



Handout on the rights and obligations of students and examiners when accessing examination documents

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Introduction

The concept of allowing students to access their examination documents is to provide them with the effective legal protection required under constitutional law with regard to the marking of their exams.

The content of this document is based on current, frequently asked questions and issues on this topic as received by the examination management team.

I. Legal basis

When it comes to students' rights of accessing documents, a distinction must be made between access to the entire student file or student's examination file (*Akteneinsicht*) and access to documents regarding a specific examination (*Prüfungseinsicht*).

Accessing specific examination documents means viewing only a part of the student's examination file.

1. Accessing specific examination documents (*Prüfungseinsicht*)

According to § 35 para. 1 sentence 2 no. 17 SächsHSG, the examination regulations for degree programs must regulate the right to access examination documents.

TU Dresden's General Regulations for Examination Regulations of June 10, 2020 (RahmenPO – Framework Examination Regulations) anchor the access to examination documents in the examination regulations for degree programs issued on or after that date, as per the provision in § 29 para. 1.

§ 29 para. 1 of the Framework Examination Regulations stipulates:

“Once the result of the examination has been announced, the student will be granted access to their written examinations, to reviewers’ reports, and to examination protocols. For this purpose, there are usually central dates for accessing the results within a reasonable period of time, but no later than eight weeks after the examination result has been announced. If, due to the type of examination or for organizational reasons, no central date is possible or scheduled, the student will be granted an individual date upon request. In this case, the application must also be submitted to the relevant Examination Office no later than eight weeks after the announcement of the examination result. It must be ensured in any case that the student only has access to the documents concerning themselves.”

Older examination regulations, which are still based on the model examination regulations (MusterPO), also specifically regulated the right to access examination documents, stating the following:

“Within one year after completion of the examinations, the student will be granted access to their written examination papers, the related expert opinions and the examination protocols within a reasonable period of time upon request.” (§ 24 MusterPO).

It can therefore be assumed that access to examination documents is regulated in the respective study documents of all of the degree programs at TU Dresden. If this is not the case, a corresponding procedure in accordance with the above-mentioned regulations needs to be followed at TU Dresden.

2. Accessing student's files (*Akteneinsicht*)

Irrespective of the provisions of the examination regulations, students have an individual right to access their files during the examination process in accordance with the relevant provisions of the Administrative Procedure Act (§ 29 VwVfG in conjunction with § 1 SächsVwVfG), provided that knowledge of the files or certain parts thereof is necessary for the applicant to assert or defend their legal interests. This is always the case if the student has lodged an appeal against an examination decision or justifies their request for access to the files by stating that they want to check whether an appeal will be lodged. Access to the files normally means access to the entire student's examination file. This also includes the examinations taken by the student, in particular those whose assessment the student wants to have reviewed, has already challenged or intends to challenge. This means that the respective examination itself, including the assignment, announcements regarding the aids permitted, instructions, examination protocols, written assessment justifications and examiners' opinions, and in some cases also sample solutions of the exam questions, are part of the file.

II. How to access specific examination documents

The following information focuses on the procedure for accessing specific examination documents.

In accordance with § 29 para. 1 RahmenPO, there are usually central dates for accessing examination results (group appointments). The employees of the Examination Offices and the examiners organize these appointments independently and carry them out proactively.

There should be enough supervisory staff available at such group appointments (no specialist background required) so that changes and/or manipulations to the documents are prevented.

Individual access to the examination documents, which is also possible, is granted in individual cases upon request. In accordance with the regulation in § 29 para. 1 RahmenPO, students must submit a request to do so to the relevant Examination Office. If students intend to bring an accompanying person with them when accessing their examination documents, they should include this information in their request. For more detailed information on the procedure, please refer to [Point II, Number 5 Accompanying persons when accessing examination documents](#) of this handout.

A repeated access to the examination documents can be granted in individual cases if a legitimate interest can be specifically substantiated. Please refer to the following bullet points for more information on the relevant procedure.

In the case of individual access, a decision must be made on a case-by-case basis as to whether the presence of expert persons, ideally the examiners themselves, is considered necessary when the students access the examination documents. This decision should be based on the specific request and the arguments already presented in the context of lodging an appeal (e.g. specific complaints about the assessment).

At the latest when the examination documents are handed over, all individuals who get access must identify themselves by means of an official photo ID or their personal student ID with photo (CampusCard).

1. What can be accessed?

The specific examination documents that must be made available are set out in the respective examination regulations and depend on the specific type of examination taken.

