

October 31, 2017

Dr. Fen Yu
Director of Institutional Research and Data Management
Western Michigan University
Kalamazoo, Michigan 49008-5253

Dear Dr. Yu:

The increase in recent years in the use of products developed by private, for-profit vendors at WMU (as in higher education more widely) gives rise to a number of concerns. Among these are the increasing transference of public money to private entities, the growing tendency for faculty work to be scored in ways that risk privileging contributions that can be counted while overlooking those that are more difficult to quantify, and the concern that is the subject of my inquiry today: Potential conflicts (including contractual concerns) associated with having a private vendor mediate the internal transmission of faculty data, including personal information and intellectual property.

As I know from my own research in computational linguistics, analyzing large quantities of data for themes and patterns that may otherwise be difficult or impossible to identify is a valid and useful methodological approach. As a researcher, I understand the need for faster and more accurate ways to organize and make sense of large quantities of information. Computational analysis of the data that faculty provide in Professional Activities Reports can surely help us better understand and more accurately describe the faculty's work in carrying out WMU's academic mission. There is much we can all learn from exploring this information in new ways.

In principle, then, I have no objection to the application of computational methods, when used appropriately and in accordance with the Agreement, as a way to try to get a better sense of who we are as a faculty and as an institution.

My immediate concern, rather, is with the role of a private vendor in mediating our submissions. This obviously raises questions about the privacy and security of our data but also about the (required) participation of faculty in a private, for-profit venture without our informed consent. Language in the vendor's privacy policy indicates that the University may in fact be providing access to our personal information, the products of our labor, and our intellectual property to the vendor, for the vendor's benefit, and without the faculty's consent. (This is also a concern with the use of eLearning platforms, in relation to which the rights of not only faculty but also students are at issue.)

As you are probably aware, Faculty180, the developer of the online interface that faculty are now required to use to submit Professional Activities Reports, was acquired by Interfolio earlier this year. Interfolio's privacy policy (<https://www.interfolio.com/privacy-policy/>) states

that "If you are using any of the Services through an educational or other institution that is a customer of Interfolio, this policy does not supersede the terms of any agreements between Interfolio and any other party." Interfolio also explicitly directs users of their platforms to "Please make sure that you read the terms of any privacy policies that you enter into with parties other than Interfolio, including your educational institution, as those policies may also explain how your personal information is used by them."

I have not been able to locate the University's privacy policies concerning FARS on the Institutional Research website nor on the Interfolio/Faculty180 interface that faculty were required to use to submit Professional Activity Reports earlier this month. Nor have I been able to find information about the policies and agreements between WMU and Interfolio. I hope we can correct these conditions quickly so that faculty can begin (alas, belatedly) to make informed decisions regarding future interaction with FARS.

Additionally, Article 42 of the Agreement between the University and the WMU-AAUP cites the purpose for PAR data collection as "to enable Western and the Chapter to assess the workload activities of faculty." The implementation of FARS this year, and the information published about it, suggests that data collected through this system may be used in ways that go beyond the agreed-upon contractual intent. The Chapter will need to review the University's policies regarding FARS and its agreement(s) with Interfolio so that we can evaluate whether they comport with the WMU/WMU-AAUP Agreement. (Relatedly, this issue illustrates why it is so important to invite WMU-AAUP participation in initiatives such as this one, which was unfortunately not done in this case.)

Please consider this letter a request on behalf of the WMU-AAUP for copies of all privacy policies, disclosure agreements, data-use policies, and other relevant agreements between WMU and Interfolio/Faculty180, along with the University's policies for FARS users (especially faculty) regarding privacy, disclosure, and use of data.

Please see the attached document for questions and concerns about Interfolio's privacy policy related to those referenced above. It should be approached with the understanding that these are examples of our concerns, which are not limited to those cited therein.

Many thanks in advance for your help in accessing this critically important information.

Sincerely,



Lisa C. Minnick
President, WMU-AAUP

Cc: Dr. Nancy Mansberger, Director of Academic Labor Relations
Dr. Susan Stapleton, Interim Provost

Enclosure: Excerpts from Interfolio privacy policy, with annotations

Excerpts from the Interfolio Privacy Policy (with annotations)
Source: <https://www.interfolio.com/privacy-policy/>

Shaded areas contain direct quotes from the published policy. **Bold type** within quotes is added to highlight relevant language. Language in ALL CAPS is shown as in the original.

From the introductory section:

So we are clear about the terminology we are using, when we use the phrase “Personal Information”, we mean contact information (i.e., your name, address, email address, and/or telephone number) and any other non-public information that is used or intended to be used to personally identify an individual, and information associated with the foregoing. When we use the phrase “Anonymous Information”, we mean information that is not associated with or linked to your Personal Information. Anonymous Information does not enable identification of or contact with, individual persons.

BY USING OUR SITE OR SERVICES OR SUBMITTING PERSONAL INFORMATION THROUGH OUR SITE OR SERVICES, YOU AGREE TO THE TERMS OF THIS PRIVACY POLICY AND YOU EXPRESSLY CONSENT TO THE PROCESSING OF YOUR PERSONAL INFORMATION ACCORDING TO THIS PRIVACY POLICY.¹ YOUR PERSONAL INFORMATION MAY BE PROCESSED BY US IN THE COUNTRY WHERE IT WAS COLLECTED AS WELL AS OTHER COUNTRIES (INCLUDING THE UNITED STATES) WHERE LAWS REGARDING PROCESSING OF PERSONAL INFORMATION MAY BE LESS STRINGENT THAN THE LAWS IN YOUR COUNTRY.

