



OFFICE OF THE ACADEMIC SENATE
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DAVIS, CALIFORNIA 95616-8502
TELEPHONE: (530) 752-2231

February 9, 2007

Robert C. Dynes, President
University of California
1111 Franklin Street
Oakland, CA 94607-5200

Dear President Dynes:

The faculty at UC Davis is deeply concerned about recent transmissions of sensitive financial and personal data about employees to a third party company without explicit permission of the individuals affected. This action appears to us to be a violation of University Electronic Communications Policy and ethical standards advocated by UC. At the February 5th, 2007, meeting of the Representative Assembly of the Davis Division of the Academic Senate, the following motion regarding W2 data transmitted to TALX by the administration of the University of California was approved by unanimous vote:

"We demand that all of these files be expunged immediately and any subsequent request be on an opt-in basis only, after appropriate Senate consultation."

The administration has given the Davis Division of the Academic Senate an unsatisfactory and superficial response that does not resolve the core of this very serious matter. The issue has at least two important aspects that we ask you to consider:

- 1) We believe that the action violates University Policy. The University's Electronic Communications Policy, Section IV, "Privacy and Confidentiality," item c, paragraph 3, states: "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." The email of December 18, 2006 (attachment 1) clearly defines TALX as a vendor. The administration has addressed this concern with an evasive and obscure definition of what "electronic communication" is. The explanation defies common sense and surely does not pass the "smell test" described in the ethics briefing that faculty recently have taken at the direction of the Regents.
- 2) We argue that the administration should discontinue these practices pursuant to such clearly articulated strong opposition from the faculty. Both administration and faculty are best served if the administration does not develop a reputation (internal or external) for deliberately and forcefully acting in direct opposition to the wishes of the faculty in matters that pertain to personal and sensitive information.

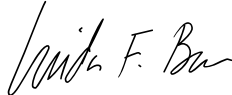
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We therefore reiterate our position stated in the unanimous resolution of the UC Davis Representative Assembly.

For your information, attached is a compilation of e-mail communication to the Davis Division concerning the period to prevent inclusion of personal information to TALX; aka. "opt out" (attachment 1). In addition, a compilation of faculty concerns regarding this issue (attachment 2). The issues raised by the faculty will be forwarded to Academic Council and to other systemwide committees.

Sincerely,



Linda F. Bisson

Professor of Viticulture & Enology

Chair of the Davis Division of the Academic Senate

Attachments:

1. E-mail communication to members of the UC Davis community
 2. List of Faculty Concerns
- c: Chancellor Vanderhoef (w/attachments)
Provost Hinshaw (w/attachments)
Senate Chair Oakley (w/attachments)
Academic Council (w/attachments)

Attachment 1:

Date: Mon, 18 Dec 2006 08:18:57 -0800 (PST)
Message-Id: <200612181618.kBIGIvtx008563@pop14.ucdavis.edu>
MIME-Version: 1.0
From: Cindy Jones <cynjones@ucdavis.edu>
To: All UC Davis Employees;;
Subject: Electronic W-2 Statement on UC's At Your Service Website
X-Approved-BY: Stan Nosek <senosek@ucdavis.edu>, Gina Anderson
<gina.anderson@ucdavis.edu>
Content-Disposition: inline
Content-Type: text/plain
Content-Transfer-Encoding: 7bit
X-Scanned-By: MIMEDefang 2.57 on 128.120.32.33
Status:

Dear Colleagues:

You may now elect to receive your 2006 W-2 form electronically, in lieu of a printed paper copy. This new service is provided as part of the University of California employee self-service web application, At Your Service Online (AYSO). The new functionality will allow you to view and print your 2006 W-2 statement at your convenience.

By default, you will receive a printed, paper copy of your 2006 W-2 form unless you elect to change to an electronic format. To change your delivery method, login to <https://atyourserviceonline.ucop.edu/ayso/> and choose the 'Select Delivery Method' sub-menu option from the W2 menu. You will be presented with a new screen that allows you to select your delivery method.

