



University Counsel

North Carolina State University

June 11, 1985

*(7) Affirmative Action File*

*"Important"*  
*Re: Clauston Jenkins*  
RECEIVED  
PRODUCTION  
N. C. STATE UNIVERSITY  
JUN 11 1985

MEMORANDUM

TO: Deans, Directors, and Department Heads

FROM: Clauston Jenkins, University Counsel  
Maurice S. Toler, University Archivist

*CJ & T*

SUBJECT: Records Disposition

Chapters 121 and 132 of the General Statutes provide that the records of any State agency or institution may not be destroyed or otherwise disposed of without the prior consent of the North Carolina Division of Archives and History. The Statutes further provide that the Division may assist State agencies or institutions in the management of their records by preparing inventories and records retention and disposition schedules.

Over the years North Carolina State University has worked closely with responsible State officials regarding records management. In 1963 a Records Retention and Disposition Schedule was done for North Carolina State University by the Division of Archives and history. In 1965, when the University Archives was established, it was given the authority to implement the provisions of the Records Schedule. In the ensuing two decades, most University offices have been cooperative when contacted by the Archives about matters relating to the disposition of their records.

In order to assure continued University compliance with the laws relating to public records, all units should follow the University's Records Schedule in determining which records are to be retained, destroyed, or transferred to the University Archives. If the disposition schedule for your unit cannot be located, or if your unit was created after 1963, please call the University Archives at 2273.

Please remember that when matters are involved in litigation, no records about the subject should be destroyed or transferred without the approval of the University Counsel.

Finally, in addition to State law, there are Federal regulations concerning record keeping for civil rights purposes. A previous 3-D memorandum on these requirements has been revised and is attached. The time limits in the Federal regulations fit within our records disposition schedule.

CJ/MST:fc



# North Carolina State University

University Counsel

June 11, 1985

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## MEMORANDUM

TO: Deans, Directors, and Department Heads

FROM: Clauston Jenkins, University Counsel *Clauston Jenkins*

RE: Departmental Record Keeping for Civil Rights Purposes  
(replaces DDD memo of June 20, 1979)

Under various civil rights rules and regulations, North Carolina State University has obligations to keep certain records related to applicants and the employee selection process. The purpose of this memorandum is to identify what records should be kept at the departmental level.

### I. DEPARTMENTAL RECORD KEEPING FOR EPA POSITIONS:

#### 1) Applicant List to be Kept

For all EPA positions filled, a list of all applicants must be maintained and should contain the following information:

- a) name of applicant
- b) address of applicant
- c) date application received
- d) sex of applicant
- e) race of applicant
- f) disposition of application

This list can be prepared as a summary after the process has been completed. Items such as the address can be included by reference to the vitae. The date of application can be determined on a weekly or other reasonable basis.

#### 2) Length of Time Applicant List Must be Kept

This list must be maintained for two (2) years from the date the position is filled.

#### 3) Retention of Vitae

Vitae of all applicants for the position must also be retained for a two-year period because they are used in the selection process.

4) Racial Identification Categories

The racial designations to be used are: "White" (not of Hispanic origin), "Black" (not of Hispanic Origin), "Hispanic," "Asian or Pacific Islander," or "American Indian or Alaskan Native."

5) Methods of Racial Identification

Traditionally, faculty vitae do not contain racial identification, thus in many cases it is impossible to determine such information from an application. Since many applicants are never interviewed or otherwise seen, it is also impossible to make any kind of visual determination. The EEOC suggests that a written request be used, but for positions with large number of applicants such a procedure is unreasonably expensive. Thus, as a practical matter, we are suggesting that for any position for which more than 25 applications are received, a department use all reasonable means other than a written request to make a racial identification of an applicant where that information is not provided. This guideline would not apply if a department acknowledges all applications, since costs would not be increased by including a request for additional information in the acknowledgment. For positions for which 25 or fewer applications are received, a department should use a mail request, if necessary, to make a racial identification prior to filling the position. If a written request is used, it must indicate that the racial identification is being requested to comply with EEOC record keeping requirements. There is no obligation to follow up the written request if the applicant does not respond. The same process should be used to determine the sex of the applicant if such information is not available. Efforts to obtain racial and sexual identification information should be documented.

6) Definition of an Applicant

The EEOC considers an applicant to be a person who files a formal application or who in some informal way indicates a specific desire to be considered for employment. It is likely that the EEOC would consider a general letter of inquiry about positions to be an application, if such letter is retained in the files.



7) Unsolicited General Letters of Inquiry

To avoid the problem of having to keep records concerning unsolicited general letters of application when no position is open, we suggest that each department respond to such letters by informing the individual that the department only accepts applications for advertised positions and by indicating that the department will be happy to receive a vita when a position is available and advertised.

8) Other Records That Must be Kept

The EEOC requires that we retain for a period of two (2) years from the date of decision records that we make or keep concerning hiring, promotion, tenure, termination, salary, or other personnel decisions. Such records are kept as a matter of course at present, thus this requirement does not appear to create problems. Our present Affirmative Action Plan states that we normally keep such material at least two years.

9) Record Keeping Requirements When Discrimination Charged

In the event a charge of discrimination is filed by an applicant, all records of any sort relevant to the applicant and the position must be kept until the final disposition of the charge. Determination of what is "relevant to the charge" should be made on a case by case basis by consultation with University legal counsel.

10) Exceptions

Record keeping requirements do not apply to undergraduate and graduate students in part-time or temporary positions, or to non-student applicants applying for positions known to be of a temporary or seasonal nature.

11) Tenure Decision Files

Where written material is prepared for consideration by the departmental committee making tenure recommendations, this material must be retained for two (2) years after the decision is official and final.

II. SPA EMPLOYEES

All required records shall be retained by the Division of Human Resources, thereby eliminating the necessity for departmental record keeping for civil rights purposes except in cases where charges of discrimination are filed.

III. HOW THE RECORDS ARE LIKELY TO BE USED BY OUTSIDE AGENCIES

In the event that the records are reviewed by an outside agency, it is likely to be for one or more of the following purposes:

1) Review of our Employee Selection Procedures by the EEOC

A major consideration of the EEOC is to determine whether our employee selection procedures (including faculty selection) have an "adverse impact." "Adverse impact" is explained as a "substantially different rate of selection...which works to the disadvantage of members of a race, sex or ethnic group." The EEOC considers a selection rate less than four-fifths or eighty percent of the selection rate for the group with the highest selection rate to be a "substantially different" selection rate. However, "adverse impact" will normally be calculated on an institutional basis but not on a departmental basis because of the small number of positions involved at the departmental level. If a calculation reveals "adverse impact," the EEOC will then review our selection procedures in a search for procedures that cause discrimination.

2) Investigation of a Complaint by EEOC

If the EEOC investigates an individual complaint or undertakes a systematic review of our employment practices, departmental records will be reviewed.

3) Pre-Award Compliance Review of Affirmative Action Program by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor.

The OFCCP is required to conduct a compliance review of the affirmative action program of a campus prior to the awarding of a contract for \$1,000,000 or more where a similar review has not been conducted within a year. In such a review an institution's employment practices may be reviewed. OFCCP has the authority to initiate such a compliance review even when no grant is pending.