UNIVERSITY OF CALIFORNIA PROCEDURES MANUAL

California Public Records Act

Information Practices Act

Last revised September 19, 2011

Overview of the UCOP California Public Records Act (CPRA) response process

There are three general phases of a CPRA request: the 10-day acknowledgement period, the collection and review period, and the final notification/internal circulation period before release of records.

10-Day Acknowledgement Period

CPRA requests are logged and acknowledged within 10 calendar days of receipt of the request.

Requests are generally processed in the order received; however, we strive to move all the open requests to completion. Requests that are "Simple" (see definition of Simple requests below), will be taken out of order and processed immediately.

- **Simple requests**: if the requested records are readily available, we can respond fairly quickly. "Readily Available" means that the records are on the web, or that the requested records have been released previously, thus obviating the need for further review or internal notification.

More often, search, collection and review of the requested records is required. An estimate of the time it will take to complete the request and produce records is included in the 10 day acknowledgement to the requester. The CPRA requires the 10-day response, and requires that the response contain an estimated date for production of the records, but does not specify a time frame for actual production of the records. UCOP tries to produce the records in a reasonable amount of time, considering the overall CPRA workload and the particular workload associated with each request.

Often, requests are unclear and/or overbroad or ask for reports that do not exist.

- Unclear or overbroad requests take longer to process, as we then have to dialogue with both the requester to figure out what they want and with the office of record to determine what records might be responsive. As required by law, we help requesters make "focused and specific" requests that reasonably describe identifiable records. (Government Code section 6253.1).

We meet with the office of records regarding the types of records that may respond to the request.

Initial Notifications: for requests for records related to issues with possible public impact, we make relevant UCOP personnel aware of these requests.

Collection and Review Period

The office of record collects records for OGC review.

Paralegal does initial review of records for responsiveness and possible legal exemptions. Records are redacted. The review and redaction process can be particularly time-consuming for records that contain personal information, such as social security numbers, home addresses, etc. Then the entire set is turned over to counsel for legal review. Additional redactions may be required by paralegal after legal review.

Final Notification/Internal Circulation of Pending Response

The responsive record set is provided to the office of record and other relevant UCOP personnel so that these individuals are aware of the contents of the disclosure prior to public release.

Release

Records are released to the requester upon payment for copy costs. Requester also has option of inspecting records prior to obtaining copies.

Process for different records requests

The records response process may vary depending on the type of records requested. The following are *among* the types of requests submitted to UCOP:

- **Requests for contracts**: requests for strategically sourced or professional services require notification to the vendor prior to release. These types of requests can be protracted, as vendors may engage their counsel in objecting to release of vendor information.

- **Requests from the media**: close coordination with the Office of Media Relations is required

- **Requests for records of members of the Board of Regents**: close coordination with the Office of the Secretary and Chief of Staff of the Regents is required

- **Requests that implicate the Information Practices Act**: these are requests made by individuals for records directly pertaining to themselves. Such records would often not be disclosable to the general public under the CPRA (because they often contain personnel information that would constitute an unwarranted invasion of privacy), but UCOP processes those requests as Information Practices Act requests.

CASE STUDY: AN EXAMPLE OF THE CPRA RESPONSE PROCESS

The following is a summary of the process for responding to a request for the travel expense reports of the President and the Regents submitted by a reporter last October 2010. The reporter asked for multiple years of expense report information for all of the aforementioned individuals. We explained to the reporter that her request as stated would take months to complete. We suggested that if she narrowed her request (for example, to expenses over $50, or expenses from particular trips, or expenses for certain Regents), she would receive a response more quickly.   All of our suggestions were rebuffed. The reporter refused to narrow her request by subject matter or person. She did slightly shorten the time period to September 2008 to the present. We informed the reporter that the expenses of 20+ individuals over a two-year period of time would take approximately four months to complete.

We met with representatives of the SCOS, Media Relations, PEO, and BRC to discuss the parameters of the request. Then the offices of record collected records.

OGC conducted its review of the records. Significant additional time was required to process this request, since travel expense records contain personal information that must be redacted.

Prior to release, final responsive sets of approximately 400 pages were prepared and circulated to the PEO, SCOS, and Media Relations for internal review so that those offices could be aware of the contents of the release. The SCOS also briefed the affected Regents regarding the impending release at the January 2011 Board meeting.

A request for copy costs was sent to the reporter on February 23, 2011, telling her that the records would be available for pick up or mailing upon receipt of her check to cover the copy costs. OGC made its target date of completing the response to this request in four months.

