

**REPORT TO THE SUBCOMMITTEE
OF THE HARVARD CORPORATION
ON EMAIL SEARCHES CONDUCTED IN CONNECTION
WITH THE ACADEMIC INTEGRITY CASES**

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July 15, 2013

I. Internal Investigation

On April 2, 2013, President Drew Faust announced to the Faculty of Arts and Sciences that she intended to retain the undersigned to investigate and report on the facts concerning searches of email accounts of the Resident Deans in the Fall of 2012. The email searches, conducted by Harvard Administrators, were in connection with the Administrative Board's review of students' academic misconduct. Specifically, the email searches were in response to concerns that the confidentiality of information, transmitted to the Resident Deans as part of the Administrative Board's proceedings, had been compromised. Over the past three months, the undersigned, with assistance of members of his law firm, has interviewed persons having personal knowledge of the email searches and has reviewed hundreds of pages of contemporaneous correspondence, memoranda, notes, logs, electronic documents and other relevant information to form the basis of this report. In connection with this investigation, the undersigned has reported to William F. Lee, Chair of the Subcommittee of the Corporation, as well as President Faust, Lawrence S. Bacow, and Theodore V. Wells, Jr., who have served as the members of the Subcommittee.¹

II. Executive Summary

Between September 12, 2012 and September 15, 2012, three separate searches of email accounts occurred. The first search involved the search of log files that included all of the Resident Deans' administrative email accounts² to determine if any Resident Dean had

¹ The mandate to the undersigned was to undertake fact-finding to determine what occurred with regard to the email searches conducted in connection with the academic integrity cases. The mandate did not include making any recommendations in this report regarding how the University might revise or improve its policies concerning such searches. The undersigned will be available, however, to meet and consult with Professor David J. Barron, of the Harvard Law School, who serves as Chair of the special committee charged with considering these policy issues.

² The University furnishes two kinds of email accounts to each Resident Dean. An "administrative account," which uses the format xx-abrd@fas.harvard.edu (where the initials "xx" identify the Resident Dean's house), is used by the

forwarded a confidential email, with the subject line “case process,” that had been sent on August 16, 2012 (hereafter “the ‘case process’ email”), to all of the Resident Deans by John “Jay” Ellison, Associate Dean of Harvard College, who serves as Secretary of the Administrative Board. That search revealed that a Resident Dean (hereafter referred to as “Resident Dean X”) had transmitted the “case process” email to one of the students whom Resident Dean X advised. The second search involved log and mailbox searches of Resident Dean X’s administrative account to determine if Resident Dean X had forwarded the “case process” email, or other confidential information, to two named reporters for The Harvard Crimson. That search found no indication that Resident Dean X had transmitted the “case process” email, or any other confidential information, to The Crimson reporters. The third search occurred following a meeting at which Resident Dean X admitted having forwarded the “case process” email to a student (and after Resident Dean X later acknowledged having forwarded the same email to a second student as well). That search was a mailbox search of Resident Dean X’s administrative and personal email accounts to determine if Resident Dean X had forwarded the “case process” email to any other student or exchanged emails with the two previously identified Crimson reporters. That search revealed that Resident Dean X had forwarded the “case process” email to two students, both advisees of Resident Dean X, and that Resident Dean X had also exchanged emails with one of The Crimson reporters.

Each of the above referenced searches was undertaken after a decision to conduct the search was made by an administrator, or administrators, from the Faculty of Arts and Sciences (“FAS”). Moreover, attorneys from the Office of General Counsel (“OGC”) consulted with the

Resident Dean for matters pertaining to his or her duties as a Resident Dean. A “personal” or “individual account,” which uses the format name@fas.harvard.edu, can be used for other purposes.

FAS administrators regarding these searches, and an attorney communicated the directives from the FAS administrators to an employee at Harvard University Information Technology (“HUIT”), who conducted the searches along with an outside vendor. All of the searches were undertaken with the understanding that no emails identified by the searches would be read. The objective was to determine whether any of the Resident Deans who received the “case process” email from Dean Ellison had forwarded that email and, if so, which Resident Dean forwarded it and to whom.

In addition to conducting these searches, HUIT “archived” or made copies of all of the Resident Deans’ administrative accounts for possible review at a later date. No further review of these administrative accounts was made, however. HUIT also archived Resident Dean X’s personal email account.

Finally, at Dean Ellison’s request, HUIT ran all of the same mailbox searches described above on Dean Ellison’s administrative and personal email accounts.

All actions taken in connection with these email searches were undertaken in good faith. The administrators from the University and the FAS who authorized, supervised and conducted these searches believed that they were acting in compliance with applicable email privacy policies. There is no evidence that anyone intentionally violated any requirement to give notice to the Resident Deans regarding these searches. Further, there is no evidence that any of the individuals involved read the content of any emails that were identified as a result of these searches.

III. Background

A. The Academic Integrity Cases

On May 14, 2012, a member of the Faculty sent a letter to the Administrative Board to report “several cases of academic dishonesty that took place during the take-home final exam”

for an undergraduate course. In this letter, the Faculty member identified fourteen students for “review” by the Administrative Board for possible violations of the “exam protocol,” which provided that, although the take-home test was “completely open book, open note, open internet, etc.,” it was otherwise governed by “similar guidelines that apply to in-class exams,” meaning that the students were not allowed to “discuss the exam with others—this includes resident tutors, writing centers, etc.”

From May 2012 through August 2012, the Administrative Board investigated these academic integrity concerns. During this time, the scope of the investigation expanded, and the number of students suspected of improper collaboration or plagiarism increased. It quickly became clear that this situation was unprecedented in the history of the University.

