

Academic Freedom Resources

Members of the UC Davis campus sometimes have questions about what academic freedom is, and whether particular problems they may have encountered constitute incursions on their academic freedom. The Committee on Academic Freedom and Responsibility (CAFR) put together this document to help campus members find answers to these questions.

1. UNIVERSITY OF CALIFORNIA AND UC DAVIS POLICIES AND STATEMENTS ABOUT ACADEMIC FREEDOM

A. Selected provisions, Academic Personnel Manual

[Academic Personnel Manual 010: General University Policies Regarding Academic Freedom](#)

[Academic Personnel Manual 015: Faculty Code of Conduct](#)

B. Websites of Senate academic freedom committees

[University Committee on Academic Freedom](#)

[UC Davis Committee on Academic Freedom and Responsibility](#)

C. Selected provisions, UC Davis Policy and Procedure Manual (Office of the Chancellor)

[Chapter 400, Section 01: Freedom of Expression.](#)

[Chapter 310, Section 24: Electronic Communications—Privacy and Access.](#) This section provides UC Davis (UCD) implementing procedures for the privacy and disclosure of Electronic Communications (EC) records.

[Chapter 230, Section 10: Sponsored Programs, Publication Rights.](#) This section provides guidance regarding the University's publication rights, and policies with respect to external research sponsors who may seek to limit faculty publication rights.

D. Resources from Other Campuses

[UCLA's Faculty Resource Guide for California Public Records Act Requests](#)

[UCLA Statement on the Principles of Scholarly Research and Public Records Act Requests](#) (Sept. 2012)

E. Academic Council Statement

[Academic Council Statement on Academic Freedom and Civility](#) (April 2015)

2. GENERAL STATEMENTS REGARDING PRINCIPLES AND SOURCES OF ACADEMIC FREEDOM

A. Materials from the American Association of University Professionals (AAUP). The AAUP seeks to “advance academic freedom and shared governance, define fundamental professional values and standards for higher education, and ensure higher education's contribution to the common good.”

[1940 Statement of Principles on Academic Freedom and Tenure](#)

[Resources on Academic Freedom](#). This webpage has links to the AAUP's Policy Statements and Reports; papers and primers on academic freedom and the law; and links to the AAUP's investigations and “censures” of university administrations for academic freedom transgressions.

[Policy Documents and Reports \(a/k/a “The Redbook”\)](#). Purchase required. The AAUP's *Policy Documents and Reports* presents in convenient format a wide range of policies, in some instances formulated in cooperation with other educational organizations. The current edition, the eleventh, includes basic statements on academic freedom, tenure, and due process; academic governance; professional ethics; research and teaching; online and distance education; intellectual property; discrimination; collective bargaining; accreditation; and students' rights and freedoms.

[Journal of Academic Freedom](#). Publishes scholarship on academic freedom and on its relation to shared governance, tenure, and collective bargaining.

B. Primers and Other Brief Commentaries on Academic Freedom. The following represents a somewhat idiosyncratic and no doubt incomplete list of shorter works on academic freedom that members of CAFR have found to be of particular value.

[Academic Freedom Primer](#) - By Ann Franke, former Senior Counsel, AAUP

[Defining Academic Freedom](#) – By Cary Nelson, author of *Saving Academic Freedom* (NYU, 2010) and former AAUP president

C. Academic Freedom and the Law. (See the AAUP's [Resources](#) page for additional materials.)

[Dean Robert Post, Provost's Forum talk on foundations of academic freedom](#) (March 2014, video)

[Jefferson v. Cuccinelli: Does the Constitution really protect a right to “academic freedom?”](#)
– By Dahlia Lithwick and Richard Schragger

If there are any questions regarding the Committee on Academic Freedom & Responsibility, please contact Tessa Egan in the Academic Senate Office at tdegan@ucdavis.edu.

UC Davis Faculty Resource Guide for California Public Records Act Requests

What is this guide and how does it apply to me?

Because UC Davis is a state institution, the university and its faculty are subject to the California Public Records Act (“CPRA”). The CPRA was enacted to ensure that the citizens of the state, in essence, know how the state conducts its business. Requests for records may be directed to specific departments at UC Davis, but sometimes requests are made of individual faculty members. This guide provides information about the CPRA, including what are public records, what types of records are exempt from disclosure under the CPRA, and how faculty should respond to CPRA requests for records. It is organized as an FAQ page, so by clicking on a link below you can be taken to the appropriate explanatory section. In addition to the information provided on this page, links to other resources and guidance may also be found below.