You may change your delivery method as many times as you want up to January 1, 2007. Please note that you must have an email address on file at AYSO before you can select the electronic delivery method.

Additionally, the University of California has contracted with a vendor named TALX Corporation to provide you with enhanced W-2 tax services. This service provides the ability for you to electronically download your W-2 data directly into one of several popular tax preparation software packages, such as TurboTax, etc. In order for this to occur, the University of California transmits your W-2 data securely to TALX Corporation at tax time. If you do not want your tax information transmitted to TALX Corporation, you can choose to block the transmission of your data. See below for additional information on TALX services.

TALX W-2: Features and Services -Quick Facts

Cost: Free

Convenient: Tax preparation software calculates refunds or taxes owed, explains complex tax provisions and assists users in filing with the appropriate taxing authorities. These software packages record and store the values from the W-2 Statements. You do not have to key in any values. You will first need to purchase a Tax Preparation software product and initiate the download from within the software application. You can download W-2s directly from W-2 express into:

Turbo Tax
TaxCut
ezTaxReturn.com
Complete Tax

Safe and confidential: The University of California employs information protection controls in keeping with industry standards and practices. We make extensive use of Secure Sockets Layer (SSL) encryption, the Internet's leading encryption standard, as well as password-like identifying information. SSL is used to encrypt information to protect data from eavesdropping, tampering, or forgery over the Internet and we encrypt the transmission of all personal or financial information transmitted between our servers and TALX Corporation.

Privacy: TALX Corporation agrees to hold Confidential Information received from or created on behalf of the University of California in strict confidence. TALX has agreed to develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all Confidential Information. TALX will not provide any of your information/data to any other party without the prior express written permission of the University of California or as otherwise provided under the terms of the vendor contract and Agreement.

Questions and Answers:

WHAT IF I DON'T WANT MY INFORMATION SENT TO TALX?

You may elect to BLOCK the transmission of your W2 data to TALX Corporation.

To block your transmission, simply select the "NO" response to the question, "Do you wish to allow your data to be sent to this vendor?" To allow the transmission of your data, you would select the "YES" response to the question.

WHERE CAN I LEARN MORE ABOUT TALX CORPORATION?

For further information on TALX Corporation, please refer to the following links:
<http://www.talx.com> or <http://www.w2express.com>

For questions concerning problems with accessing the AYSO site, call UC Customer Service at (800) 888-8267. For questions about this new option, please call your Payroll Services representative.

Best regards,
Cindy

Cindy Jones, Manager - Payroll Services University of California,
Davis Accounting & Financial Services
Phone: 530.757.8542
Fax: 530.757.8597
Date: Wed, 20 Dec 2006 15:00:03 -0800 (PST)
Message-Id: <200612202300.kBKN03VM020558@pop14.ucdavis.edu>
MIME-Version: 1.0
From: Penny Knutson <plknutson@ucdavis.edu>
To: All UC Davis Employees;
Subject: Extended Deadline for Electronic W-2 Statement on UC's At Your
Service Website
X-Approved-BY: J Mike Allred <jmallred@ucdavis.edu>
Content-Disposition: inline
Content-Type: text/plain
Content-Transfer-Encoding: 7bit
X-Scanned-By: MIMEDefang 2.57 on 128.120.32.34
Status:

Dear Colleagues:

Your election to receive your 2006 W-2 form electronically, in lieu of a printed paper copy has been extended to noon on January 10, 2007, due to the holidays and vacations scheduled during this time.

The goal of the University's At Your Service committee is to provide electronic options for self-service for those who may wish to use them. Many employees prefer the option to handle their personal business themselves without going through a departmental administrative person. The ability to consider options and make choices in the privacy of one's home, at any hour of the day or night, is clearly the preference for many. Each campus annually receives hundreds of requests for electronic services, particularly those that are compatible with tax software. Our colleagues at UC San Diego have used the TALX service for 5 years with great success and a number of other campuses did it last year.

However, we agree; choosing to select electronic options is a personal choice that each UC employee must weigh and make for themselves. We absolutely respect those who may have concerns; the option NOT to participate was critical to the selection committee.