Given the number of students implicated in the academic integrity cases, University and FAS administrators decided to make limited public statements about the situation, consistent with the Administrative Board’s rules regarding confidentiality, in the hope that the entire episode might serve as a learning opportunity for the Harvard community. On August 30, 2012, at the beginning of the fall term, Michael Smith, Dean of the FAS, sent a letter to the Faculty about the Administrative Board’s investigation and the need to re-affirm the University’s commitment to “academic integrity.”

At the end of last semester, an instructor found indications that a number of undergraduates in this instructor’s spring class may have committed acts of academic dishonesty on the class’s take-home final exam, ranging from inappropriate collaboration to outright plagiarism. Per the Faculty’s procedures, the Administrative Board undertook a review of all final exams from the class. I am sorry to report that this careful and comprehensive review found that nearly half of the more than 250 students in the class may have worked together in groups of varying size to develop and/or share answers, even though there was a stated policy against collaboration on the final exam. . . . The fact that the

Administrative Board is investigating such a large number of cases from a single class is deeply disturbing.

Dean Smith encouraged the Faculty to “foster a culture of honesty and integrity in our classes and learning assessments.”

On the same day, in the Gazette, the University announced that the Administrative Board was “investigating allegations” that a “significant number of students” had cheated on the final exam in an undergraduate course during the prior term.

Jay Harris, Associate Dean of Harvard College, also sent an email to students and parents concerning the academic integrity cases. In his email, Dean Harris explained:

[T]he College Administrative Board is currently reviewing allegations that students in one spring class may have committed acts of academic dishonesty, ranging from inappropriate collaboration to outright plagiarism, on a take-home final exam. This summer, a careful and comprehensive review by the Administrative Board of every exam from the class found that nearly half of the more than 250 enrolled students may have worked together in groups of varying size to develop and/or share answers. . . . In the coming weeks, the Administrative Board will meet with each student whose work is in question, seek to understand all the relevant facts, and determine whether any Faculty rules were violated.

Dean Harris noted that, “[t]o date, the Board has come to no judgments.”

Harvard Magazine published a lengthy article about the situation, noting that the University had “declined to identify the course or professor” and that “[s]tudent identities are protected legally.” Although the University declined to identify the course at issue, on August 30, 2012, The Crimson did so.

The public announcement by the University about the academic integrity cases immediately became a major news event of national interest. By 6:00 pm on August 30, 2012, the Harvard Public Affairs & Communications (“HPAC”) was tracking more than 100 media outlets, mostly television and radio stations, which were reporting on the academic integrity

cases. These media outlets included not only The Crimson and The Boston Globe, but also Bloomberg News, USA Today, The Washington Post, the Boston Business Journal, Time Magazine, the Atlantic Monthly, The Toronto Sun and others.

B. The “Case Process” Email

On August 16, 2012, Dean Ellison, in his capacity as Secretary of the Administrative Board, sent two emails concerning the academic integrity cases to all of the Resident Deans—the thirteen Resident Deans assigned to houses and the four Resident Deans assigned to freshmen. All of the Resident Deans serve on the Administrative Board, along with other members of the Faculty and administrators.

First, Dean Ellison sent an email to the Resident Deans asking for their “help” with the ongoing review of student cases by the Administrative Board. Then, a few minutes later, Dean Ellison sent another email to the Resident Deans addressing the “case process” and, in particular, “feedback from students about confusing messages” concerning the “possible sanctions,” including “RWDs” (required to withdraw). Dean Ellison sent his “case process” email only to the Resident Deans, because they played a unique role as advisors to the students who were implicated in the academic integrity cases. With regard to athletes, Dean Ellison advised:

Fall term athletes may also want to consider taking a LOA [leave of absence] before their first game. The reason this matters for athletes is that once they compete one time their season counts and they would lose eligibility if they had to take a year off and return. That said, these students should be sent to Nathan Fry for advice on their options and eligibility—let’s not get into advising students on NCAA rules.

Both of Dean Ellison’s emails were sent from his administrative account (adboard@fas.harvard.edu) and included footers with standard language emphasizing the confidentiality of Administrative Board communications: “This message is intended for the designated recipient(s). It may contain confidential or proprietary information and may be

subject to confidentiality protections. If you are not the designated recipient, you may not review, copy or distribute this message.”

By August 31, 2012, The Crimson obtained the “case process” email that Dean Ellison sent to the Resident Deans. Around 9:00 am, a student reporter for The Crimson came to University Hall with a copy of the text of the email and asked to speak with Dean Ellison about it. Staff in the office alerted Dean Ellison, who was home sick, to this inquiry, and he immediately sent an email, addressed “Dear Colleagues,” to the Resident Deans.

This morning a Crimson reporter showed up in UHall with a copy of my email, below [which Dean Ellison forwarded]. That email was sent to this group and I need to find out how the Crimson got a copy of an email I sent to Resident Deans. While the content is neutral to have my email given to a student, or forwarded to a student, is unacceptable and we need to find out how that happened. If anyone has ideas about this please contact me right away. The Crimson intends to publish the full text of this email by this afternoon.

Shortly after visiting University Hall, the reporter emailed Dean Ellison, asking to speak with him about “an internal email we received from a source that you sent to colleagues on Thursday, August 16 at 5:46 p.m. explaining possible sanctions” in the academic integrity cases. The reporter told Dean Ellison that The Crimson was “planning to publish the contents of this email” and that “we wanted to give you the opportunity to comment on it before doing so.” By email, Dean Ellison responded that he was “troubled” by the situation—“that one of my emails to my colleagues has made it into the hands of the Crimson.”

