

Faculty Resource Guide for California Public Records Requests

What is this guide, why do I need it, and how do I use it?

Because UCLA is a state institution, its public records, including the public records of 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. Sometimes, requests for records are made of UCLA or individual faculty members. This guide: (1) provides information on the CPRA; (2) explains what public records are, what types of records are exempt from disclosure under the CPRA, and how UCLA faculty should respond to CPRA requests for records; (3) suggests how faculty should manage their electronic records in light of the CPRA; and (4) is organized as an FAQ page. Just click on a link below to be taken to the appropriate explanatory section. In addition to the information provided on this page, links to other sources of information and guidance may also be found below.

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1. What is a Public Records Request?

The California Public Records Act ("CPRA"), "mindful of the right of individuals to privacy," declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=06001-07000&file=6250-6270>.

Unless an exemption applies, when a request for a copy of records is submitted to a state agency, the agency is required to make the records available to the requestor promptly.

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

Do not respond to a records request yourself. As requests for public records must generally be acknowledged within 10 days of receipt, immediately forward the request to Public

Records Request Services or contact the Records Management and Information Practices Office at (310) 794-8741. If you have concerns or questions about the request, you may also contact the Office of the Campus Counsel at (310) 206-6985. No records responsive to the request should be destroyed while the request is pending.

3. Are records of the faculty considered to be public records?

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

A “public record” is broadly defined to include any “writing” (which includes any tangible recording such as hard-copy or electronic records, photographs, audio recording, handwritten notes, etc.) that relates “to the conduct of the public’s business,” and which is “prepared, owned, used, or retained” by the University.

Certain types of records of the faculty are likely to be deemed to be related to the “conduct of the public’s business” and hence “public records.” These records include: (i) communications with third parties not encompassed in the faculty member’s research programs or independently 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.

Communications relating to a faculty member’s individual research or development of individual courses arguably should not be deemed to “relate to the conduct of the public’s business” as these communications are deemed to be the independent scholarly effort of the faculty member. See *Report by Senate-Administration Taskforce on Academic Freedom* [link to be provided]. This issue, however, has not been decided by a California court.

Records of personal communications: Email communications that are wholly personal in nature do not relate to the conduct of university business and, thus, are not “public records.” Thus, any communications deemed wholly personal in nature are not subject to disclosure. For example, non-University-related communications with a faculty member’s healthcare provider, or communications with a sibling who is not a colleague, would be deemed wholly personal and not a “public record,” even if stored on a University network or computer. However, please see guidance on recommended practices for use of University networks and computers.

Although a record may be a “public record,” there are exemptions to the disclosure requirement. See [link to FAQ 4(d)].

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

The types of records requested must be individually assessed to determine first whether they

are public records, and second whether there are any exemptions that apply. [See link to 5(a) below for an explanation of who conducts this assessment]. If a public record is subject to an exemption, disclosure is not required.

There are many exemptions in the CPRA, [see Cal. Gov. Code Section 6253, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=06001-07000&file=6250-6270>], but the categories of most common “public records” of faculty that may be exempt from disclosure are as follows:

- a. **Student Records:** The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and 34 CFR Part 99, requires the university to keep confidential all personally identifiable information in education records related to students. This prohibition on disclosure by federal law exempts such records from disclosure under the CPRA. Cal. Gov. Code § 6254(k). Records, including emails, relating to students or student work are generally exempt, in whole or in part.
- b. **Personnel matters and records protected by personal privacy:** Records containing personnel, medical, or other information are exempt from disclosure *when disclosure would constitute an unwarranted invasion of personal privacy*. Cal. Gov. Code §6254(c) and (k). Records that are protected by personal privacy interests must be balanced against the public interest in disclosure. If disclosure would result in an unwarranted invasion of privacy that is not outweighed by the public interest in disclosure, the records would be exempt from disclosure.
 - i. **Example:** Communications about faculty evaluations, merit, and promotion are considered to be personnel records that may be subject to exemption when disclosure would constitute an unwarranted invasion of personal privacy. However, records of faculty compensation, including salary history, are required to be disclosed. See UC policy on public disclosure of Compensation information.
<http://policy.ucop.edu/doc/4000383/CompPublicDisclosure>
- c. **Information Protected by Other Laws:** Records that contain confidential, proprietary, or other privileged information that is protected from disclosure pursuant to federal or state law are exempt from disclosure. Cal. Gov. Code §6254(k). Examples: Attorney-client privileged communications, records containing trade secrets, patient information protected under HIPAA, etc.
- d. **Communications as Scholars:** Communication with colleagues, students, staff, or other collaborators about research or relating to the development of courses may be exempt from disclosure, pursuant to federal and state law, because the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure, *see* Cal. Gov. Code §§ 6254(k), 6255. Specifically, disclosure of such records could impair the academic research process by impeding candid and informal communications. Such a chilling effect would result in significant harm to the public

interest—a more significant harm than any potential benefit to the public in disclosure. As reflected in the Report of the Senate-Administration Taskforce on Academic Freedom, [include link here], the UCLA Senate has explicitly set forth the rationale for exemption of these records, which includes the recognition that scholars must be afforded privacy in their communications to pursue knowledge, develop lines of argument without fear of reprisal for controversial findings, and without the premature disclosure of those ideas and theories. The protection of academic freedom is the fundamental foundation of the University of California. See, University of California Academic Personnel Manual 010, <http://www.ucop.edu/acadpersonnel/apm/apm-010.pdf>. Thus, scholarly communications could be exempt from disclosure.