[Introduction](#)

[What is a public records request?](#)

[What should I do if I receive a public records request?](#)

[Are faculty records considered public records?](#)

[Are records of the faculty required to be disclosed in response to a public records request?](#)

[Is there any basis in the CPRA to exempt academic research and scholarly records?](#)

[How should I respond to notice from the Information Practices Coordinator that my records have been requested?](#)

[How should I manage my electronic communications in light of the potential obligation to disclose public records in the future?](#)

[How are the federal Freedom of Information Act procedures different?](#)

1. Introduction

UC Davis is committed to fostering an environment that allows its academic community to conduct teaching and research activities in accordance with the highest standards of academic freedom. Academic and intellectual freedoms are fundamental to an educational and research institution and its mission of producing and disseminating knowledge.

[Article I, Section 3\(b\)](#) of the California Constitution provides that the writings of public officials and agencies shall be open to public scrutiny. This right of access to public records is codified in California law as the California Public Records Act (“CPRA”), which is located in the California Government Code at [section 6250](#) et. seq. As a state institution, the University of California, including the Davis campus, must comply with the legal mandates of the CPRA, a law that requires state agencies to make public records available for inspection and disclosure to the public upon request, unless those records are exempted by law.

2. What is a public records request?

A public records act request is a request submitted to a state agency asking to review or receive copies of specific records. Under the CPRA, when a request for a copy of records has been made

to the University of California, the University must promptly make requested records available unless an exemption applies.

3. What should I do if I receive a public records request?

Do not respond to the records request yourself. Instead, you should immediately forward the request to the Information Practices Coordinator by email to PublicRecords@ucdavis.edu so that a response can be provided to the requestor within 10 days of receipt, as the law requires. If you have questions or concerns about the request, you are also welcome to call the Office of the Campus Counsel at 530-754-6295. Once a request has been received, it is critical that all potentially responsive records be preserved and not deleted or destroyed.

4. Are faculty records considered public records?

UC Davis is a State of California public institution, and therefore is subject to the CPRA. The campus must disclose records “relating to the conduct of the public’s business” when requests for specific records are submitted, unless an exemption applies that protects the records from disclosure.

A “public record” under the CPRA is “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” This definition includes records maintained as paper hard-copies, electronic files, photographs, drawings, audio recordings, handwritten notes, and any other tangible forms that a record may take. A faculty member’s notes, emails, text messages, research documentation including laboratory notebooks, spreadsheets, reports, etc., as well as University-related correspondence, may all fall within the definition of a public record for purposes of the CPRA. Unless an exemption applies, a faculty member’s records are subject to disclosure to the public.

Certain types of records of the faculty are likely to be considered related “to the conduct of the public’s business” and therefore “public records.” Examples include: (i) communications with third parties not encompassed in the faculty member’s research programs or independent scholarly activities; (ii) participation in shared governance; (iii) service on University committees; (iv) conduct in the separate capacity as departmental Chair or other University administrator, and other similar activities.

Email or other communications that are wholly personal in nature do not relate to the conduct of University business and, therefore, are not “public records.” Any communications deemed wholly personal in nature are not subject to disclosure. For example, non-University-related communications with a faculty member’s parent, spouse, sibling or friend (who is not a colleague) would be deemed wholly personal and not “public records,” even if stored on a University network or computer.

5. Are records of the faculty required to be disclosed in response to a public records request?

As with any other requested records, faculty records must be reviewed and individually assessed to determine first whether they are public records, and second whether there are any exemptions that would apply. If a public record is subject to an exemption, disclosure is not required.

