Dear Professors,

Attached please find a report of the joint Senate-Administration Taskforce on Academic Freedom, which was convened in the 2011-12 Academic Year. I have also attached the charge letter for the committee. That taskforce’s mandate was to:

"1) Draft a statement for the Chancellor’s review and approval reiterating the values underpinning academic freedom, including how these values affect the University and broader community, and the need to assess our legal obligations in light of these principles.  
2) Provide guidelines that can be disseminated to faculty to educate them on their obligations under the California Public Records Act and on what steps to take to better protect the privacy of their electronic communications. 
3) Identify campus stakeholders who could or should be convened to address specific problems or threats when they arise" (Waugh and Leuchter; 12-06-2011).

At the request of Academic Senate Chair Linda Sarna, I ask that you review the report and any recommendations it makes with your committees. Responses are most helpful when they include a clear statement of support, a statement of support contingent upon stated revisions, or opposition to the report. You may also decline to opine or simply raise no objections.

Please respond to me by January 17, 2013, so that the Executive Board may review all the responses and synthesize a single campus response at its meeting on January 24, 2013.

Thank you,
Jaime

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Jaime Ronaldo Balboa, Ph.D.
Chief Administrative Officer, UCLA Academic Senate
www.senate.ucla.edu

T. (310) 825-3852
F. (310) 206-5273
December 6, 2011

Senior Campus Counsel Amy Blum  
Vice Chancellor Carole Goldberg  
Professor Barbara Herman  
Professor Matthew Kahn  
Professor Ann Karagozian  
Associate Professor Christopher Kelty  
Associate Professor Mark Sawyer  
Professor in Residence David Teplow

Dear Colleagues:

A number of universities have recently been the target of public records requests for disclosure of faculty members’ scholarly communications. Many of these requests have narrowly focused on e-mails, but others have been quite broad, encompassing reports, transcripts, and other academic materials. This recent spotlight on the potential chilling effect of such requests has raised new questions about academic freedom and its intersection with public institutions’ legal obligations to conduct business transparently. Such public records requests will continue to occur, and the concern about potential impingement on academic freedom is likely to arise with increasing frequency due to our widespread use of technology for communication and collaboration.

We are writing to ask you to serve on a joint Administration-Senate Academic Freedom Task Force charged with helping the Chancellor and our faculty adequately prepare to respond to such situations. Specifically, we ask the Task Force to accomplish three tasks:

1) Draft a statement for the Chancellor’s review and approval reiterating the values underpinning academic freedom, including how these values affect the University and broader community, and the need to assess our legal obligations in light of these principles.

2) Provide guidelines that can be disseminated to faculty to educate them on their obligations under the California Public Records Act and on what steps to take to better protect the privacy of their electronic communications.

3) Identify campus stakeholders who could or should be convened to address specific problems or threats when they arise.

We are pleased and appreciative that Carole Goldberg, Vice Chancellor for Academic Personnel, and David Teplow, Chair of the Academic Freedom Committee of the Academic Senate, have agreed to co-chair the Task Force. We ask for a first draft of the statement for the Chancellor by March 1, 2012, and for the Task Force to complete its
work by May 1, 2012. If you are unable to serve, please let us know. Otherwise, you will be contacted soon to schedule the first meeting.

Sincerely,

Scott L. Waugh
Executive Vice Chancellor and Provost

Andrew F. Leuchter
Academic Senate Chair

cc: Chancellor Gene D. Block
Chancellor's Communications Service
3148 Murphy Hall 140501 Phone: 5-3797
E-Mail: ccs@conet.ucla.edu FAX: 6-6030

CCS Routing Slip

To: Scott Waugh; Andrew Leuchter

From: David Teplow; Carole Goldberg

CC:

Document Date: 8/31/2012

Abstract: On behalf of the Joint Administration-Senate Academic Freedom Task Force, submit the attached "Statement on the Principles of Scholarly Research and Public Records Requests." Ask to circulate this Statement through appropriate review processes for comments and suggestions.