Examinations can have produced a physical result (*gegenständlich*), such as written examinations and term papers, or final theses.

If an examination has produced a physical result, this result itself is accessible for viewing. In addition, the assignment and the associated announcements regarding the aids permitted, as well as any written instructions issued at the time of the examination can also be accessed.

Examinations which have not produced any physical result (*nicht-gegenständlich*) include oral examinations and scientific-practical assessments, as well as colloquia.

The main points and results are recorded in a protocol. This protocol can be accessed.

In the interest of effective legal protection with regard to the review of the examination assessment, the students' right of access includes access to the established assessment criteria, written assessment justifications and the examiners' reports. For organizational reasons, students may be referred to individual appointments for accessing these documents.

In the case of individually requested access to examination documents, the content of the specific request may limit the scope of access. Usually, the documents provided should not exceed the requested scope of access. This is particularly important when the request has been filed with the involvement of a lawyer.

If the process of appointing the examiners itself is questioned for justified reasons, the documents relating to the appointment of the examiners can also be accessed. This often happens in cases in which lawyers are involved as authorized representatives.

Students only have a right to access the sample solutions of the exam, if the examiners explicitly refer to it in their correction and evaluation.

2. Deadlines

§ 29 para. 1 RahmenPO stipulates that the dates for accessing examination documents must be set within a reasonable period of time and no later than eight weeks after the announcement of the examination result. Likewise, an application for individual access to examination documents should be submitted within eight weeks of the announcement of the examination result.

The decisive factor for accessing examination documents is the time of the announcement of the examination result. The announcement of the examination results is governed by the type of examination in the relevant examination regulations of the degree program and normally takes place in the usual manner.

Rejecting the request to access the examination documents after the stipulated eight-week period is not justified if there is a recognizable or sufficiently demonstrated interest in legal protection.

If a request to access the examination documents is repeatedly submitted for the same examination, the justified interest must be specifically verified. Unless there is a justified reason,

repeated access must not be granted and the Examination Committee must reject the request with a notice (cf. § 23 para. 4 RahmenPO).

If students request access repeatedly, they should provide a plausible reason for the renewed need to access their documents. Such a reason could be, for example, that an authorized person requests another access to the files after the student has already accessed the examination documents (in this case, copies that have been handed over cannot be used to reject the request). Moreover, it may be possible that students make a justified request for accessing additional documents or that they object the incompleteness of the documents.

3. Duration of the appointments

The duration of such an appointment must be determined individually based on the specific circumstances. Students must be given enough time to take full note of the content of the examination and the assessment. If students are unable to make or receive copies for organizational reasons (especially in the case of group appointments) they must be given the opportunity to read everything and take notes, if necessary.

4. Copies / notes / use of (other) documents

4a) Right to copies

Students usually access their documents on site. They are entitled to make copies of the examination documents. Students who request this must therefore be given the opportunity to make or receive copies.

Photographing with a phone or tablet can therefore not be ruled out.

The scope of the documents to be copied depends on what has been granted for access, cf. [Point II, Number 1 What can be accessed?](#) of this handout.

From a practical point of view, the possibility of making copies during group appointments could only be realized if students were referred to individual appointments in these cases.

4b) Copying costs

We do not charge for copying. This is based on the legally established exemption from administrative fees in accordance with the Saxon Administrative Fees Act (SächsVwKG) and the case law of the European Court of Justice (ECJ) and the Federal Administrative Court (BVerwG).

In addition, both the ECJ and the BVerwG have ruled that exam answers, evaluations and correction notes from examiners are "personal data according to the GDPR" and that students are therefore entitled to receive a free copy of this data (Art. 15 para. 3 GDPR).

4c) Notes / explanation on copyright protection

Since the examination documents regularly contain tasks and correction notes that are protected by copyright, we recommend that when granting permission to make copies of the examination documents, students should be expressly informed that copies or photographs made may only be used to check the examination assessment and that distribution or public disclosure (e.g. on the internet or in social media) is not permitted.

This could be included as a note in the general announcements regarding the conduct of the examination (e.g. announcement regarding aids permitted, announcement regarding the central date for access) or as an individual declaration to be signed by the student. TU Dresden's central examination management recommends using the sample "Declaration on the use of transcripts / copies / photos" attached to this handout.

There is no permissible way under examination law to refuse access to examination documents if students do not sign this declaration. However, this does not affect the possibility of sanctioning any distribution or public reproduction at the individual copyright level.

4d) Notes

Students are always permitted to take personal notes when accessing their examination documents. When doing so, it must be ensured that the documents themselves are not altered.