California Public Records Act (CPRA)

Logging and opening a file for a new CPRA request

Logging the CPRA request

There are two CPRA logs maintained: the historical PRA log (named 1-PRA in Legal Files) and the open PRA log (named Open PRA Log in Legal Files).

The historical log tracks every CPRA request received and processed by this office, including requests which have been finished. This enables us to track patterns as well.

The open PRA log tracks only the CPRA requests currently in the process of fulfillment. Once a CPRA request is completed, then it is deleted from the open PRA log, but never from the historical log.

- Log into 1-PRA log. From left → right columns, fill in the following info:

    o Assign a new PRA number, sequentially

    o The date received

        ▪ *This is the actual date it gets here, not the date that it was sent*

    o List the requester's name and any organization the requester is affiliated with (example: John Smith, New York Times)

        ▪ *Remember: CPRA requesters aren't required to identify themselves and can request records anonymously*

    o Provide a description of the request

        ▪ Don't provide too much detail but enough to identify the request quickly

    o In the "# of total requests" column: add up the separate number of requests that a single requester may have. This is an art, not so much a science. Things to consider when you're filling in this column:

        ▪ Types of documents being requested

        ▪ Number of items, if the request is itemized

    o In the "# of open requests" column: a requester may have multiple requests, so this tracks the number still open. If you've provided 1 responsive record out of 5 total requests from a requester, then you would fill in "4" in this column.

    o Voluminous/Complex

        ▪ *Voluminous* – does the request require review of many documents?

- - - *Complex* – does the request entail communication with many offices, etc.?

  - Waiting for CC?

    - Are you waiting for copy costs?

  - *Copy (cc)/Prog Costs (pc) Recovered*

    - Fill this in when the copy costs or programming costs are paid by the requester

  - Make notes in the "Action" column when:

    - A request is completed (fill in "Completed")

    - A request has been transferred to a campus

    - A request is being handled by anyone other than our PRA office (example: "Employment litigator is handling")

- Log into Open PRA log.xls (HB# 207490)

  - The info must match 1-PRA log

  - Only if a PRA request is closed is it deleted from Open PRA log.xls; otherwise, just keep adding to it.

Making a CPRA file folder

- Obtain a 1 divider, end tab classification folder (light green, 4 fasteners)

  - *Use CPRA file label template to make the file label:*

    - File label must match the info on 1-PRA and include:

      - *CPRA number*

      - *Requester's name (if applicable, affiliation too)*

      - *Records being sought*

- On the left-hand side:

  - Original request

- On the right-hand side:

  - 10-day acknowledgement or 14-day determination

  - Communications with requester

  - Impending notifications of release

  - Final notifications

  - Response

- After the divider, put:

  - *Any non-responsive docs*

  - *Communications with person(s) / office(s) of record which should be retained (example: when approval is required prior to release)*

Create a CPRA folder in the PRA service inbox

- Outlook → Mailbox - UCOP-PRA → Inbox → PRA requests → 2011

  - Left-click on 2011 → select "New folder"

  - Name the new folder the CPRA number (must match the info on 1-PRA)

    - In the service inbox folder, save these types of documents:
      - *Original request*
      - *10-day acknowledgement or 14-day determination*
      - *Communications with requester*
      - *Approval prior to release*
      - *Initial notifications*
      - *Impending notifications of release*
      - *Final notifications*
      - *Response*
      - *FYI AS SENT*

INITIAL QUESTIONS

WHO is the requester?

- Is the request made by a union (i.e. AFSCME)?
- Is it a media requester?

WHAT is being requested?

- What kind of request is this?
    - CPRA request
        - Does the requester cite HEERA/CPRA/both/neither?
        - Have we ever responded to a similar request? (check 1-PRA log)
        - Is the request focused and specific?
    - Information request (questions rather than requests for records)?
    - Information Practices Act (IPA) request for records containing personal information about the requestor?
- TYPES OF RECORDS
    - Does the request deal with animal research records?
    - Does the request deal with student records?
    - Does the request deal with patient/medical records?

WHERE are the records?

- Is UCOP the office of record? If not, who/which campus should we refer the requester to?

WHEN (10-day vs. 14-day)?

- Should we do the standard 10 day acknowledgement or a14-day determination?

10-Day Acknowledgements vs. 14-Day Determinations

10-day acknowledgements:

Section 6253 (c) of the California Public Records Act: "Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor."

- Often, members of the public confuse the 10 day determination deadline with actual production. Agencies have 10 days to "determine whether the request…seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and reasons therefore." (Government Code 6253(c)). This means that agencies are supposed to notify the requester within 10 days if they have requested deliverable public records or exempt material or some combination of the two.

