clarify the Regent making the request will be identified when the information is so distributed.

**4. IMPETUS (WHY NOW?):**

Clear guidelines regarding when and how an important function is to be performed are always necessary and appropriate. Regent requests for information are such a function. However, some requests may rise to a level that presents special issues relating to staff time and resources. The Board and its members are facing increasingly complex issues during the current difficult economic environment and there is a corresponding increase in the complexity of some information requests. The current guideline based on the Chair's determination of what constitutes "minimal" use of resources is too indefinite and places an unreasonable burden on the Chair to interpret such a subjective standard. A more precise standard is needed and the full Board should exercise its discretion as to the appropriate balance between access and allocation of effort in such cases.

**5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- Clear guidelines are necessary for staff responses to Regent document requests.
- Document requests are increasingly complex.

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

The current standard is precise enough and allows more flexibility in responding to information requests.

**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

Leave the existing policy in place.

**8. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title #\_\_\_\_ Chapter #\_\_\_\_ Section #\_\_\_\_
- Amends Current Board Policy: Title # 4 Chapter # 1 Section # 4
- Amends Current Procedures & Guidelines Manual: Chapter #\_Section # \_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No X.  
Explain: \_\_\_\_\_

**POLICY PROPOSAL - HANDBOOK**  
**TITLE 4, CHAPTER 1, SECTION 4**  
Production or Inspection of Records and  
Requests for Information by Regents

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

**Section 4. Production or Inspection of Records and Requests for Information by Regents**

1. Unless otherwise prohibited by law, all books, records and documents, except material related to restricted access research, that are in the custody of an NSHE institution or unit must be made available to Regents for inspection or copying upon request. Regents should make such a request only for reasons germane to the performance of their duties as Regents. Requests for inspection or copies of books, records or documents must be directed to the Chancellor, Presidents, Vice Chancellors, Vice Presidents, Secretary to the Board or the Director of Internal Audit, as the case may be. Such requests shall also be copied to the Chancellor and, if applicable, the President of the relevant institution. The written response from the institution or unit shall be sent to all Regents, with copies to the Chancellor, the applicable President and the Board Office. Regents may request the Chancellor or his or her designee to inspect restricted access research materials on their behalf and provide a summary report to the Board. Requests to inspect restricted access research materials will be accompanied by non-disclosure and conflict of interest statements signed by the Chancellor or his or her designee.
  
2. As noted in Board Bylaws and policies, the Board of Regents acts as a unit and no one Regent has the authority to bind the Board. "It shall be the policy of the Board of Regents to act as a unit. The Board of Regents controls the University as a body representing the people; the individual members have no authority singly." Board Policies, Title 4, Chapter 1, Section 7(6). Accordingly, if [~~in the opinion of the Board Chair requests for information are beyond the production or copying of books, records or documents and require more than a minimal use of an institution's or unit's personnel or resources, the request must be approved by the Board of Regents~~] **a request for information by a Regent is anticipated by an institution or unit to require in excess of six hours to prepare a response, the request is subject to the Board's prior approval at a public meeting of the Board.** In determining whether to approve the information request, the Board shall take into consideration the cost associated with responding to the request in terms of the use of personnel and other resources. The written response by the institution or unit to approved information requests shall be sent to all Regents, with copies to the Chancellor, the applicable President and the Board office **and will identify the Regent making the request when so distributed.**

(B/R 6/07)