4e) Use of (other) documents

When accessing examination documents, students may bring along and use subject-related documents / reading material, such as textbooks, lecture scripts or similar.

5. Accompanying persons when accessing examination documents

As a general rule, only those students who have personally taken the examination are entitled to access their examination documents.

However, the examination procedure is an administrative procedure. The student's right to be represented by an authorized person or to appear with an adviser is based on § 14 VwVfG.

For organizational reasons, it is generally not possible to bring accompanying persons to group appointments, so that in these cases individual appointment are the only option, cf. [Point II, How to access specific examination documents](#).

When students wish to be accompanied by other persons when accessing their examination results, it must be determined whether certain interests of the parties involved preclude the specific accompanying person from accessing the results.

Reasons for preclusion may include the expectation that the accompanying person will cause undue disruption, or that the person seems to be unsuitable as an accompanying person or not capable of making an appropriate statement.

A criterion for exclusion would be, in particular, if the person is evidently not suitable as a trusted person (e.g. in the case of unlawfully obtaining an advantage or unauthorized action in the sense of a copyright infringement). Generally, excluding fellow students is not possible.

Therefore, the application for individual access must include detailed information about the accompanying person.

The Examination Committee must issue any decisions to refuse access with a notice (cf. § 23 para. 4 RahmenPO) and provide objective reasons. Reasons for refusal could also arise for organizational or capacity reasons (cf. [Point II, How to access specific examination documents](#)). In accordance with the wording of § 14 VwVfG, only one accompanying person should be allowed access.

5a) Advisers

The adviser is considered a trusted person of the student. Their participation is limited to verbal support. They are not the student's representative. In this capacity, the adviser cannot make any requests of their own, and their presentation is only considered the student's statement if the student does not immediately object.

In this capacity, the adviser may only access the examination documents together with the student.

5b) Authorized representatives

In contrast to this are authorized representatives, who must have been issued power of attorney in the absence of the entitled person in order to be able to access examination documents. In most cases, these are lawyers.

Individuals like parents of adult students also require a power of attorney if they are to be granted information or access to examination documents.

In any case, proof of power of attorney must be requested prior to them accessing any examination documents. We refer to Circular Letter [D3/2/2021](#) from the Chancellor of TU Dresden dated March 29, 2021.

5c) Involvement of lawyers

If lawyers claim the representation of a student and request access to the examination documents in order to possibly raise objections to the evaluation of the examination or the examination procedure, we recommend involving TU Dresden`s Legal Office in these cases.

6. Keeping a record of the access to examination documents

The organizational details of appointments for access to examination documents do not necessarily have to be documented in minutes. However, in particular in the case of group appointments, we recommend that you at least keep a list of the participants' names and document general instructions given (e.g. on copyright, cf. [Point II, Number 4c\) Notes / explanation on copyright protection](#)).

Should there be any incidents during the appointments, it may be useful to document them in a file note or protocol. A file note on previous access to the same examination documents may also prove helpful in cases where access to the examination documents has been repeatedly requested (cf. [Point II, Number 2 Deadlines](#)).

In individual cases, in particular when advisers or authorized representatives are involved, it is generally advisable to document access to the examination documents in a protocol. If the appointment is designed to give the student the opportunity to raise specific objections, these must be recorded in a protocol in order to be considered in a reconsideration or objection procedure.

If the protocol contains essential procedural steps and objections, it is to be regarded as part of the examination file and can in turn also become the subject of a later access to the file.

7. Special cases

7a) Suspicion of cheating

The student's general right to access their examination documents is also given if cheating is suspected and this has not yet been conclusively dealt with by the Examination Committee.

If there is a suspicion of cheating or deception, the student's interest in accessing the examination documents is justified, since this individual procedure must be clarified before a final decision is made and the student should be given the opportunity to be heard / to participate.

In cases where several students are suspected of collusion, it may also be necessary and (under data protection law) permissible to confront the students with the contents of the examinations of other students.

7b) Digital examinations

In the case of digital examinations, access to digital examination material must be provided and stored accordingly.

Digital examination material includes the results and evaluations / correction notes of uploaded work (e.g. take-home exams, scanned paper exams, submission of files) and of online exams (e.g. digital MC exams), as well as the associated documentation (log files, examiners' comments, and, if applicable, grades and grading keys). Storage refers to the secure storage of the digital examination materials for the period immediately after the examination until the expiry of the possible legal remedy periods at the respective Chair, before they are then transmitted to the Examination Office in the usual manner or remain at the Chair.

