

The disclosure of W-2 information to TALX was permissible pursuant to the IPA provision that permits disclosure internally to University employees and agents with an official need to know the information.

Civil Code Section 1798.24(d) permits disclosure of personal information (without the individual's consent):

"To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired."

In this case, TALX is acting as the University's agent for purposes of providing this tax service to the University's employees, and that the disclosure meets the "relevant and necessary" and "related to the purpose for which it was collected" standards.

The University itself could have performed this service, but instead decided to contract with an outside vendor to provide the service, with TALX functioning as the University's agent for this purpose. The University frequently releases personal information to outside vendors functioning as the University's agent, such as mailing houses or outside legal counsel. The information was necessary and relevant for TALX to perform the function as assigned by the University. The disclosure was also "related to the purpose" for which the information was collected, because it is directly related to the reporting of the employee's tax information. (Note also that the "related to the purpose" provision has been interpreted by a now-defunct state agency that was then in charge of enforcement of the IPA to broadly encompass virtually all legitimate University purposes. See pages 12-13 of the guidance document available at:

[http://wwdms2.water.ca.gov/imaging/files/Information\\_Practices\\_Act.pdf](http://wwdms2.water.ca.gov/imaging/files/Information_Practices_Act.pdf)

Some Davis employees have criticized the disclosure to TALX as a violation of the Electronic Communications Policy, particularly Section IV.C.1.c, "Privacy and Confidentiality," which reads in its third paragraph:

"In no case shall electronic communications that contain personally identifiable information about individuals ... be sold or distributed to third parties without the explicit permission of the individual."

This provision can be read in context online at:

<http://www.ucop.edu/ucophome/policies/ec/html/pp081805ecp.html#PRIVACY>

Section IV.C.1.c is not applicable to the W-2 information that was disclosed to TALX. Section IV.C.1.c applies to "Electronically Gathered Data." This provision does not appear to apply generally to all records maintained by the University that contain personal information. Section IV.C.1.a deals with such general records, and indicates that the privacy of electronic records is governed by the privacy protections of the Information Practices Act and the University's guidance on implementing the IPA, just like any paper records would be. Section IV.C.1.c, on the other hand, appears to apply specifically to "Electronically Gathered Data," which is not

defined in the ECP, but by the context of Section IV.C.1.c appears to generally refer to information submitted by individuals voluntarily during an electronic communications transaction, or transactional information that is automatically collected during such an electronic communications transaction, such as "cookies."

The W-2 information was not collected as part of an electronic communications transaction, and is not the type of "Electronically Gathered Data" that was intended to be governed by this provision. Rather, the disclosed information was an electronic record containing personal information, governed by Section IV.C.1.a, and by the IPA analysis described above. The W-2 information resides in University databases, and was not "electronically gathered" in any relevant sense. The employee did not provide the information as part of an electronic communications transaction, whether voluntarily or non-voluntarily; rather, the information was created and maintained in an electronic format by the University. It would render Section IV.C.1.a meaningless if Section IV.C.1.c were interpreted to include all University electronic records containing personal information; it would also require a very strained reading of the language in Section IV.C.1.c, which has been quoted out of context by some employees.

Even if it were applicable, Section IV.C.1.c arguably would not prohibit the disclosure to TALX even under its own terms, because it only prohibits the disclosure of "electronic communications," defined in Appendix A of the ECP as:

"Any transfer of signals, writings, images, sounds, data or intelligence that is, created, sent, forwarded, replied to, transmitted, distributed, broadcast, stored, held, copied, downloaded, displayed, viewed, read, or printed by one or several electronic communications systems. For purposes of this Policy, an electronic file that has not been transmitted is not an electronic communication."

While this definition is drafted quite broadly, it was clearly not intended to cover all electronic records held by the University (see the last sentence). The Electronic Communications Policy is essentially intended to address individual electronic communications transactions, such as email and internet access. This definition would exclude the W-2 information (and other similar University records that happen to be held in an electronic format), as the W-2 information has no relationship to any individual electronic communications transaction.