Date Received: 9/5/2012

Due Date:

Comments:

Record ID: DA19-A*2981956

CCS Distribution:

I Block, G
Davis, J
Economou, J
Garrell, R
Goldberg, C

I Gray, M
Guerrero, D
Littleton, C
Montero, J
Olsen, S
Powazek, J
Reed, K
Scherer, D
Smith, J
Stogsdill, C
Turteltaub, R
Washington, A

A Waugh, S
I Leal-Sotelo, M
A Leuchter, A

Action Codes:  A = Action  I = Information  O = Optional Action  R = Responsibility

CCS Internal: 1x. @=MG. No @=MLS.
Dear Executive Vice Chancellor Waugh and Professor Leuchter:

On December 6, 2011, you charged the Joint Administration-Senate Academic Freedom Task Force to draft a statement for the Chancellor's review and approval that addresses the relationship between academic freedom and the university's response to California Public Records Act (PRA) requests. Your charge also asked that the Task Force provide guidelines to faculty regarding the handling of requests under the PRA. On behalf of the Task Force, we are pleased to submit the attached “Statement on the Principles of Scholarly Research and Public Records Requests.” This Statement articulates the values underpinning academic freedom, discusses principles of scholarly research and the potential harm to that research by PRA requests, suggests a set of principles designed to protect scholarly communications, and explains how the academic enterprise is unique relative to other public enterprises and how this uniqueness should affect the response of academia to PRA requests.

In developing this Statement, the Task Force sought information from a variety of sources, including the American Association of University Professors, the American Constitution Society, the Climate Science Legal Defense Fund, Public Employees for Environmental Responsibility, the University of Wisconsin-Madison’s office of legal counsel, recent court rulings on the matter from different states, and news accounts of public records requests directed at different universities. The Task Force also held a number of meetings and corresponded extensively through email.

We ask that you circulate this Statement through appropriate review processes for comments and suggestions, directing the responses to the Task Force through Mr. Michael P. Richards mrichards@conet.ucla.edu. The Task Force will take account of this feedback in producing a final policy document that will also include practical advice for faculty confronted with PRA requests.

We thank you for entrusting us with this important task.

Best regards,

David B. Teplow
Co-Chair

Carole Goldberg
Co-Chair

August 31st, 2012
Statement on the Principles of Scholarly Research and Public Records Requests

September 2012

Preamble

Robust, frequent, and frank intellectual exchange is essential to research and teaching at the university level. It is therefore a matter of great concern that faculty at public universities throughout the country are increasingly the objects of requests through state (California Public Records Act, or PRA) and federal (Freedom of Information Act, or FOIA) public records acts for emails, notes, drafts, and other documents. Public access laws are an important component of the democratic process in our society, and scholars themselves frequently benefit from this legal framework. However, faculty scholarly communications must be protected from PRA and FOIA requests to guard the principle of academic freedom, the integrity of the research process and peer review, and the broader teaching and research mission of the university. Moreover, these requests have increasingly been used for political purposes or to intimidate faculty working on controversial issues. These onerous, politically motivated, or frivolous requests may inhibit the very communications that nourish excellence in research and teaching, threatening the long-established principles of scholarly research.

The principles of scholarly research

Faculty at UCLA carry out a triple mission of teaching, service, and research. The three parts of this mission are not identical: our service to the institution is by definition something that concerns the shared governance, operation, and decision-making here at UCLA and UC-wide. By contrast, our research and teaching are often conducted in collaboration with others in our discipline at institutions around the world, and serve the general advancement of knowledge.

Sound, high-quality scholarship is a collective process of trial and error, peer review, and questioning that happens in classrooms, laboratories, offices, conferences, workshops, at work and at home, day and night, in the university and in the field. Through this collective process, scholarship is scrutinized, questioned, improved, and ultimately accepted or rejected by the community. There are a number of principles that underlie this process and are accepted across the disciplines, including the following:

Frank exchange among scholars is essential to advancing knowledge. Scholars frequently test ideas in extreme form, explore possibilities through hypotheticals, or play “devil’s advocate,” making claims they may not themselves believe in edgy, casual language not intended for public circulation or publication. These communications are frequent and diverse in nature because scholarship is a competitive and fast-paced process, requiring intensive communication among a diverse array of participants.
Peer review is built into the academic enterprise at every level. Review and contestation is a nearly constant feature of the exploration of scholarly problems, and that review comes from peers at every stage, from the initial identification of a problem to the publication of scholarly work on the problem. Publications are the final tangible result of scholarly exploration. A published work articulates in detail the methods, materials, and modes of research that led to the findings reported or the narrative constructed. Publications are written with the expectation that they will contribute new knowledge to a field and spur deeper examination of the problems addressed within them. In essence, peer review never ends.