The respective examiner is primarily responsible for making organizational arrangements for individual access to digital examination material, both immediately after the examination (directly in the examination system through the examiners' authorization) and in the long-term (instructions for online exams and upload exams in OPAL Exam@TUD).

7c) Multiple-choice exams (MC)

In the case of conducting and evaluating multiple-choice examinations, the right to access examination documents also includes the written documentation of the examiner's work when creating the examination questions (§ 3 para. 2 sentence 2 of the Model Ordinance on Conducting and Evaluating Multiple Choice Exams).

This must be observed in particular in the case of examinations that only partly consist of multiple-choice questions.

7d) Accessing individual assessments

In certain cases, examined assessments may consist of "parts" that are called individual assessments. Complex assignments, portfolios, language examinations, and combined term papers are examples that may involve such individual assessments.

In these cases, the announcement of the examination result refers to the overall examined assessment. Access to the examination documents for all individual assessments can usually only be granted afterwards and it then depends on the specifics of the respective individual assessment.

7e) Accessing examination documents via video link

In particularly justified individual cases (e.g. distance learning or in the case of students spending longer periods abroad), access to examination documents can also be provided online or via video conference.

However, diligence is mandatory to ensure that confidentiality and data protection aspects are observed. The video conferencing services permitted at TU Dresden are listed on the [TU Dresden website](#).

7f) Accessing final theses

Final theses are usually examinations that produce a "physical result" (*gegenständlich*); for more details, cf. Point II, Number 1 [What can be accessed?](#). If a colloquium is planned, the access to the examination documents must also be granted prior to the date of the colloquium.

§ 26 para. 11 of the RahmenPO stipulates:

"If the final examination pursuant to § 2 para. 2 sentence 1 includes a colloquium, the student must explain their final thesis in a public colloquium in front of at least one of the examiners and one assessor. As a subject-specific admission requirement, the final thesis must have been assessed with a grade of at least "pass" (4.0) prior to the colloquium. The colloquium is intended to demonstrate that the student is able to coherently present the results of the final thesis and to discuss them with expert knowledge. ..."

Final thesis and colloquium are two separate examinations.

The marking of the final thesis must be available as an admission requirement prior to the colloquium. (cf. § 4 para. 3 no. 3 RahmenPO).

In order to guarantee students effective legal protection with regard to the evaluation of the final thesis, access to examination documents (including the examiners' reports) is also permissible and necessary prior to the date of the colloquium.

7g) Bonus achievements

If bonus achievements are permitted by the respective examination regulations and have an effect on the evaluation of examined assessments, these can also be accessed.

7h) Preliminary academic work (*Prüfungsvorleistung*)

Access to preliminary academic work must also be granted.

III. Excursion on related topics

1. Reconsideration process

Students cannot substantiate their constitutionally enshrined right to "reconsider the examination decision" in the required manner if they are not fully aware of the examination circumstances concerning them beforehand.

Therefore, access to examination documents is necessary for the reconsideration process.

Relevant regulations for the reconsideration process are set out in § 15 para. 8 RahmenPO. Since the reconsideration process can take place independently of any legal remedies, it also justifies a legitimate interest in accessing examination documents.

By allowing students to access to the examination documents, they are given the opportunity to raise specific objections to the evaluation of the examination and thus to initiate a reconsideration process.

The result of the reconsideration process is communicated to the students by the examiners or the responsible Examination Office and documented accordingly in the examination file.

2. Prohibition of downgrading

If a reconsideration process or an appeal procedure results in a re-evaluation of an examination, the principle of prohibition to change the result to the detriment of the applicant must be observed. Accordingly, the existence of significant or relevant errors in the evaluation can only lead to an improvement or, at most, to the retention of the original grade. This does not apply if the result of the appeal procedure is that the examination is retaken as part of the same examination attempt.

The prohibition to worsen examination results is based on the principle of equal opportunities, the students' right to legitimate expectation, and the constitutionally protected guarantee of unhindered and effective legal protection.

Annex- Sample “Declaration on the use of transcripts / copies / photos”



Access to written examination documents

Declaration on the use of transcripts / copies / photos

I, _____,
(Last name, first name, enrollment number)

hereby declare that I will use any transcripts, copies or photos of examination documents, such as written examinations, other written examinations or examination protocols, assessment justifications and reports, that I have made or that have been made available to me, either when accessing my examination documents or otherwise, only for my personal use and to safeguard my personal interests. I have noted that their distribution via the internet or other media is not permitted.

Place, date

Signature