  - The law, however, does not require production within 10 days. (Motorola v. Department of General Services (1997) 55 Cal. App. 4th 1340, 1349.). The law requires that production be made in a "reasonable" amount of time, based upon the volume of the records requested and the necessary review process.

- CPRA request received by our office.

- Calendar 10 days (not business days) from the date of receipt of request to send out the 10-day acknowledgement.

  - Example: if we get a request on March 1, the 10-day acknowledgement must be sent out by March 11.

  - If the 10th day falls on a weekend or holiday, send out the 10-day acknowledgement prior to the 10-day deadline.

- Identify what records are being sought

  - Is the request focused and specific?

  - Have we ever responded to a similar request? (Check 1-PRA log)

  - What type of records are they? (CPRA, IPA, or a request for information only)

- Identify the office of record

  - What office(s) have responsive documents to this request?

- Identify whom and/or office(s) that should be notified of the request

- Consider whether a 14-day determination would make more sense than the 10-day acknowledgement; i.e., based on past CPRA requests, you know that the requested records are disclosable (example: offer letters) If so, see **14-day determination** below.

- Send out the standard 10-day acknowledgement or 14-day determination for CPRA requests.

- If you determine that the request is an IPA, refer to the IPA section of this manual.

Example language for requester _prior_ to 10-day acknowledgement deadline

{Requester's name}:

Your request will be added to the UCOP California Public Records Act request queue. You may expect an acknowledgement and request number within ten calendar days from _____.

Thank you,

UCOP Public Records

Example 10-day acknowledgement

{Requester's name}:

This is to acknowledge your Public Records Act request, received _____, for {records}. Appropriate UC Office of the President offices are being notified of your request. Records identified as responsive to your request will be reviewed, and made available for your access, in accordance with relevant law and University policy. The estimated date of production is six weeks, which will vary accordingly due to the nature, complexity, and/or length of the request.

Although the requested records have not yet been fully gathered and reviewed, it is possible that the requested material may contain information exempt from disclosure pursuant to the Public Records Act. However, this is not a determination that the requested records are necessarily exempt from disclosure. I will provide you with a status update after the requested records have been thoroughly reviewed.

For your information, the California Public Records Act allows agencies to make records available "upon payment of fees covering direct costs of duplication." (Government Code Section 6253(b)). The charge is $0.20 per page for copies. Prepayment is required before release of public records. If you prefer, you may inspect the records in person prior to obtaining copies. Inquiries about this PRA request should refer to PRA number 11-___.

Thank you,

UCOP Public Records
pra@ucop.edu

14-day determination:

Section 6253 (c) of the California Public Records Act: "In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension of more than 14 days."

- "Unusual circumstances" include:

   o The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request

   o The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request

   o The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein

   o The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data

- Calendar 14 calendar days past the original 10 days, for a total of 24 days after the receipt of the request:

   o Send an email explaining why an extension is needed and let the requester know the date by which they'll get the 14-day determination

Example 14-day determination

{Requester's name}:

The University has determined that some of the records that you have requested are disclosable under the California Public Records Act (CPRA). Purely personal information, including but not limited to home addresses, would be redacted.

Your broad request for {records} includes records discussing personnel matters exempt from disclosure under Government Code section 6254(c), the Information Practices Act, and/or other privacy laws. Other communications seeking or receiving legal advice are protected by the attorney-client privilege and/or attorney work product doctrine (and therefore exempt under Government Code section 6254(k)).

In addition, your request may include notes, drafts or memoranda which are not retained in the ordinary course of business where the public interest in nondisclosure clearly outweighs the public interest in disclosure (Government Code section 6254(a)) and sensitive discussions

protected by the deliberative process privilege (and recognized as exempt from disclosure under the "catchall" exemption of Government Code section 6255).

Your request has been added to the UCOP California Public Records Act request queue. The estimated response time is approximately ten weeks from today, {date}. We will give you a status update by {date}.

For your information, the California Public Records Act allows agencies to make records available "upon payment of fees covering direct costs of duplication." (Government Code section 6253(b)). The charge is $0.20 per page for copies. Prepayment is required before release of public records. If you prefer, you may inspect the records in person prior to obtaining copies. Thank you.

Example 14-day determination

{Requester's name}:

Your California Public Records Act request was received on {date}. The process of contacting units that may have responsive records has begun. Your request is so broad that we must extend the time limit within which to provide a determination of whether your request seeks disclosable public records by fourteen days. (Government Code Section 6253 (c)). We must consult with multiple employees regarding the voluminous amount of separate and distinct records that could possibly be responsive to this request. We expect to be able to send you a written determination by {date}.

Inquires about this CPRA request should refer to CPRA number _____.

