

OF COUNSEL – SUMMER 2001
the newsletter of

NORTHEASTERN UNIVERSITY
OFFICE OF THE UNIVERSITY COUNSEL

**AUGUST 2001
BROWN BAG
ROUNDTABLES**

You are invited to participate in two summertime brown bag lunchtime, roundtable discussions. On Tuesday, August 7, 2001, the topic will be Liability and

Indemnification; and on Tuesday, August 14, 2001, the topic of discussion will be the First Amendment and Academic Freedom. Both sessions will be held in Clifford Lounge at Churchill Hall at 12:30 p.m. Bring your lunch, your questions, concerns and ideas for what

we hope will be informative and lively discussions. If you'd like to attend either or both, please call our assistant, Karen Brown, at x2157. Hope to see you there!

YOUR QUESTIONS AND ANSWERS

1. Federal/State Agency Inspections of Workspace

Question: A state inspector stopped by my work area and asked what chemicals I work with and where they are stored. Should I have given the inspector the information?

Answer: Regulatory agencies conduct a number of routine inspections at our facilities but MUST be accompanied by an administrative representative of the University who has thorough knowledge of the program being inspected or audited. For example, an inspector from the Occupational Health and Safety Administration (OSHA) or the Massachusetts Department of Environmental Protection (DEP) may request to visit research laboratories selected at random to determine if the University has implemented safe work practices with chemicals or is properly storing hazardous materials. In this case, the inspector would need to first meet with a representative of the Northeastern University Environmental Health & Safety (EH&S) Office to identify the purpose of the visit and request permission to visit any work area. As part of implementing the University safety policy, unauthorized visitors must be immediately asked to leave the work area, especially an area where hazardous materials are stored or used.

Inspectors have a right of entry to inspect in most cases, as determined by applicable occupational or environmental regulatory statute. Northeastern University will always fully cooperate with official inspections and the EH&S representative will escort the inspector. The EH&S representative will arrange for access to restricted areas as needed and will be able to provide additional information on safety programs implemented for that work site and answer any questions the inspector may have. So, as in the instance you describe in your question above, should any unauthorized visitor or inspector come to your work site, contact your supervisor who then must contact immediately the appropriate University administrator and the University's Environmental Health and Safety Office.

If you have any specific questions about your work space or space you supervise, please contact the Environmental Health and Safety Office, 229 Forsyth Building, X2769.

In addition, Environmental Health and Safety is always willing to assist you with programming appropriate for your work environment.

2. **Be Careful What You Put In Writing . . .**

Question: I've heard that e-mail may be used as evidence in a lawsuit; is e-mail subject to discovery in litigation?

Answer: Yes. In litigation, e-mail is a discoverable form of communication. Some people treat e-mail as if it were a casual, oral communication, the kind of discussion they might have with a good friend. However, while oral communications go away, except as may be preserved in one's memory, e-mails do not. E-mails get saved, copied, printed, forwarded, filed and, even when deleted by you, may be archived elsewhere or may have been kept by the party with whom you're communicating. And, when printed, e-mails look like memos or letters.

Therefore, it's important to keep in mind that what you write may some day be evidence. Utilize the same thought and care in e-mail communication that you use in other forms of business and professional communication. As a very wise woman (Lisa's mother) always advises, "Never put in writing what you wouldn't want to see published on the front page of the newspaper!"

2. **Posting of Class Rosters**

Question: Are there any FERPA problems raised by computer-posting a class list for students, containing phone numbers and e-mail addresses?

Answer: If you intend to create an accessible computer-based class roster including such information as student addresses, telephone numbers and/or e-mail addresses, you must advise the students of your plan in your syllabus. And students must have an opportunity to fully participate without disclosing the requested information. While you may be well-intended, just trying to provide a convenience for your students, acting without consent in this type of scenario may put you in violation of FERPA (Family Educational Rights and Privacy Act).

FERPA protects students' privacy in their "education records", broadly defined as "those records, files, documents, and other information directly related to a student and which are maintained by an educational . . . institution or by a person acting for such . . . institution". 20 U.S.C. Section 1232g(a)(4)(A).

So-called "directory information", however, can be released without violating the protections of FERPA. FERPA defines "directory information" as "information contained in an education record that would generally not be considered harmful or an invasion of privacy if disclosed, including but not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended". 20 U.S.C. Section 1232g(a)(5)(A); 34 C.F.R. Section 99.3. *The University may disclose directory information where it has given public notice to students of the types of information it has designated as directory information and provided the student with the opportunity to opt out of having any or all of those types of information disclosed as directory information.* 34 C.F.R. Section 99.37.

Northeastern University has designated only the following as directory information: Full name, date of birth, major field of study, dates of attendance, class year, degrees and awards received, most recent previous educational institution attended, participation in formally recognized University athletics, weight & height of members of athletic teams, participation in officially recognized University activities and student organizations. The University's designation of what constitutes directory information is published in the Northeastern University Undergraduate and Graduate Student Handbook, 2001-2002, page 119. Note that the University's designation does not include address, telephone listing or electronic mail address. Therefore, if you want to post such information, a written in-advance go ahead from your students is the prudent approach.

***FOLLOW-UP ON NEW DISCRIMINATION/SEXUAL HARASSMENT
GRIEVANCE PROCEDURES***

In the Winter/Spring edition of this newsletter, we advised you about the University's revised/updated Discrimination/Sexual Harassment Grievance Policy & Procedures. The new procedures became effective on February 1, 2001. If you haven't attended a training session yet and received a paper copy of the procedures, please make the time to access the procedures on the University's web site. As employees of the University, each of us is responsible for the information contained in the new procedures. They can be located for review as follows:

Grievance procedures – <http://www.aa.neu.edu/grieve.html>

Sexual harassment policy – <http://www.aa.neu.edu/harass.html>.

Any questions or requests for education and training on these important procedures should be directed to the Office of Affirmative Action & Diversity, 424 Columbus Place, x2133.

If you have any questions you'd like to see responded to in this space, please submit them to the Office of University Counsel at 115 Churchill Hall. Depending upon the nature of your question, we'll either answer you personally or address your issue in a future edition of this newsletter.

Of Counsel has been prepared as a general summary of important developments. It is not intended as individual legal advice. Should you have any questions or need information concerning a specific situation or any of the content of this advisory, please contact the Office of University Counsel, 115 Churchill Hall, x2157.