Dean Ellison asked the reporter to forward a copy of the email in question so that he could “review” it. The reporter sent Dean Ellison the text of his “case process” email. (The reporter did not forward the actual email, which may have revealed how The Crimson had obtained it.)

On September 1, 2012, The Crimson published an article, quoting extensively from what it described as “an internal email between College administrators obtained by the Crimson,” which Dean Ellison wrote on August 16, 2012. The Crimson reported that “one Resident Dean, who had been granted anonymity” because of “the secrecy of the Administrative Board’s deliberation,” confirmed that Dean Ellison sent his “case process” email to all of the Resident Deans, who sit on the Administrative Board. The Crimson did not indicate how it obtained this confidential email.

After reading The Crimson article, Resident Dean X realized that s/he was the “anonymous” Resident Dean referred to in the article. On August 30, 2012, Resident Dean X had spoken with a student reporter for The Crimson and confirmed that Dean Ellison sent his “case process” email to all of the Resident Deans. But when the reporter pressed for further information about that email and the Administrative Board’s proceedings concerning the academic integrity cases, Resident Dean X refused to comment. In an email later that day, the reporter asked Resident Dean X to confirm quotes for the forthcoming article. In an email, Resident Dean X responded, clearly telling the reporter that The Crimson did not have permission to use any of the information that had been provided, including any direct quotes or general quotes from “a Resident Dean,” because the Resident Deans had been given clear instructions not to talk with the media about Administrative Board matters. After the article about the “case process” email was published on September 1, 2012, Resident Dean X spoke with Dean Ellison and Sharon Howell, Senior Resident Dean, and acknowledged that s/he had spoken with a reporter for The Crimson. While recognizing that talking to the reporter had been a mistake, Resident Dean X explained that s/he had expressly refused to give permission to run

any quotes or otherwise use any of the information that had been provided. The Crimson ran with the story anyway.

On Tuesday, September 4, 2012, the Administrative Board met for its regular weekly meeting. Dean Ellison and Evelyn Hammonds, Dean of Harvard College, who serves as Chair of the Administrative Board, raised the issue of “leaks” with the Resident Deans. They asked the Resident Deans for information concerning how the “case process” email, which Dean Ellison sent only to the Resident Deans, reached The Crimson. None of the Resident Deans, including Resident Dean X, provided any information (or acknowledged having forwarded the email). Dean Ellison and Dean Hammonds told the Resident Deans that, if information was not forthcoming, a further investigation would be necessary, because it was critical to plug any “leaks” before the Administrative Board began to hear student cases. Several Resident Deans have stated that, during the meeting on September 4, 2012, and thereafter, no one put the Resident Deans on notice about possible email searches of their accounts, and there is no evidence to suggest that they were put on notice.

C. The “Leaks” to the Media

As noted above, in August 2012, the public statements by the University about the academic integrity cases did not identify the course at issue. Nevertheless, on August 30, 2012, The Crimson published its first article on the cases, reporting that “several students familiar with the investigation” had confirmed the identity of the Faculty member and the relevant course. Then, as noted above, on September 1, 2012, The Crimson reported on the contents of the “case process” email that Dean Ellison sent to the Resident Deans. Many additional media reports followed about the academic integrity cases and the process by which the Administrative Board planned to review student cases.

On September 9, 2012, the IvyGate Blog posted information from a “tipster” that “my Resident Dean told me” how the Administrative Board will “determine the guilt (or innocence) of students.” The anonymous tipster claimed that, according to his or her Resident Dean, the Administrative Board would “not take [account of] the ‘culture of collaboration’ that has existed in the course for many years when reaching its decision” and that “students will have to *prove* their stories.”

On September 10, 2012, The Crimson published an article about how the sports teams were “grappling with the ramifications of the . . . cheating scandal.” In the article, The Crimson again reported on the “case process” email in which Dean Ellison “wrote that varsity athletes involved in the investigation should weigh potential Ivy League eligibility issues when deciding whether or not to remain on campus for the fall term.” It also quoted Dean Ellison as giving the following advice: “Fall term athletes may want to consider taking [leaves of absence] before their first game.”

Then, on September 11, 2012, The Crimson reported that two athletes had been implicated in the academic integrity cases, had taken leaves of absence and would not play in that academic year. In the article, which named these athletes, The Crimson again referenced the “case process” email, noting that Dean Ellison had “suggested that fall athletes might ‘consider taking [leaves of absence] before the first game.’” The departures of these players were widely reported in the media, such as Sports Illustrated (Sept. 11, 2012), The Wall Street Journal (Sept. 11, 2012), and The Boston Globe (Sept. 12, 2012). Many of these articles also commented on the “case process” email from Dean Ellison.

On September 11, 2012, The Crimson ran an article about the “punishment scheme” that the Administrative Board would purportedly use to decide students cases. The article was based

on information from the “tipster” on the IvyGate Blog and also an anonymous “student under investigation” who claimed to have heard that “administrators had drafted a tiered punishment scheme.”

Reporters from The Crimson then emailed the Faculty member who had initially contacted the Administrative Board, stated that “we have obtained a copy of your complaint letter reporting 13 cases of academic dishonesty,” and asked for his/her comment. The reporters also spoke with Dean Ellison, who told them that the “charge letter” was “confidential” and asked them not to publish its contents in The Crimson. Nevertheless, on September 12, 2012, The Crimson published an article describing the contents of the “charge letter.” The Crimson reported, “The letter, addressed to the Administrative Board Secretary John ‘Jay’ L. Ellison, narrated [the Faculty member’s] first suspicions of plagiarism in 13 exams among the 279 submitted in the spring course.”

