

MEMORANDUM

To: Senate Executive Committee

From: Dr. Patricia Minter, Faculty Welfare and Professional Responsibilities Committee Chair

Date: May 1, 2015

Re: First Amendment and Proposed Firewall of Salaries for WKU Employees

At the April 6, 2015 meeting of the Senate Executive Committee, Provost Gordon Emslie suggested that the Senate consider supporting a move to place employee salary information behind a password-protected firewall. According to the minutes of the meeting, the Provost reported that “100+ employees have had a fraudulent tax return. The salary on line 7 is exactly the number that appears in public data; this brings up the issue of personal privacy of data. The suggestion is to put it behind a net ID and password. This does not stop anyone from going to the database in Frankfort. It is on the Herald website. Anyone can request it as an open record. Would the senate want this behind a net ID? Patricia Minter stated that it is premature to ask the senate for anything that gives less transparency. She would want an opinion from someone on the first amendment; Minter will make phone calls to get advice. She added that the salary information was not the problem; the hack was the problem. She recommends First Amendment-based rationale; Minter stated that she will get at least two opinions. It is a perception issue of transparency.”

As promised, I have sought three opinions from experts on First Amendment law, both in theory and in practice. These are copied below:

- 1) William Sharp, Staff Attorney at the American Civil Liberties Union of Kentucky:

“Our official position is best summed up by the Attorney General’s office in 04-ORD-141 (copy attached): “A public employee’s name, position, work station, *and salary are subject to public inspection ...*” *Id.* at 4 (quoting 97-ORD-066).” (OAG opinion is attached).

- 2) Professor Enid Trucios-Haynes, Professor of Law and Director of the Muhammad Ali Institute for Peace and Justice at Louis D. Brandeis School of Law, University of Louisville (Professor Trucios-Haynes also serves as the Faculty Grievance Officer at the University of Louisville):

“The public has a right to information under the First Amendment and public institutions have an obligation to comply. If an institution attempts to shield information, I would guess it runs the risk of a lawsuit and the university would look really bad in the press if a lawsuit were filed. We work for public institutions and the public has a right to know how it spends its money.”

- 3) Professor Mac McKerral, Coordinator of News/Editorial Journalism in the School of Journalism and Broadcasting: “It's a public record by statute, and any effort to close it or limit access to it, should be squashed. Tactics such as using the security breach as an impetus for closing records is an age-old bureaucratic [tactic]. And it is a "public" record not a WKU-access-only record...”

Therefore, I recommend that the Senate Executive Committee specifically, and the university generally, do not pursue such a plan to limit public access to salary information and maintain current practices as is, in order to remain compliant with state and federal interpretations both of the First Amendment and Open Records laws.