

Clery Act and Anonymous Reports

SART Listserv April 2007

States are listed as a geographical reference, not as a statewide perspective.

Issue: A current listserv subscriber has met with resistance at a local University about anonymous reporting options on campus. Although the SART has had anonymous reporting options for years in the community, the University has stated anonymous reporting on campus violates the Clery Act.

Iowa

- We use anonymous reporting as part of our SART team practices and haven't run into any Clery concerns. At the bottom of our webpage describing what SART is, we have an e-mail link that provides a way for folks to do an anonymous report. Here's the link:
<http://www.dps.iastate.edu/sart/SARTonlinereport.html>
- I know different agencies interpret Clery in different ways.

New York

- As a police investigator on a college campus, I have taken several reports over the years regarding sexual assault where the victim wishes to remain anonymous but wants to make sure that the suspect information and the details of the incident are documented.
- We have anonymous tip lines set up for phone calls and for email reporting from our web page.
- We are working on an on-line form that will eliminate the fear of the phone or email trace.
- We have established a good working relationship with our Counseling Center. Many times a victim will want to tell us about the incident and ask questions about options. I normally do this type of "interview" with the counselor present - I do not take any notes and do not require any names to be given until the victim decides they want to reveal that information.
- If a victim gives us their name and contact information but wants it to remain confidential, we will do that but it limits what can be done as far as charges go.
- We would never discourage anonymous reporting and consider all information valuable.

Response from Security on Campus

<http://www.securityoncampus.org/>

Disclosing Crimes

First, the Clery Act requires Institutions of Higher Education to disclose reported crimes. A crime is reported when it is brought to the attention of a campus security authority; local police by a victim, witness, other third party; or even the offender. An institution must disclose crime reports regardless of whether any of the reporting individuals were directly involved or were associated with the institution.

If the individual receiving the crime information believes it was provided in good faith, he or she should document this as a crime report. In good faith means there is a reasonable basis for believing that the information is not simply rumor or hearsay. That is, there is little or no reason to doubt the validity of the information).

Anonymous Reports

Nothing in the federal Jeanne Clery Act, 20 USC § 1092(f), precludes an institution of postsecondary education from accepting anonymous crime reports or from permitting individual authorities who report data under the Act from keeping detailed information confidential. In fact, we believe that institutions are required to accept anonymous crime reports, so long as they are credible, and if it isn't precluded by state law.

The Clery statute does not specifically reference anonymous reporting. Some may think that this means anonymous reports do not have to be reported, but the Handbook for Campus Crime Reporting is clear that some anonymous crimes must be reported.

Handbook for Campus Crime Reporting

<http://www.ed.gov/admins/lead/safety/handbook.pdf>

Institutions must also disclose whether they have policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures must be included. [34 CFR § 668.46(b)(2)(iii), referring to requirement that institutions must in their Annual Security Report disclose a "statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus."]

Much of the confusion about both anonymous and confidential reporting can be traced to what is known as a "preamble" explaining the regulations when they were first published in the Federal Register in 1999. In the preamble, the U.S. Department of Education (ED) said the following:

- Institutions should note that the regulations refer to confidential reporting, **not** anonymous reporting.
- The regulations do not require institutions to allow confidential reporting. Rather, Sec. 668.46(b)(2)(iii) and (4)(iii) require institutions to state whether they allow confidential reporting, and if so, to describe their procedures for that reporting, including whether the institution encourages pastoral counselors and professional counselors, if and when they deem it

appropriate, to inform the persons they are counseling of those procedures.

- An institution prohibited by State law from allowing confidential reporting simply would be required to state that in its annual security report.

Based on the question received, it appears that institutions were either confusing or were using "anonymous" and "confidential" interchangeably. For Clery purposes, they mean very different and distinct things:

(1) An **anonymous report** means that the identity of the person making the report isn't known to any campus official

(2) A **confidential report** is one where the identity of the reporter is not made known to personnel beyond the official receiving the report.

Neither anonymous nor confidential reports are precluded by anything in the Clery Act or guidance issued by the Department of Education.. Some states, like Ohio, have statutes where *failing to report a crime is a crime*. It is important to note that some institutional personnel, or SART members, may be exempt from this. Ohio exempts rape crisis counselors, so even if confidential reporting were precluded for most officials some could still offer it.

Because the Clery preamble says that the regulations do not specifically address "anonymous" reporting and then moves right into saying that institutions aren't required to accept "confidential" reports(if this conflicts with state law); some have apparently interpreted this to mean, because they use the terms interchangeably, that institutions aren't required to accept anonymous reports. That is an incorrect interpretation. Guidance offered by the Department of Education, in 2005's Handbook for Campus Crime Reporting, seems to contradict this view.