Also on September 12, 2012, The Boston Globe reported on Dean Ellison’s “case process” email. In the evening on September 11, 2012, Mary Carmichael, a higher education reporter for The Boston Globe, contacted Nathan Fry, Associate Director of Athletics for the University, and forwarded the “case process” email, which mentioned Fry by name. Carmichael told Fry that she had been “passed an email sent by Dean Ellison,” planned to write “a story for tomorrow’s paper about the implications of the investigation for Harvard athletics,” and asked Fry to comment on the advice from Dean Ellison about “options and eligibility” for student athletes. Fry declined to comment on the email, but he alerted Dean Ellison and others.

The next morning, The Boston Globe published an article that focused on an athlete’s withdrawal from the College and also reported that “Harvard officials have told some athletes to consider carefully [whether to take leaves of absence to preserve NCAA eligibility], judging by

an Aug. 16 email obtained by the Globe.” This athlete, and one other teammate, were the first students to be publicly named in media reports about the academic integrity cases, and the disclosure of their identities raised many concerns about the confidentiality of the proceedings pending before the Administrative Board. The Boston Globe observed:

Typically, investigations of academic misbehavior, like all other student disciplinary probes, handled by Harvard’s Administrative Board, are kept confidential. But in August, Harvard took the unusual step of revealing its investigation to the media, worrying some implicated students who feared their identities would also become known.

It also quoted an unidentified “friend” of the athlete who noted that the student’s name had become “national news” and that such publicity was inconsistent with the “confidentiality” of the Administrative Board’s proceedings. Such criticism heightened the anxiety among University and FAS administrators that private student information might be leaked, even inadvertently, from the Administrative Board.

Also on September 12, 2012, a reporter for The Crimson emailed a communications officer with HPAC to ask about the use of “temporary paralegals” to assist the Administrative Board with handling the academic integrity cases.

We’ve heard that the Administrative Board has hired about 10 temporary paralegals, who are being paid by the Office of the General Counsel, to help with the cheating investigation. Is this accurate?

This latest inquiry by The Crimson, based on information that resembled internal discussions at confidential meetings of the Administrative Board about the use of temporary legal staff to review and organize materials for student cases, underscored the concern among administrators about “leaks” to The Crimson.

These reports in the media raised two related concerns: what they revealed about certain confidential communications within the Administrative Board and what they suggested about

possible disclosures of private student information. Administrators expressed the worry that The Crimson had a “pipeline” from the Administrative Board and that a “source” with access to confidential information was revealing internal deliberations, such as how to process cases, what punishments to impose and whether to hire temporary legal staff to assist. Similarly, the disclosure of the “case process” email from Dean Ellison revealed for the first time the identity of the course at issue and the fact that the academic integrity cases involved many athletes. Beyond this information, however, the leaks also raised the specter that, later in the process while the Administrative Board was considering individual cases, someone might disclose private student information, even inadvertently. The intensive media coverage and the strict laws mandating the protection of such information, such as the Family Educational Rights and Privacy Act (“FERPA”), intensified these concerns.

The Administrative Board’s concern about confidentiality was heightened because in early September 2012, the Administrative Board was in the process of assembling a packet of material to be distributed to each student whose case the Administrative Board intended to consider. The packet contained information about the student’s examination paper which had caused concern at the Administrative Board, together with materials furnished by the student in connection with the examination. The packet for each of the suspected students was distributed to all members of the Administrative Board in addition to the student. University and FAS administrators wanted to be sure that they had resolved any “leaks” before distributing materials about individual student cases to the Administrative Board. In fact, for this reason, despite pressure to proceed expeditiously with the cases, Dean Ellison and Dean Hammonds waited to send out the case packets until September 17, 2012, after the email searches had been conducted.

By that time, they had identified and met with Resident Dean X, who admitted having forwarded the “case process” email, thus allaying concerns about future breaches of confidentiality.

D. Concerns about Potential Lawsuits

Amidst the “leaks” from the Administrative Board, there were also reports about potential lawsuits against the University and individual faculty, deans and administrators. The potential “liability” risks included breaching confidentiality obligations, violating the procedures for the Administrative Board and violating FERPA.

A post on the IvyGate Blog expressly linked “leaks” and lawsuits:

When asked why [students] were planning to sue, a reliable tipster told us: Many students have been talking about suing and many students I know, have already contacted or retained attorneys for the impending matter. What have I heard they will be suing for? Defamation, breach of confidentiality, among other things stemming from the [academic integrity] case itself.

The Resident Deans expressed concern to FAS administrators about their own “vulnerable position,” meaning that they might be sued by disgruntled students or parents, and inquired whether they would be indemnified by the University if suits were filed. The Resident Deans were assured that they would be indemnified under those circumstances.

E. Log Searches and Mailbox Searches

As discussed below, two types of email searches could be conducted to determine who forwarded the “case process” email. One is a “log search,” and the other a “mailbox search.”

A log search allows the administrator of an email system to review the delivery logs of emails based on available metadata, such as the sender, recipient, subject line and timestamp. A log search typically does not involve, or even permit, the review of the content of any specific email. It is akin to looking at the information on an envelope but not the letter sealed inside.

When searching a log, the IT system administrator reviews a log file that the system maintains, and he or she does not access the actual mailbox associated with any user.

A mailbox search, on the other hand, allows the IT system administrator to search the actual contents of a mailbox. A mailbox search can look for metadata, such as a sender, recipient, subject line, and timestamp, as well as the text of emails in the mailbox. When searching a mailbox, the administrator has access to the contents of the mailbox itself, including the inbox, sent folder, deleted folder, and other subfolders. To be clear, a mailbox search does not necessarily involve reviewing the content of any email, but such review is possible. Thus, a mailbox search is generally considered to present greater privacy risks than a log search.