If you choose NOT to have your W2 data sent to TALX you MUST OPT OUT no later than noon on January 10, 2007.

To OPT OUT: Login to the AYSO website:
<https://atyourserviceonline.ucop.edu/ayso/>

Release of University of California Davis Employee W2 Forms to TALX Corporation

Introduction

In January 2007, the W-2 forms of all UC Davis employees were automatically sent to a third party vendor, TALX Corporation, unless they chose to opt out. A similar practice may be in place at other UC and CSU campuses.

Internal UC Davis Privacy Policy

This action is in clear violation of the UC Davis Electronic Communications Policy, Section IV, "Privacy and Confidentiality," item c, paragraph 3 which states:

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.

Further Release of W-2 Information by TALX

Although the University and TALX stress their privacy safeguards, it is important to note that TALX only guarantees that it will not release the information further without authorization by the University of California. The approval of the individual is **not** required.

UCOP/UCD Response to Inquiry by Faculty - 1

The initial response to faculty inquiries was this:

The UC Office of the General Counsel has confirmed that neither the Information Practices Act nor the University's Electronic Communications Policy have been violated by the UC sending W-2 data to TALX.

Upon further inquiry into how the release of private information without explicit consent does not violate a policy which states that under no circumstances can private information be released without explicit consent, the General Counsel indicated that:

W-2 information held in an electronic file is not an electronic communication subject to ECP.

UCOP/UCD Response to Inquiry by Faculty - 2

Many UCD faculty are puzzled and concerned that the UC Office of the General Counsel seems to be more interested in defending the right of TALX Corporation to their data than protecting the privacy of the faculty. Shouldn't it be the other way around?

How Widespread is this practice? How has it been implemented?

Unknown. According to a May 2006 UCOP report, four campuses have subscribed to TALX. Communications from the UCD administration assert that six campuses may have TALX in place.

Why is the University of California doing this?

Unknown. These actions are not only in violation of local privacy policy on the Davis campus, but also run counter to the good privacy practices briefings and documents at State of California and UC web sites. They are also potentially in violation of state law, specifically the California Information Practices Act (IPA). See below. There appears to be an enormous down-side in terms of employee discontent, embarrassment and legal action against the university. The recent unanimous resolution of the UCD Academic Senate condemning this act is a measure of the intensity of faculty opinion. What is the benefit? As mentioned above, we find the motivation and actions of the University and its General Counsel in this matter extremely difficult to fathom.

In Which Direction is the Money Flowing?

Unknown. Is UC paying TALX to provide this service? If so, how much and why? Does it result in any cost savings to the University, eg fewer HR employee positions? Is TALX paying UC to acquire this information?

Who is in Charge of Approving these Actions?

Unknown at present. The fact that only some of the campuses are involved with TALX suggests that some of the decision making is on the campus level.

University of California Implementation of the California Information Practices Act

The California Information Practices Act of 1977 (IPA - California Civil Code Section 1798 et seq.) protects the access, maintenance, and dissemination of information about individuals. The University of California's implementation of the IPA is expressed in policy in Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information", July 1, 1992. The Sample Rules of Conduct in RMP-8 clearly state that UC employees shall comply with the provisions of the IPA. RMP-8 also states that, concerning the California Information Privacy Act:

The provisions of these laws as applicable to the university are the minimum requirements for developing University policies and procedures, and for dealing with the right of public access to information and the right of privacy of individuals.

The IPA is a complex piece of legislation, as opposed to the simple and clear UCD privacy policy. Lawyers will no doubt argue whether there is some loophole which exempts the release of UCD W-2 information to TALX. However, it is interesting to note that UC and Cal State alumni associations were sufficiently concerned that release of alumni names and addresses to credit card issuers without prior consent was in violation of the IPA, that a special bill (SB569) was passed to make it legal. Presumably distribution of earnings and social security numbers on W-2 forms would be an even more serious violation of the IPA than names and addresses. Indeed, one provision of SB569 states:

(e) This section shall not be construed to authorize the release of any social security numbers.