Faculty often choose research topics that are highly relevant to society and therefore may generate strong reactions. These topics may be controversial and highly politicized (e.g., global warming), deal with illegal or criminal behavior, or focus directly on contentious social questions (e.g., ethnicity, sexual orientation). Faculty must be free to work on these important topics without fear of retribution, threats, or interference.

Faculty members regularly collaborate with colleagues at other institutions. Faculty within the UC system require, and deserve to have, the same freedom of communication with people at other universities and corporations, public and private. Faculty at private universities who perform equivalent research need not fear interference through state public records act requests pertaining to their scholarly contributions; neither should faculty at public universities such as UCLA.

Teaching and research are conducted and governed by the generally accepted professional and ethical commitments specific to each academic discipline. University policies generally incorporate, rather than supersed, those requirements and expectations. Thus, university faculty members already are held to very high professional and ethical standards in the conduct of their scholarly work.

The potential harms of public records requests for scholarly records

Frank, honest exchange depends on the maximum protection of the informal and everyday work, personal email, drafts, and records related to research and teaching. It is essential that regular and frequent communications among faculty within UCLA and with colleagues in other institutions remain within faculty control. Public records requests can lead to unnecessary and unwarranted increased time commitments necessary to monitor all that is written or said in case of potential public disclosure. A lack of protection from such requests can directly impinge on academic freedom (the "chilling effect") by causing faculty to avoid investigating controversial issues.

Principles endorsed to protect scholarly communications

Clarity concerning what is considered a public record by the university is essential to the success of faculty research and teaching endeavors. The university must do its utmost to protect those records not subject to public records oversight and to prevent the chilling
effect of public records requests on frank scholarly exchange. These principles are consistent with the letter and intent of the open records laws:

*Protect the system of peer review at all levels.* Public records requests are neither a substitute for nor an effective check on peer review by the scholarly community, but instead damage the process by threatening scholars into silence when they should be speaking truthfully and frankly about their concerns. The published record is the gold standard on which scholarship rests and it is readily available to the public. Public records requests of private, draft, or pre-publication materials only serve to confound the peer review process, rather than leading to an improvement or check on this process.

*Protect the right of faculty to choose topics and research areas based on intrinsic criteria.* Research that is politically or socially controversial should be subject to the same protections as any other kind of research. If the scholarly process is to function correctly, it must be protected from political, social, religious or other non-academic criteria of evaluation.

*Provide the same protections to UCLA faculty that colleagues in private universities or corporations enjoy.* Scholarship is inherently collaborative and extends beyond the bounds of a single lab or office or university. Hence, faculty at UCLA should be afforded the same kinds of protection offered elsewhere, including at private universities. Maximum protection of UCLA faculty also is necessary to ensure that our colleagues at other institutions do not experience “second-order” chilling effects, i.e., a fear of collaborating with UC faculty due to concern about potential public disclosure of private materials.

*Reiterate the value of the longstanding traditions of ethical and professional codes of conduct.* Disciplines possess necessary and effective standards that govern the ethics of research. It is this time-tested oversight that ensures accountability. Public records requests should not be allowed to undermine these traditions.

**Conclusion** The academic enterprise is intrinsically different from other enterprises conducted for the benefit of the public. Its product, *knowledge*, is intangible, yet it informs all of society in countless tangible ways, including technology, medical care, ecology, and art. Academia can only make these tremendous contributions to the quality of our lives if it operates according to the standards that have ensured its freedom from bias and its unwavering devotion to truth, whatever that truth may be. The threat to faculty of forced disclosure of scholarly communication through PRA/FOIA requests can damage intellectual freedom and interfere with robust scholarly communication. The proper forum for evaluating and vetting academic research is through the time-honored and rigorous process of peer review. The world’s academic community, including its faculties and administrative leaders, must protect itself from these requests if it is to continue to function and contribute to society in the highly valuable manner that is has for centuries.