California Government Code [section 6254](#) lists the applicable exemptions to the California Public Records Act. The most common exemptions that apply to requests for faculty records include:

- Section 6254(c) exempts personnel records, medical records, or similar confidential personal files where disclosure would create an unwarranted invasion of personal privacy. Records related to employee compensation, however, are subject to disclosure.
- Section 6254(k) exempts records that are confidential and protected from disclosure under other applicable state or federal laws. For example, student records are confidential and protected from disclosure under the Family Educational Rights and Privacy Act (FERPA), and communications between Campus Counsel and University officials which fall within the attorney-client privilege in California Evidence Code [section 950](#), et seq., are confidential and protected from disclosure. Additionally, a trade secret privilege (Evidence Code [sections 1060](#), et seq.) protects information that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

6. Is there any basis in the CPRA to exempt academic research and scholarly records?

The CPRA does not have a specific statutory exemption for academic research or scholarly records. California Government Code [section 6255](#), however, provides that the government may “justify withholding any record by demonstrating that ... on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” This is commonly called the “balancing test” or the “catch-all” exemption.

In a lawsuit testing this issue, UC Davis successfully protected from disclosure unpublished data and researchers’ communications about their research under section 6255. The case went to the California Court of Appeal and is a seminal case in California law protecting academic research and scholarly records. The case is called [*The Humane Society of the United States v. The Superior Court of Yolo County*](#). The University of California Office of the General Counsel provides the following [summary](#) of this case to researchers throughout the University of California system.

In the *Humane Society* case, the California Court of Appeal affirmed that records relating to the funding, preparation, and publishing of a UC Davis research study were exempt from disclosure under the CPRA. The Humane Society filed a petition to compel disclosure of some 3100 pages of documents, including email correspondence between researchers, held by the University’s Agricultural Issues Center (AIC). The AIC had recently published a study on the projected economic effects of the Prevention of Farm Animal Cruelty Act, a state ballot proposition.

After reviewing the documents, the trial court found that none of the records showed that the egg or poultry industries had improperly influenced the study. Relying upon section 6255, which provides for a “balancing test” between the public’s right to know and the public’s interest in University confidentiality, the court protected all but 28 pages of the records from disclosure. Specifically, the court held that the public interest in promoting research on important social issues “clearly outweighed” any benefit the public might receive from gaining access to the remaining documents.

Upholding the trial court decision, the Court of Appeal emphasized that disclosing scholarly research communications would have a chilling effect on the candid and objective analysis of controversial social issues in the academic setting – and that such analysis benefits the public. In applying the CPRA’s balancing test, the Court gave special consideration to two particular features of the research community’s methodology. First, academic researchers often send brief, informal emails containing “midstream thinking” that the public could easily misunderstand if read out of context. Second, academic studies like the AIC’s are exposed to extensive peer review and scrutiny prior to publication, so public disclosure is not needed to ensure their objectivity.

In reaching its decision, the Court relied heavily on the declaration of the Director of the AIC, who testified about the harm that the release of such data and communications would have on the ability of the Center to carry out its mission, which depends on the cooperation of community advisors, research collaborators, and farms who provide highly confidential financial data. The Court found the declaration sufficiently authoritative to conclude that the risk of harm to the scholarly research process was not merely speculative, but rather was a real harm that must weigh heavily against public disclosure.

7. How should I respond to a notice from the Information Practices Coordinator that my records have been requested?

The Information Practices Coordinator within the Office of Campus Counsel coordinates all responses to CPRA requests in order to ensure that the campus meets the necessary legal requirements in responding to requests.

Faculty who receive requests directly are strongly encouraged to consult with the Information Practices Coordinator to assist in responding to requests.

a. How are decisions made with respect to determining whether records are exempt from disclosure?

The Information Practices Coordinator closely consults with the faculty member and/or academic researcher, Campus Counsel, and as appropriate, with academic leadership (e.g. chair, dean, academic senate, provost) to determine potential application of exemptions under the CPRA.

b. What happens if there is a dispute with the requestor as to the application of an exemption?

If the requestor disagrees with the University’s determination that an exemption applies, the CPRA allows the requestor to sue the University (but not individuals) to compel disclosure. In

such a lawsuit, the University is the party to the lawsuit, not the faculty member or the individual academic researcher.

c. What protocol does the Information Practices Coordinator follow in responding to public records requests that deal with academic and research related records?