5. How should I respond to notice from the Records Management and Information Practices Office (RMIP) that my records have been requested?

RMIP is the office responsible for managing and responding to public records requests, so you are required to respond to its request.

- a. When RMIP informs you that your records have been requested, you should carefully review the request to determine if you have the records and to raise any concerns you may have as to the appropriateness of disclosing such records. If you believe the records sought are not “public records,” (add link to question 2) or are exempt from disclosure (add link to question 3), you should immediately notify RMIP. RMIP will consult with the Office of the Campus Counsel, you, the Chair of your Department, and as appropriate, with the Vice Chancellor for Academic Personnel and Chair of the Academic Senate to assess whether the records are subject to disclosure.
- b. If a determination is made that the records are public records that are not protected by any exemption, you should immediately begin searching for the responsive records. Importantly, the obligation to disclose records rests with the University, not with the faculty or staff whose records are sought. Thus, it is the University administration, through the RMIP after appropriate consultation, that makes the determination of whether and what records must be disclosed. Once that determination is made, you must assist in obtaining the responsive records.
- c. Notify the RMIP whether you have the requested disclosable records.
- d. Forward copies of the requested records to RMIP. Do not provide RMIP with your original records. Send the records to RMIP (a) as email attachments to Public Records Request Services, or (b) via intercampus mail to 10920 Wilshire Boulevard, Suite 530, Los Angeles, CA 90024-6541.
- e. You are not required to, and should not create records that do not otherwise exist in hardcopy, electronic or some other form. Note: the Campus may be required to

compile data or to construct a computer report to extract data that is only maintained electronically, such as in a database. Should that be required in order to produce the requested information, you should notify RMIP of this requirement and the estimated time and effort that you expect would be involved in extracting this type of record.

6. What happens if there is a dispute with the requestor as to whether the records are subject to disclosure?

The University administration, after due consultation *see* [link to FAQ 5(a)], determines whether a record must be produced in response to a public records request. If the requestor disagrees with that determination it may seek a supplemental response, or file a court action seeking to compel the University to produce the requested records.

7. What happens if the requestor files a lawsuit to compel production of the records?

In any court action to compel compliance with the California Public Records Act, the University, not the faculty member, is the party to the lawsuit. The cost of litigating such a lawsuit is not covered by any liability insurance program, so the UCLA campus would be responsible for the litigation defense costs. Importantly, in any such lawsuit, if the requestor is deemed to be the prevailing party, the University may be required to pay for the reasonable attorney's fees incurred *by the requestor*. This additional expense would also be borne by the UCLA campus. Because of the strong campus interest in protecting academic freedom and supporting UCLA faculty, the Chancellor's Office has agreed to be responsible for all of the legal expenses.

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, the records are still considered to be "public records" and are subject to disclosure.

When communicating by electronic communications 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" – Don't use this without first deciding 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, included 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.
 - Easier for recipients to read.
 - Aids review and redaction.
- D. Limit Personal and Sensitive Information.
- Don't include names, addresses, phone numbers, email addresses or other identifying information in the body of the email.
- E. Remember that other electronic devices are subject to the same 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 legitimate reasons, keep it.
 - If you do not need to keep communications, routinely dispose of those records.
 - 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. For more information, see <http://www.campuscounsel.ucla.edu/discovery.html>.

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 UCLA. The law provides certain exemptions set forth in 5 U.S.C. § 552 (b), <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section552&num=0&edition=prelim>. Because UCLA is not a federal agency, it is not subject to FOIA requests, but UCLA’s records may be disclosed by a federal agency that holds such records.

Some of the exemptions that may apply to faculty records held by a federal agency include records that are specifically exempted by statute, trade secrets and proprietary information, personnel, medical and other records the disclosure of which would be an invasion of personal privacy, and information compiled for law enforcement where release could affect health and safety. Unlike the California Public Records Act, however, there is no exemption to disclosure obligations if the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure. If a federal agency receives a FOIA request that includes records that UCLA’s faculty might deem proprietary, the agency will typically notify the affected faculty member of the request so that the faculty member can provide input. The decision as to disclosure, however, remains with the federal agency. If a faculty member receives such notice from a federal agency, he or she may seek assistance from the Office of the Campus Counsel at (310) 206-6985.