

## Rutgers University Senate

### Instruction, Curricula and Advising Committee

#### Acceptable Use Policy for Information Technology Resources

**Charge S-1614:** Examine the existing Rutgers University Acceptable Use Policy for Information Technology Resources. In particular, review Section 5.B.6 on the requirement that University business be conducted using defined software and applications (considering the scope of "University business"), and Section 5.C on Privacy, with regard to access by technicians and university administrators to electronic records (especially the scope of 5.C.5 and the need of the University to carry on its normal operations. Respond to Senate Executive Committee by December 28, 2016.

On August 22, 2015, the University made a number of revisions to the *Acceptable Use Policy* for Information Technology Resources (University Policy Library Section 70.1.1: <http://policies.rutgers.edu/sites/policies/files/00005571.PDF>)

As per the Policy Statement (70.1.1): “This policy outlines the acceptable use of University information and technology resources, which include, but are not limited to, equipment, software, networks, data, and stationary and mobile communication devices used to access Rutgers information and IT resources, whether the technology or devices are personally owned or owned, leased, or otherwise provided by Rutgers University.”

Section 5B of the policy, User Responsibilities, outlines what would be violations of the policy, e.g., unauthorized use, using resources inappropriately, preventing others from accessing an authorized service, violating copyright or distributing illegally obtained materials, or violating the privacy of others. However in the revised version a new section, 5.B.6, has been added. This section states:

University business must be conducted using the Official University email, and calendar service, Rutgers Connect, including other O365 comprised services.

- As per this University policy; in order to meet federal, state and local, legal, regulatory and statutory requirements (e.g. HIPAA, OPRA, FERPA, GLBA); and in a manner which ensures business continuity, enables proper E-Discovery and handles data in a secure and compliant manner.

Designating the use of a specific piece of software—in this case Microsoft Office 365—in a University Policy Library is in itself highly unusual. Software by its nature tends to be transient—it evolves, or is eclipsed, or at the very least is eventually renamed. We have not been able to identify any other institution that has this level of specificity in their email policy. While there are some institutions (University of Florida; Columbia University) that do mandate the use of university approved email systems for “university business,” these systems are always described in generic terms such as “a university provided or approved electronic mail service.”

Nor does a policy document which focuses on violations of University technology resources seem like an appropriate home for a policy of this nature. While all Big10 universities have an Acceptable Use policy, for example, none includes mandates for the use of university-approved

email systems. If there is a need for a specific email policy of this nature, it should probably be a separate policy.

Moreover, the *Acceptable Use Policy* applies to all users including faculty, staff, and students. But students, unless they are also employed by the university, are currently for the most part using Scarletmail. If this is an employee-only policy it seems that that should be specified and be placed in a more appropriate document.

### **“University Business”**

There is also the question of just what constitutes “university business.” Are communications relating to faculty research projects “university business?” While this is a term that is regularly used in policies and procedures at many universities—most often as it relates to university travel—it is a term that is rarely defined. The University of Oklahoma, in their HIPAA FAQ, defines university business as:

University Business is work performed as part of an employee’s job responsibilities, or work performed on behalf of the University by faculty, staff, volunteers, students, trainees, and other persons whose conduct, in the performance of work for the University, is under the direct control of the University, whether or not they are paid by the University.<sup>1</sup>

The University of Warwick simply defines university business as “any activity conducted either in the course of employment or as part of or related to a University course or other University activity that is not purely personal.”<sup>2</sup>

For faculty, whose academic, professional and personal lives tend to be heavily intertwined, neither of these definitions is likely to be particularly useful when determining if a particular communication does indeed rise to “university business.” There needs to be better agreement as to what is, and is not, “university business.”

The University of Michigan, in their Privacy and the Need to Monitor and Access Records policy (<http://spg.umich.edu/policy/601.11>) does a nice job of defining university business records. While this deals with records rather than just communications, it could be a starting point for defining the types of communications being addressed.

### **Health-related and Other Confidential Communications**

We recognize that we need to be concerned about the transmission of sensitive information, especially that originating from RBHS and the medical schools. Institutions that do not dictate the use of university emails still may do so for their health schools and participants so as to insure the highest level of security as required by HIPAA and ethical standards. It would seem

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<sup>1</sup> <https://ouhsc.edu/hipaa/faqs/UniversityBuisness.asp>

<sup>2</sup> <http://www2.warwick.ac.uk/services/gov/calendar/section2/regulations/computing/>

appropriate for Rutgers to have specific email guidelines for health-related and other confidential communications. It might be a reasonable expectation, for example, that administrators at a certain level, as well as members of the Rutgers boards, are indeed restricted to the use of a specific email system when communicating in their official capacity. In addition, any communications involving or concerning students need to be made using secure university systems.

Email security is obviously a matter of concern in general. However the reality is that if we are sending email across multiple platforms, regardless of what “official” email system we may be using, that email is not really secure. Corporations looking to make their communications secure provide employees at a certain level with mobile devices and require that the employees login to their platforms to use those devices. But unless we’re all on the same platform we have to assume that at some level our email is vulnerable.

### **Automatic Forwarding of Email**

While it is not mentioned in the *Acceptable Use Policy*, there has been concern expressed about the fact that the new email system is set up to not allow automatic forwarding to another email system (gmail, for example). While we appreciate that this is an inconvenience that requires some retraining on the part of individuals who are used to working in a particular way, the Committee did not feel this to be an unreasonable policy. While most of us may not be terribly concerned about the security of even the majority of our communications, we still have some that we would prefer to transmit and receive in the safest way possible. Automatic forwarding does not allow you to pick and choose. Nor does it seem appropriate that email sent to someone in their official capacity should be responded to from a non-University account.