IV. First Round of Email Activity

A. Log Searches of the Resident Deans' Administrative Accounts

As noted above, on September 11, 2012, a Boston Globe reporter contacted Fry by email and told him that she had obtained, and planned to report on, the “case process” email that Dean Ellison sent to the Resident Deans. Because it was clear that The Boston Globe possessed a complete, electronic copy of the “case process” email, Dean Ellison concluded that a Resident Dean must have forwarded his email, and he contacted an attorney from the OGC (hereafter referred to as “the OGC Attorney”). Dean Ellison wanted to “search [the Resident Deans’] email for this header [*i.e.*, ‘case process’] to see who forwarded it.”

On September 12, 2012, a group of University and FAS administrators, including Dean Smith, Dean Hammonds and Dean Ellison, participated in a regularly scheduled, weekly conference call concerning the academic integrity cases and Administrative Board proceedings. The group discussed a wide range of issues, from the management of individual student cases to the intensive media attention. They also addressed the “RD issue” and the concern about “leaks” to the media. During the call, the FAS administrators reached a consensus to conduct email

searches to determine whether a Resident Dean had forwarded the “case process” email, which both The Crimson and The Boston Globe had obtained. They did not decide how to conduct any particular searches but relied on the expertise of HUIT in that regard. The OGC Attorney was tasked with communicating to HUIT the directives from the FAS administrators concerning these email searches. President Faust did not participate in this conference call, and she first learned about these searches in March 2013, six months after they had been conducted.

Shortly after the conference call concluded, at 10:01 am, the OGC Attorney emailed a senior employee at HUIT (hereafter referred to as “the HUIT Employee”) and asked to speak about “an urgent issue at FAS.” The OGC Attorney also sent the HUIT Employee a copy of the “case process” email, the email from Carmichael to Fry, and a list of the email addresses for the administrative accounts of all seventeen Resident Deans.

Then, Dean Ellison and the OGC Attorney spoke with the HUIT Employee by phone. They explained that “two things have been leaked”—Dean Ellison’s “case process” email to the Resident Deans and the Faculty member’s charge letter to the Administrative Board—and that University and FAS administrators wanted to determine “who leaked the email that Jay [Ellison] sent to the RDs.” Thus, they directed HUIT to conduct searches “to figure out if this email was forwarded and, if so, by whom and when.”

After these calls, the HUIT Employee emailed Dean Ellison and the OGC Attorney and assured them that HUIT would “immediately start working on gathering any information that we can.” In an update to Dean Smith and Dean Hammonds, the OGC Attorney described the instructions to the HUIT Employee as follows:

After the call this morning, Jay Ellison and I discussed how to go about reviewing the RD’s email. . . . I then contacted [the HUIT Employee]. In consultation with Jay [Ellison] (and with you, Evelyn [Hammonds]), I described the situation . . . , forwarded . .

. the Administrative Board email that is now in the possession of the Boston Globe, and asked [HUIT] to review the email logs for all seventeen of the RDs to see if [HUIT] could determine whether the email had been forwarded by one of them, and if so, to whom.

The OGC Attorney further stated, “To be clear, the only accounts we asked [HUIT] to review were their *Board* email accounts ([xx]-abrd@fas.harvard.edu, for example), that is the accounts on which the Board business is conducted. We did not ask [HUIT] to look at the RDs’ individual Harvard email accounts . . . but [the HUIT Employee] knows this is critical in terms of timing.”

Working with email administrators, the HUIT Employee quickly determined that HUIT hosted only two of the Resident Deans’ administrative accounts at a local data center and that a third-party vendor (hereafter referred to as “the IT Vendor”) hosted fifteen of the accounts at its off-site data center. Based on this information, the HUIT Employee took two steps. First, s/he contacted the IT Vendor and made an “urgent request” for assistance with log searches of the Resident Deans’ administrative accounts. S/he provided addresses for the fifteen accounts that the IT Vendor hosted, forwarded a copy of the “case process” email from Dean Ellison to the Resident Deans, and stated, “I need to know if that email was forwarded by any of these accounts any time between 8/16/2012 at 17:46 and 9/11/2012 at 18:00,” and “[i]f so, I need to know when and to whom.” Second, the HUIT Employee also explained to the OGC Attorney and Dean Ellison that, although HUIT hosted two of the accounts, it maintained logs which did not “include a subject line, making finding that particular message having been forwarded later almost impossible simply by metadata in the logs.”

Consequently, for the two accounts that HUIT hosted, a log search based on the subject line “case process” in the email was not possible. As an alternative, HUIT ran a log search for emails to and from Carmichael, the reporter for The Boston Globe, who had obtained a copy of

the “case process” email and contacted Fry by email. This search identified a “dozen or so” emails to and from Carmichael, which was not surprising because she covered higher education for the newspaper, but no emails from the two Resident Deans’ administrative accounts that HUIT hosted. After the HUIT Employee reported that information to Dean Ellison and the OGC Attorney, HUIT conducted no further searches concerning these two accounts. HUIT was not directed by the OGC or anyone in the Administration to use the email address of Carmichael to run a log search. In order to address the question posed, which was how could it be determined who forwarded the “case process” email, HUIT undertook a log search utilizing all of the data which had been made available, including Carmichael’s email address. The entire log file for all accounts hosted by HUIT (approximately 14,000 accounts on the UNIX email platform) was scanned with the metadata available which included the time and recipient. Beyond the report that no relevant emails had been found, no comprehensive list or report of the emails identified was produced by HUIT for the OGC or any administrators.

