

Board of Trustees University of the Virgin Islands

Resolution Authorizing the Executive Committee to Amend the University's Policy On Public Access To Documents And Information

WHEREAS, the University of the Virgin Islands' Policy On Public Access To Documents And Information in part specifies that "No information from the personnel file of any employee shall be provided to individuals who are not authorized University employees other than to confirm that the employee is in fact employed by the University, unless express authorization for such disclosure is given in writing by the employee or a determination has been made by Director of Human Resources that the information may be released"; and

WHEREAS, in accordance with that policy, the University has declined periodic requests from the Virgin Islands Daily News to provide a list of the name, job title, and salary of all the University's employees and has instead provided only a list of the positions held by employees and the salary of each of those positions; and

WHEREAS, the only exception to this practice by the University of not providing the name, job title, and salary of all employees has been the University's practice of submitting a confidential list of the name, job title, and salary of all its employees to the Governor and to the Finance Committee of the Legislature of the Virgin Islands, as part of the University's annual request for an appropriation from the General Fund of the Virgin Islands; and

WHEREAS, an article published in the Virgin Islands Daily News in December of 2015 indicated that V.I. Attorney General Claude E. Walker had stated in part,

"When public monies are used to pay salaries, I don't care whether you're a semi-autonomous agency or an autonomous agency, the public has a right to know," Walker said. "If someone is uncomfortable with that fact, they don't have to work for the public agency. If public monies are involved, you should expect that the public will know your salary"; and

WHEREAS, University President David Hall later issued a letter to Attorney General Walker requesting an official opinion whether the University is required to comply with the Virgin Islands Open Records Act (Chapter 33 of Title 3 of the Virgin Islands Code) even though the University is an independent instrumentality of the Government of the Virgin Islands and the Act is not expressly applicable to such instrumentalities; and

WHEREAS, in response to that request, in a letter dated March 7, 2016, Attorney General Walker stated, in part,

Under the Open Records Act, news outlets have the right to review, inspect and copy non-privileged documents, such as documents pertaining to UVI employee salaries,

unless federal law applies. This means that if exemptions exist under either the Open Records Act or federal law, then they would apply, depending on the type of request made for public disclosure of information.

Therefore, subject to legal exceptions, the Open Records Act applies to UVI. ; and

WHEREAS, Attorney General Walker issued a copy of the March 7th letter to the Daily News, which action prompted the Executive Editor of the newspaper to send correspondence to President Hall a couple days later alleging “the board's current policy is in violation of the VI Code”; and

WHEREAS, President Hall referred this matter to Hall & Griffith, PC, the University’s general counsel, and requested legal advice;

Now, therefore, be it resolved by the Board of Trustees of the University of the Virgin Islands:

1. After receiving legal advice from its general counsel and the results of deliberations on this issue by the University’s Governance Committee, it is the position of the Board of Trustees that, pursuant to Title 17, Section 453 (b), which states “Nothing in this chapter shall be construed as exempting the University of the Virgin Islands from any law made specifically applicable thereto or generally applicable to independent instrumentalities of the Government of the United States Virgin Islands, whether such law was enacted before, on, or after the date of enactment of this subsection” [Underlining added for emphasis.], and pursuant to Virgin Islands’ case law on identical language that refers to another independent instrumentality, the Open Records law does not apply to the University because it does not specifically apply to the University nor has it been made generally applicable to independent instrumentalities;
2. In order to dispel any suspicion that the University is withholding this information of its employees because of some ulterior motive and in furtherance of the interests of the University, the Board hereby authorizes its Executive Committee to amend the Policy On Public Access To Documents And Information, prior to the next regular meeting of the Board, to allow the President of the University, once each year, upon written request from a Virgin Islands newspaper, to provide a listing of the name, job title, and salary of all employees of the University, provided that, in order to preclude the salary data from being used to steal the identity of employees, all salary data shall be rounded to the nearest one thousand dollars.
3. Nothing herein shall be construed as the University accepting that the Virgin Islands Open Records Act has any applicability to the University, or that the March 7, 2016 Opinion of the Attorney General has correctly identified the state of Virgin Islands law with respect to the application of the Virgin Islands Records Act to the University specifically, or generally to independent instrumentalities of the Government of the Virgin Islands.

CERTIFICATION

The undersigned hereby certifies that the foregoing is a true and exact copy of a resolution of the Board of Trustees of the University of the Virgin Islands adopted at a meeting on June 4, 2016, as recorded in the minutes of said meeting.

A handwritten signature in blue ink that reads "Daniel Hall". The signature is written in a cursive style with a large, looped 'H'.

June 4, 2016

Secretary of the Board

Date