However, while no automatic forwarding to external email systems from Rutgers Connect is the stated policy, the Committee found that in point of fact specifying an external email account will automatically forward Rutgers Connect mail to that account.<sup>3</sup>

### **Calendar Service**

Within some units, there could be an argument made for everyone to be using the same calendar service. For the most part however, there is rarely a need for one faculty member to know exactly where another faculty member is at any given moment. We fail to see the need for a mandated “official” calendar.

### **“Other O365 Comprised Services”**

These have yet to be rolled out; we don’t know what they are or why we should be required to use them. So it seems somewhat premature to mandate their use!

### **Violations**

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<sup>3</sup> From NetId Services (<https://netid.rutgers.edu/index.htm>), select “Manage Email Addresses.” Login and enter the address into “Delivery Email Accounts.”

5.E.1 of the *Acceptable Use Policy* states that:

1. Violations of this policy are subject to suspension or termination of system privileges and disciplinary action up to and including termination of employment.

On the basis of this policy, one could lose access to Rutgers Connect, or be fired, for not using Rutgers Connect! If the email policy is not separated from the acceptable use policy it would seem that some sort of grievance policy needs to be put into place.

### **Privacy and the Need to Carry on “Normal Operations”**

The Committee was asked to look at the Privacy section of the *Acceptable Use Policy*, specifically section 5.C.5 which allows “information stored on the University’s information technology system may be accessed by the University under certain circumstances, including:”

5. The need of the University to carry on its normal operations (e.g., in the case of accessing the electronic records of a deceased, incapacitated or unavailable individual).

It should be noted that while there are some minor changes from previous versions in 5.C; 5.C.5 itself was present in the previous version of the policy. However, there is some concern about the ambiguity of the term “normal operations.” This might be better stated as:

The need to ensure the continuity of University business when an employee is deceased, incapacitated, or unavailable.

As is the case with an email policy, it would probably serve everyone better if there were a separate Rutgers policy relating to privacy and access to records rather than have that tacked onto an “Acceptable Use Policy.” The University of Michigan has an excellent *Privacy and the Need to Monitor and Access Records* policy that could serve as a model:

<http://spg.umich.edu/policy/601.11>

The University of Michigan policy offers a definition of business records, faculty-owned scholarly records, and personal records, and standards for accessing each type of record.

As defined in the University of Michigan policy (VI.D), business records are:

#### D. Business Records

A business record is any *record* created, received, used, or maintained by an employee in the normal course of his or her professional responsibility or work for the University. This includes *records* relating to an employee’s professional development, but does not include *faculty-owned scholarly records*. Examples of business records are drafts or final documents, including underlying or supporting documentation, of the following:

- budget reports;
- documents shared with or generated by third parties, such as purchase orders, bills for services or contracts with vendors;
- data sets that do not meet the definition of *faculty-owned scholarly records*, such as financial or enrollment data;

- feasibility studies or utilization analysis;
- attendance records, work schedules, or work orders;
- architectural drawings;
- correspondence or memoranda related to University business;
- course syllabi;
- student grades;
- meeting minutes;
- departmental web sites or e-mail groups; and
- committee reports.

The policy further defines legitimate business need for access (VI.G) as:

#### G. Legitimate Business Need

A legitimate business need is any reason necessary to conduct the normal business of the University. A legitimate business need can be held only by a person who, based strictly on his or her job responsibilities, has a specific need to know the information accessed or monitored. The normal business of the University includes, but is not limited to:

- preparation of departmental budgets;
- ordering of materials, supplies, and equipment for the unit;
- activity related to providing service, such as food service, human resources, legal services, computer support services, etc.;
- strategic planning activity;
- planning, financing and construction of capital projects;
- preparation of work schedules;
- duties related to University committees; or
- audits of University finances, processes, and related activity.

Legitimate business need does **not** include access or monitoring the content of *records* or *record systems* in order to determine:

- whether a faculty or staff member is spending an excessive amount of work time on personal activities; or
- whether a faculty or staff member has committed misconduct, unless there is reasonable cause to believe that misconduct has been committed, *and* that University resources may have been used improperly.

**Resolution:**

*Whereas* the Senate Instruction, Curricula and Advising Committee has examined the existing *Rutgers University Acceptable Use Policy for Information Technology Resources* and found issues with the requirement that University business be conducted using defined software and applications

*And whereas*, the Committee found the sections of the Policy regarding access to electronic records to be vague in their definitions and safeguards

***Be It Resolved That the Rutgers University Senate recommends that:***

1. A separate email policy document—distinct from the *Acceptable Use Policy*—be developed for the University.
2. The *Acceptable Use Policy*, and any new email policy, not specify any particular product to be used.
3. If there is an expectation that all “university business” communications are to be conducted using a university-provided email system(s), what exactly constitutes “university business” needs to be defined and communicated. (See <http://spg.umich.edu/policy/601.11> (VI.D) for a definition of university business records.)
4. Rutgers develop specific email guidelines for health-related communications.
5. Rutgers develop specific email guidelines for other confidential communications, including any communications involving or concerning students.
6. The option to automatically forward all Rutgers Connect email to an external email system be disabled.
7. While it may be useful for some units or departments to mandate the use of a specific calendar service for their members, there be no requirement for the use of one specific calendar system university-wide.
8. Until the “Other O365 Comprised Services” are actually available and there is clearer information as to their use, mention of those be removed from any policy.
9. A separate policy relating to privacy and access to records, based on the University of Michigan model whereby there are clear definitions of different types of records and the access to those records as well as what constitutes legitimate business need to access those records, be developed to replace Section 5C of the *Acceptable Use Policy*.
10. Whenever electronic records are accessed, there shall be a record of the individual accessing the record, and the time the record is accessed.

**Instruction, Curricula and Advising Committee 2016-17**

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