B. Proposed Mailbox Searches of the Resident Deans’ Administrative Accounts

Because of the uncertainty as to when the IT Vendor could complete log searches of the fifteen accounts that it hosted, the HUIT Employee also suggested that HUIT could run mailbox searches for all of the Resident Deans’ administrative accounts. As will be discussed below, however, HUIT never conducted these proposed mailbox searches.

In relaying this suggestion about possible mailbox searches to Dean Smith and Dean Hammonds, the OGC Attorney explained the anticipated process as follows:

[T]he easiest and most effective way to find the information we’re seeking (again, solely whether the email that the Crimson and Globe has was forwarded by one of the RDs, and if so, to whom) is for HUIT Security group to look at the RDs’ Board email accounts themselves, not just the metadata that are logged. This would give them access to the RDs’ “Sent” mailboxes, and they could simply

search for this particular email's subject line to see whether it was indeed sent to anyone.

[HUIT] does not run searches of this kind [*i.e.*, mailbox searches] unless they are formally requested to do so by HR or the OGC, and that is the reason for this email—this is the question for both of you. If you want to pursue this method, then I will write an email to [the HUIT Employee], with a copy to both of you, letting [the HUIT Employee] know that you have authorized me to request that s/he conduct a limited search of the kind I have described.

The OGC Attorney continued:

I will make clear that [HUIT] is *not* being asked to open or review the contents of any email, but simply to discover whether the particular email that has been identified was forwarded to anyone, and if so, to whom and when.

Before sending this request, the OGC Attorney reviewed an email policy on the HUIT website <http://www.fas-it.fas.harvard.edu/services/student/policies/rules_and_responsibilities>, to which Dean Ellison had directed his/her attention. That policy, regarding acceptable use of the University's network, addressed the "privacy of information" and stated in relevant part:

Systems administrators . . . may gain access to users' data or programs when it is necessary to maintain or prevent damage to systems or to ensure compliance with other University rules.

Because the OGC Attorney believed that policy applied to students, s/he looked for, and found, a similar policy on the FAS website that applied to the Faculty (including Resident Deans), which also broadly permitted access to user's accounts to "prevent harm to the University" <<http://isites.harvard.edu/icb/icb.do?keyword=k87794&pageid=icb.page507752>>. The OGC Attorney believed in good faith that this policy provided appropriate guidance and that the requested searches complied with it, in that the searches addressed potential violations of Administrative Board rules and aimed to prevent possible harm to the University. Neither of

these policies from the HUIT and FAS websites mentioned any requirement to provide notice concerning the email searches.³

On September 12, 2012, at 10:10 pm, the OGC Attorney emailed the HUIT Employee, and stated:

As you know, the Faculty of Arts and Sciences is concerned that confidential information from the Administrative Board of Harvard College may have been inappropriately shared with members of the media. In particular, an email from Jay Ellison, the Secretary of the Administrative Board, that was sent to Resident Deans of the College in mid-August now appears to be in the possession of both the Harvard Crimson and the Boston Globe.

Regarding approval of the email searches and their compliance with applicable policy, the OGC Attorney further stated:

Because a breach of confidentiality of this nature raises clear concerns about the integrity of the Administrative Board's ongoing work I have been authorized by both Michael Smith, the Dean of the Faculty of Arts and Sciences, and Evelyn Hammonds, the Dean of Harvard College, to request that you take certain initial and limited investigatory steps with respect to the Administrative Board email accounts of all seventeen Resident Deans. I am now writing to describe the parameters of the work that is being requested. This request is consistent with the Faculty of Arts and Sciences policies regulating the use of computers and networks, which state that authorized systems administrators and authorized system support staff may gain access to users' data or programs to ensure compliance with University rules.

As for the actual email searches, the OGC Attorney instructed the HUIT Employee as follows:

³ The OGC Attorney did not review a policy, entitled "FAS Policy Regarding the Privacy of Faculty Electronic Materials," which was posted on an Information Security & Privacy website at <<http://security.harvard.edu>>, rather than the FAS website. That policy had never been approved by the OGC, and in 2012, no attorney at the OGC appears to have been aware of its existence. Also, neither the HUIT Employee nor the FAS administrators who approved the searches knew about it. In 2005, the FAS consulted with the OGC concerning a proposed privacy policy, but the OGC was never advised that the policy had been adopted by anyone or posted to this particular website. Also, as a matter of practice, the OGC is not asked to "approve" privacy policies adopted by different institutions at the University. Further, when the OGC is asked for guidance about whether particular actions comply with applicable policies, it focuses on the policies posted to the website for the relevant institution, such as the FAS website, or printed in the relevant handbook.

1. Search for the email in question and any forwarded copies of the email, by its “Subject line,” which is “Case Process,” or by any other means of identification (author and time signature or unique strings within the email, for example), beginning immediately after the email was sent and continuing through today’s date [September 12, 2012]. We are *not* asking you to open emails or otherwise review their content (other than to confirm that a message suspected to be a forwarded copy of the email in question actually is), simply to find whether the email in question or any forwarded copies of the email exist within any of the account mailboxes.
2. If the email in question or a forwarded copy of the email does appear in a Resident Dean’s Administrative Board email account, please ensure that the email account cannot be changed by the user, either by creating a copy of the account as it exists on the day on which you conducted the search, or by other appropriate means, such as restricting the user’s ability to permanently delete files.
3. Prepare a report showing the results of your search for each Resident Dean’s Administrative Board email account, and indicating, if the email in question was found: (a) where (in what folder) it was located within the account; (b) whether it was forwarded; and (c) if so, to whom, when and in what folder the forward(s) appear(s).

In this email to the HUIT Employee, the OGC Attorney stressed that “this inquiry is a confidential matter,” and s/he reiterated that HUIT should “make every effort during your search to avoid opening or reading materials that are clearly personal and unrelated to this inquiry.”