An *anonymous report* could be one factor an official or institution could use in determining the validity of the report but it must not disqualify it from being reported. Another factor an institution would need to consider is *the level of detail provided and if the reporter directly knew the victim*. An anonymous report of a rumor probably wouldn't meet the reporting threshold but a direct report from a victim saying they were attacked on campus, or other covered area, probably would.

The handbook on page 23, states that, "It is not necessary for the crime to have been investigated by the police or a campus security authority, nor must a finding of guilt or responsibility be made." This further supports the proposition that institutions should report anonymous or confidential crime reports. They need not share them with law enforcement or any other campus authority, at least for Clery purposes, to have them investigated or otherwise reviewed prior to them becoming reportable.

Although the Clery Act does not require it, an institution may require their own personnel, so long as reports received by them are not privileged under state law, to

provide the identity of a reporting party as well as detailed information to other officials on campus including law enforcement for Clery reporting or other purposes.

An institution, if they elect not to offer confidential reporting, is REQUIRED to state this clearly in their annual security report (we recommend that they do offer confidential reporting options, at least to some extent).

We also recommend balancing both the needs of individual victims/survivors and the needs of institutions to warn others who may be at risk. For example, we suggest that campus officials regularly meet and have an open flow of information. A SART is an excellent option for keeping as much information as possible confidential but allowing for the sharing of critical information about threats (for both Clery warnings and Title IX investigations)

What you must disclose, therefore, are statistics from reports of alleged criminal incidents. It is not necessary for the crime to have been investigated by the police or a campus security authority, nor must a finding of guilt or responsibility be made. If the institution is in doubt as to whether a crime has been reported, the institution should rely on the judgment of law enforcement professionals.

Because an anonymous crime report may be made in good faith and because a crime report need not be investigated, before it becomes reportable an institution may not automatically exclude anonymous reports from their Clery statistics. Some may be deemed to not be valid, or be a report of a rumor and thus not reportable, but others, such as one directly from a victim, may be credible and thus reportable. Decisions must be made on a case-by-case basis as they are with any other crime report.

As a practical matter, this leaves it up to each institution whether or not they permit campus officials to keep detailed or personally identifying information from going any further than themselves when reporting for the purposes of gathering statistics. The two important points here are that (1) Clery does NOT prohibit confidential reporting and (2) each institution MUST tell their community whether they have elected to offer this important option. (They can't blame Clery if they don't offer it).

Resources

Sexual Assault on Campus: What Colleges and Universities Are Doing

<http://www.ncjrs.gov/pdffiles1/nij/205521.pdf>

Page 9 -Administrative support for anonymous reporting; page 14- anonymous reports are promising practices

Handbook on Campus Crime Reporting (pg. 79)

<http://www.securityoncampus.org/schools/cleryact/handbook.pdf>

Disclosure of the number of reported crimes may not include the identification of the victim or the person accused of committing the crime. The *Clery Act* does not require crimes to be *reported* anonymously. It prohibits personally identifiable information from being *included* in the institution's disclosure of crime statistics. Crime reports made to campus security authorities may include personally identifiable information to aid in crime investigation. However, this information is omitted from the annual security report and the Web-based data collection.

Snapshots of Anonymous Reporting Options at Institutions of Higher Education

California State University Northridge

Anonymous Sexual Assault Report Form

http://www-admn.csun.edu/police/forms/sexual_assault.htm

University of Buffalo

<http://www.ub-judiciary.buffalo.edu/proxy.shtml>

The College of Scholastica- MN

<http://www.css.edu/x17570.xml>

Virginia Wesleyan College

www.vwc.edu/documents/emergency_B.pdf

Lewis and Clark College

<http://www.lclark.edu/dept/safety/responsenetwork.html> -

University of California- Riverside

<http://csw.ucr.edu/assault.html>

University of Missouri- Rolla

Reporting Sexual Assaults

http://campus.UMR.edu/police/security_act/report.htm

University of Cincinnati

http://www.uc.edu/ucwc/documents/CONTACT_SHEET.doc

St Edwards University

Austin Texas

<http://www.stedwards.edu/studev/judicialaffairs/sexualassault.pdf>

Santa Barbara City College

Santa Barbara California

<http://www.sbccc.edu/healthandsafety/index.php?sec=2034>

William and Mary

http://www.wm.edu/sexualassault/help_myself_dean.php