¹As faculty are now required to use the Interfolio/Faculty180 platform to submit our professional activity reports, it appears that we are consequently being denied the right to decide whether to grant this vendor our consent. We are essentially being compelled to consent, which of course is not consent at all.

From the HOW WE COLLECT INFORMATION section:

Personal Information

We receive and store information you **voluntarily**² provide to us (either through the Site or in some other way) upon registration or your use of the Site and Services. When you register with us, regardless of the type of User you are, we require you to provide certain Personal Information, such as your name and email address. You may choose to provide additional Personal Information as part of certain Services. As a rule, Interfolio only collects information necessary to provide the Services you or your institution have requested.

²Again, faculty were required to provide information using the Interfolio/Faculty180 platform. The information was therefore not provided “voluntarily” to the vendor.

From the HOW WE COLLECT INFORMATION section:

Anonymous Information

As you use our Service, we may also collect certain information, including your Internet protocol address, browser type, and access times. We use Cookies and navigational data like Uniform Resource Locators (URLs) to gather information regarding the date and time of your use of the Service. An “Internet protocol address” or “IP address” is a number that is automatically assigned to your computer by your Internet access provider when you use the Internet. In some cases your IP address stays the same from browser session to browser session; but if you use a consumer internet access provider, your IP address probably varies from session to session. We track IP addresses solely in conjunction with session cookies to analyze our web page flow. “Cookies” are small pieces of information that a web site sends to your computer’s hard drive while you are viewing a web site. We may use both session Cookies (which expire once you close your web browser) and persistent Cookies (which stay on your computer until you delete them). Persistent Cookies can be removed by following Internet browser help file directions.

Disclosure—Usage of Third Party Cookies

We may use a third party tracking service (such as Google Analytics) to track and analyze Anonymous Information from Users of our Site. Such third parties may use Cookies to help **track User behavior**. We do not have access or control over these cookies. **Our analytics service provider uses session IDs to help us uncover bugs, improve user pathways, and build better services.**³

Anonymous Information

Generally, we use Anonymous Information in statistical analysis to help us analyze patterns in the use of our Services. We may, through our use of Cookies, keep you logged into the Site, personalize your use of the Site and customize your experience on the Site. **We may also use your Anonymous Information to improve our internal operations, surveys and software,**⁴ customize the content and layout of the Site and/or Service and notify you of updates to our Site and Services.

^{3,4} In addition to the obvious concerns this disclosure language raises about surveillance of faculty online, it is also an explicit example of the issue highlighted in my letter: that the University appears to be providing the vendor with access to faculty information, and the labor faculty perform in providing it, without faculty consent and for the benefit of the vendor’s commercial enterprise.

From the DISCLOSURE OF INFORMATION section:

We may disclose certain Personal Information:

To third-party services to manage communications⁵ (e.g., in order to send transactional emails related to our services). We also use third-party analytics services to help understand your usage of our services. In particular, **we provide a limited amount of your information (such as your name and email address) to third-party service providers in order to analyze your use of our website and/or product and track our relationship so that we can improve our service to you.**⁶ In such cases, we will require such vendors agree to process such information based on our instructions and in compliance with this Privacy Policy (including your Billing Information to our payment processor).

⁵Faculty names and email addresses are disclosed to the vendor and others without the faculty's informed consent, knowledge of who these other parties are, or the right to opt out.

⁶This is another explicit acknowledgment by the vendor that faculty information is accessible to them for use to the benefit of their commercial enterprise, without informed consent of faculty.

Disclosure to Universities or Recipients

Giving you tools to help you protect your Personal Information is a vital part of our mission. **It is up to you to make sure you are comfortable with the information you provide.**⁷ We do provide Personal Information to Recipients to whom you have authorized disclosure and, if applicable, your University. **We do not control how Universities or Recipients (or their respective Users) use or disclose the information they obtain from us.**⁸

⁷Faculty were required to use this platform to submit our PARs, meaning that it is not, in fact, "up to [them] to make sure [they] are comfortable with the information [they] provide."

⁸Faculty (and other users of the platform) have the right to be fully informed about how WMU "use[s] or disclose[s] the information" collected by the vendor through our submissions.

IF YOU AUTHORIZE US TO SHARE PERSONAL INFORMATION WITH A RECIPIENT OR YOUR UNIVERSITY, WE DO NOT HAVE ANY CONTROL OVER HOW ANY SUCH RECIPIENT OR UNIVERSITY USES AND DISCLOSES YOUR PERSONAL INFORMATION, INCLUDING INFORMATION YOU PROVIDE DIRECTLY TO THAT RECIPIENT.⁹ YOU ACKNOWLEDGE AND AGREE THAT (1) INTERFOLIO DOES NOT EVALUATE ANY RECIPIENT'S OR UNIVERSITY'S PRIVACY PRACTICES, AND (2) INTERFOLIO WILL NOT HAVE ANY LIABILITY FOR ANY ACTIONS OF ANY RECIPIENT OR UNIVERSITY. YOU SHOULD KNOW THAT RECIPIENTS TO WHOM WE MAY DISCLOSE YOUR DISCLOSED PROFILE MAY SHARE YOUR DISCLOSED PROFILE WITH OTHERS.

⁹Again, faculty (and other users of the platform) have the right to be fully informed about how their information is being used by the University, how it may be used in the future, and to whom and under what circumstances it will or may be disclosed. The information on the WMU/IR FARS FAQs page on "Who has access to the WMU FARS system?" is helpful but not sufficient. (That section also raises contractual questions in relation to Article 42.§12 of the Agreement.)