C. Results of the Log Searches

The decision to have HUIT conduct mailbox searches was driven, at least in part, by the concern that the IT Vendor may not have been able to run log searches and return meaningful results in a timely manner. In fact, HUIT and the OGC thought that the IT Vendor was “on hold” and waiting for further instructions about whether to proceed with any searches. As it turned out, however, the IT Vendor proceeded with, and promptly completed, those searches.

On September 13, 2012, at 3:36 am, the IT Vendor sent the HUIT Employee “the complete mail tracking report” with the results from the log searches of the Resident Deans’ administrative accounts. The report was a spreadsheet which listed the emails, from August 16, 2012 through August 31, 2012, with the subject line “case process,” that were sent from the Resident Deans’ administrative accounts, including Dean Ellison’s administrative account. One of the listed emails was sent, on August 16, 2012, by Resident Dean X to a student advisee. Resident Dean X forwarded the “case process” email to the student less than 10 minutes after Dean Ellison sent it. Two of the emails were responses from the same student to Resident Dean X. According to the tracking report, no other Resident Dean forwarded the “case process” email.

The IT Vendor had undertaken its log search in a manner similar to the way HUIT had performed a log search on the accounts that it hosted. As part of that search, the entire log file (which included metadata from approximately 17,000 accounts on the Windows email platform) was reviewed in order to determine whether the “case process” email had been forwarded by any sender to any recipient.

Later that morning, the HUIT Employee transferred the “log report” from the IT Vendor to the OGC Attorney through Accellion, a secure file transfer system that HUIT uses.

D. Cancellation of the Mailbox Searches

When the HUIT Employee sent the OGC Attorney the results from the IT Vendor of its log searches, s/he also asked whether HUIT should proceed with the mailbox searches that had been requested.

Based on further discussions with University and FAS administrators, the OGC Attorney directed the HUIT Employee to “hold off on reviewing any of the Resident Deans’ Administrative Board accounts in the way outlined in my earlier message.” The HUIT Employee confirmed that, “based on the log information gathered overnight and provided this

morning,” HUIT was “holding off on th[e] request.” Because the log searches by the IT Vendor identified Resident Dean X as the person who forwarded the “case process” email from Dean Ellison, there was no need for the mailbox searches by HUIT.

Meanwhile, the OGC Attorney asked the HUIT Employee to take the following steps: confirm that the IT Vendor conducted searches through September 11, 2012 (because the “log report” listed emails only through August 31, 2012), and ask HUIT to archive all of the Resident Deans’ administrative accounts.⁴

V. Second Round of Email Activity

A. Log Searches of Resident Dean X’s Administrative Account

On September 13, 2012, the OGC Attorney sent an email to the HUIT Employee and requested that HUIT undertake the following tasks:

- a) send the “log report” from the IT Vendor to Dean Hammonds and Dean Ellison;
- b) make “copies” of the “three emails”—one email in which Resident Dean X forwarded the “case process” email to a student and two emails in which the student responded—and have them available for review by Dean Hammonds, Dean Ellison and the OGC Attorney “at our request”; and
- c) ask the IT Vendor to run additional log searches in Resident Dean X’s administrative account.

The additional log searches aimed to determine whether, since May 13, 2012, when the academic integrity cases first surfaced, “any emails were exchanged between [Resident Dean X’s administrative] account” and three accounts associated with student reporters for The Crimson.

⁴ “Archiving” an email account entails copying that account so that its contents can be preserved. It does not involve searching that account based on logs or the contents of the mailbox. Archiving is a typical practice in internal investigations to prevent users from altering the contents of mailboxes (e.g., by deleting emails) and to preserve contents for later review, if that proves necessary.

Two of the email addresses were Harvard accounts, and one email address was the Gmail account for one of the reporters.

The OGC Attorney copied Dean Ellison and Dean Hammonds on the email to the HUIT Employee concerning these additional activities. The OGC Attorney also forwarded his/her email to Dean Smith and noted: “FYI. There has been some recent additional correspondence on this matter.” Although this email described the further searches to be conducted, there is no evidence that Dean Smith responded to this email or that he approved these searches.

On September 13, 2012, the HUIT Employee provided the “log report” from the IT Vendor to Dean Hammonds and Dean Ellison by delivering them on USB drives. The HUIT Employee also told the OGC Attorney that HUIT would start immediately on archiving the “three emails” and working with the IT Vendor to conduct the additional log searches.

B. Searches of Dean Ellison’s Administrative and Personal Accounts

On September 13, 2012, at 11:43 pm, Dean Ellison emailed the OGC Attorney and Dean Hammonds to request, and “give [his] unconditional permission,” that his administrative and personal accounts be searched “exactly like the RDs.” Dean Ellison explained that he “need[ed] to be able to tell the RDs that ‘our’ email was subject to review and have them know that we are not holding them to a standard that I am not also held to.”

C. Mailbox Searches of Resident Dean X’s Administrative Account

Because the IT Vendor was only able to conduct log searches going back one month (the retention period for the IT Vendor’s logs), the decision was made for HUIT to conduct mailbox searches of Resident Dean X’s account, initially going back to May 13, 2012. Thus, on September 14, 2012, by 8 am, and in advance of the meeting with Resident Dean X, HUIT began to run mailbox searches of Resident Dean X’s administrative account for any emails exchanged, since May 13, 2012, with The Crimson reporters. These mailbox searches identified no emails,

dating back to May 13, 2012, between Resident Dean X's administrative account and any of the three email addresses. The searches were subsequently extended back to January 1, 2012, but still no emails were found.