The Information Practices Coordinator will immediately notify specific faculty members and academic researchers identified in requests for records. The faculty members will be asked to review what is requested to determine if responsive records exist, and if so, to share any concerns they may have about public disclosure of those records. If there are any concerns that the release of specific records would potentially infringe on principles of academic freedom, freedom of expression, or freedom of association, the Information Practices Coordinator will closely consult with the faculty member or academic researcher and Campus Counsel, and as appropriate, with academic leadership (e.g. chair, dean, academic senate, provost) to determine potential application of the exemptions under the CPRA.

Once responsive documents have been gathered and provided to the Information Practices Coordinator, the records will be reviewed and any exempted information contained within the records will be redacted. Records prepared for public release will then be sent back to the faculty member or academic researcher for review prior to release. After any additional necessary consultation with the faculty member or academic researcher, the records will be disclosed to the requestor.

d. Should I create a record to respond to a CPRA request?

No, the CPRA does not require public entities to create a record that did not previously exist. On occasion the University may elect to create a record to provide explanation or context, compile data, or generate a report that did not otherwise exist. This should only be done in close coordination with the Information Practices Coordinator, because even in draft or email form, once a record is created, it may be subject to disclosure.

e. Who should I contact if I have any additional questions?

If faculty members or academic researchers have any questions or concerns regarding the disclosure of their records, they should contact the Information Practices Coordinator at PublicRecords@ucdavis.edu or call (530) 754-6295.

8. How should I manage my electronic communications in light of the potential obligation to disclose public records in the future?

Although electronic resources may be used for incidental personal use, it is best not to include any personal communications on a University email account or to store personal records on a University system. Use a personal email account for personal matters. If you use a personal email account or computer for University-related activities, including forwarding University emails to the personal email account, the records are still likely to be considered “public records” and therefore to be subject to disclosure.

When communicating by email consider the following:

- a. **Limit addressees**
- To: only those who need to take action or are leading the effort
 - CC: only people who need to be informed
 - Remember: if people are included on the email address list, their records may be subject to CPRA requests
 - Caution: “Reply All” – Before using, decide that all recipients need the response.
- b. **Use a descriptive subject line**
- If the email dialogue changes into another subject matter, start a new email with a new subject line.
 - If the email string is relevant to the new subject, modify the subject line to reflect the new subject.
 - If the email is attorney-client privileged, include that in the subject line. Merely copying a University attorney is not sufficient to make a communication attorney-client privileged. To be privileged, the communication must seek or provide legal advice.
- c. **Limit the scope of the content**
- Keep all messages short and on point.
 - Only include relevant portions of prior emails in new emails to prevent lengthy email strings. This has the following effects: (1) easier for recipients to read; and (2) aids review and redaction.
- d. **Limit personal and sensitive information**
- Do not include names, addresses, phone numbers, email addresses or other identifying information in the body of the email except as needed.
- e. **Remember that University records stored on other types of media are subject to the same legal obligations**
- Voice messages
 - Calendar entries
 - Emails copied to calendars
 - Department websites
 - Text messages
 - Social networking sites and YouTube
- f. **Have a retention and disposal practice that makes good business, educational or research sense**
- If you need to keep a communication for future purposes, keep it.
 - If you do not need to keep communications, routinely dispose of them.

- If you have drafts that are intended to be replaced by a final report, routinely dispose of any unneeded drafts.
- Remember that special rules for preservation of records apply when a notice to preserve evidence has been received. The duty to preserve evidence arises when there is pending litigation or such litigation is reasonably anticipated. Any routine disposal practice must be halted when evidence preservation is required.

9. How are the federal Freedom of Information Act procedures different?

The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., is a federal law that applies to federal, not state, agencies. It requires federal agencies to make documents available to the public, including documents that federal agencies may have obtained from UC Davis. The law provides certain exemptions set forth in 5 U.S.C. § 552(b). Because UC Davis is not a federal agency, it is not subject to FOIA requests, but UC Davis’ records may be disclosed by a federal agency that holds such records (e.g., NIH, NSF, and other federal agencies that award grants). FOIA officers for a federal agency will contact UC Davis faculty (i.e. the principal investigator) prior to releasing a copy of their grant to a requesting party; they will ask the PI to either (a) approve the release of their grant in its entirety, or (b) indicate what portions of the grant should be withheld as proprietary. Faculty who receive a communication from a federal agency about a FOIA request for their records may contact PublicRecords@ucdavis.edu if they have questions.