VI. Meeting with Resident Dean X

At a meeting on September 14, 2012, with Dean Hammonds, Dean Ellison and Dean Harris, Resident Dean X was advised that log searches had revealed that s/he forwarded the "case process" email to a student. Dean Hammonds asked Resident Dean X for a copy of that email, and Resident Dean X forwarded the email to Dean Hammonds. After the meeting, Resident Dean X more carefully reviewed his/her email account and determined that s/he had, in fact, forwarded the "case process" email to two students, both athletes, whom Resident Dean X had been advising about enrollment and eligibility issues. Resident Dean X advised Dean Hammonds of the transmission of the "case process" email to the second student.

Following the meeting with Resident Dean X, Dean Hammonds discussed the situation concerning Resident Dean X with Dean Smith and also with Dean Ellison, Dean Harris and the OGC Attorney. Thereafter, Dean Hammonds decided, after speaking with the OGC Attorney, to conduct further searches of Resident Dean X's accounts, in this case both the administrative and personal accounts, because Resident Deans occasionally use their personal accounts for administrative matters. These searches were undertaken to make sure that there were no other emails of concern from Resident Dean X's accounts that had not been disclosed or otherwise discovered.

In addition, that afternoon, the HUIT Employee transferred the three emails that were recovered from Resident Dean X's administrative account—one from Resident Dean X forwarding the "case process email" to a student and two from the same student responding to that email—to the OGC Attorney as a way to maintain them within the document management

system at the OGC. It is not unusual for the OGC to serve as a secure repository for sensitive documents related to internal investigations at the University. Neither the HUIT Employee nor the OGC Attorney sent these emails to Dean Hammonds, Dean Ellison or anyone else.

VII. Third Round of Email Activity

A. Mailbox Searches of Resident Dean X's Administrative and Personal Accounts

On September 14, 2012, after the meeting with Resident Dean X, and based on further discussions with Dean Hammonds, the OGC Attorney emailed the HUIT Employee with “a number of follow-up requests” for additional mailbox searches of Resident Dean X's administrative and personal accounts. These were the first searches of any kind in Resident Dean X's personal account.

Specifically, the OGC Attorney asked the HUIT Employee to conduct the following mailbox searches:

- a) from August 16, 2012 to September 14, 2012, in Resident Dean X's administrative and personal accounts, search for all instances of the “case process” email, including forwarded copies;
- b) from May 13, 2012 to September 14, 2012, in Resident Dean X's administrative and personal accounts, any emails to or from the account of the second student to whom Resident Dean X had forwarded the “case process” email,⁵ and
- c) from May 13, 2012 to September 14, 2012, in Resident Dean X's personal account, any emails to or from the student reporters for The Crimson.

⁵ As noted above, after the meeting on September 14, 2012, Resident Dean X disclosed that s/he had forwarded the “case process” email to two students, not to only one student. But after running its log search, the IT Vendor had only identified one of those emails for HUIT. Thus, these additional searches in Resident Dean X's accounts were intended, in part, to confirm the information that s/he had provided. To this day, HUIT is unsure why the IT Vendor did not locate both emails from Resident Dean X to the students.

As with the earlier searches, the OGC Attorney emphasized:

[W]e are *not* asking you to open emails or otherwise review their content, simply to conduct the searches outlined above. . . . Again, as you have throughout this process, please make every effort during your search to avoid opening or reading materials that are clearly personal and unrelated to this inquiry.

There is no evidence that Dean Smith knew of or approved these final searches of Resident Dean X's administrative and personal email accounts. Dean Hammonds did not consult with Dean Smith about them. Dean Smith first learned about these searches in March 2013, after he made his joint statement with Dean Hammonds to the Faculty,

B. Results of the Mailbox Searches

On September 15, 2012, the HUIT Employee transferred four files (three screenshots and one spreadsheet) to the OGC Attorney containing the additional results from these searches:

- a) the "case process" email was found only in Resident Dean X's administrative account;
- b) one email on August 16, 2012, to the second student to whom Resident Dean X had forwarded the "case process" email was found in Resident Dean X's administrative account, and
- c) two emails on August 30, 2012, with one Crimson reporter were found in Resident Dean X's personal account.

No one reviewed the content of these emails.

Dean Hammonds, Dean Ellison and the OGC Attorney reviewed these results, but they never looked at the actual emails. Rather they agreed that these results merely confirmed what they already knew from their conversations with Resident Dean X: that on August 16, 2012, Resident Dean X had forwarded the "case process" email to two students, and that on August 30, 2012, Resident Dean X had also exchanged emails with a student reporter for The Crimson.

No further email searches were conducted.

VIII. Conclusion

The email searches of the Resident Deans' accounts described above arose in the context of an unprecedented event in the history of the University in which as many as 125 undergraduates were suspected of conduct inconsistent with academic integrity. Under University rules, it was the responsibility of the Administrative Board to resolve these cases. Confronted with credible evidence that the guaranteed confidentiality of the Administrative Board's communications had been compromised, and concerned that the identities of affected students might be disclosed, University and FAS administrators felt compelled to identify the source of the disclosures. The intense media attention on the academic integrity cases and the manner in which the Administrative Board was handling them heightened the concern about any possible disclosures of confidential information, whether intentional or by accident. Time was also of the essence, because the cases had been pending for months, and the students were entitled to hearings that were both fair and expeditious. Faced with inadequate University policies governing the privacy of email communications, FAS Administrators acting in good faith undertook the searches described in this Report in order to proceed with and complete the disciplinary proceedings of the Administrative Board and to protect the confidentiality of that process. The Administrative Board was able to complete its review of the academic integrity cases arising from this episode with no further breach of confidentiality.

Respectfully submitted,

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July 15, 2013