Sincerely,

UCOP Public Records

Initial Notification

It's important to ask yourself whether the offices listed below should be notified of the request. For instance, for requests for records related to issues with possible public impact, we make relevant UCOP personnel aware of these requests. Possibilities:

- Campuses
- Individuals mentioned in the request
- People outside of UC
- OGC
  - If there's related litigation, the attorney handling
- Communications / external relations
- Deputy to the Chief of Staff
- The Secretary and Chief of Staff's office
- Governmental Relations: State and Federal
- Procurement Services
- CPRA requests from Union members / labor relations

Note: Notification language will vary in detail and content depending on the particular type of disclosure.

Example initial notification email *to non-UCOP individuals* not seeking approval prior to release

{Requester's name}:

As a courtesy, this is to notify you that _____ has requested the attached documents under the California Public Records Act (Government Code section 6250 et seq). A copy of the law firm's request, originally sent to {receiver's name}, is attached to this email for your reference.

The University has reviewed the attached documents and determined that they are releasable under the California Public Records Act (CPRA). I anticipate releasing the attached agreement to the requester on or after {date}. Please contact me before that day if you believe that any portions of the attached records need to be withheld and explain your reasoning. Thank you.

Example initial notification email to UCOP personnel *requiring approval prior to release*

All:

This is to notify you that the attached {number} pages will be made available to the requesters on {date}. Please contact me before that day if you have questions about this release.

The records will be released in response to the following California Public Records Act (CPRA) request:

1.   {request}

Purely personal information, such as employee ID numbers and home addresses, was redacted from the material.

Within the record set, there are a few records that may raise questions. {Describe}.

At 4:00 p.m. on {date}, we plan to notify the requesters that the requested records are available upon receipt of payment for copy costs. Please contact me before that time if you have questions about this disclosure. Thank you for your work on these requests.

Programming costs

Section 6253.9(b) of the California Public Records Act: "[T]he requester shall bear the cost of programming and computer services necessary to produce a copy of the record when … the request would require data compilation, extraction, or programming to produce the record."

Example of programming estimate email *with* CPRA language and breakdown of charges

{Requester's name}:

As indicated in our {date} email to you, the California Public Records Act provides that requesters bear the cost of producing a copy of the record, including the cost to construct a record, when the request would require data compilation, extraction, or programming to produce the record. Government Code Section 6253.9(b).

With regard to your PRA request for records regarding {description of records}, the programming charge estimate of {total cost of programming} to compile the requested report includes:

· __ hours of programming at $_____/hour ($_____)
· __ hours for system requirements and data compilation at $_____/hour ($_____)

Please let me know whether you wish to proceed with this request. If you wish to proceed, please indicate, via return email, your agreement to pay for the programming charges to compile the requested report. A deposit of ½ of the estimated charge due, or $_____, is required before commencement of work. Checks should be made payable to "UC Regents" and sent to the address below.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Example of request for collecting the remainder of programming costs

{Requester's name}:

Thank you for your payment of $_____. In response to your request, {requested records} are now available for release. The California Public Records Act provides that requesters bear the cost of producing a copy of the record, including the cost to construct a record, when the

request would require data compilation, extraction, or programming to produce the record. Government Code Section 6253.9(b). Pre-payment is required before release of public records. Please send a check (checks only, please) payable to "UC Regents" to the address below in the amount of $_____ for the remaining balance due. Please reference PRA _____ on your check.

When we receive your check, the response will be available for pick-up or mailing.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Programming costs reminder #1

{Requester's name}:

We have not received the deposit of ½ of the estimated charge due, or $_____, to proceed with the programming required to compile the requested report:

- {Request}

If you still want to proceed with this programming, please let us know by {date} when we can expect payment. If you do not want to proceed with the programming, kindly let us know whether you are withdrawing your request. Thank you.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Reviewing documents

Documents exempt from production

Please refer to Government Code 6254 for a complete list of exemptions. Examples of exemptions:

- Notes, drafts or memoranda which are not retained in the ordinary course of business where the public interest in nondisclosure clearly outweighs the public interest in disclosure – Gov. Code Section 6254(a) and 6255
- Documents specifically prepared in connection with filed litigation – Gov. Code Section 6254(b)
- Personnel, medical or similar record – Gov. Code Section 6254(c)
- Investigative records – Gov. Code Section 6254(c)
- Attorney-client privileged – Gov. Code Section 6254(k)
- Attorney work product – Gov. Code Section 6254(k)
- Trade secret – Gov. Code Section 6254(k)
- The deliberative process exemption – Gov. Code Section 6255

Types of info redacted

Please refer to Government Code 6254 for a complete list of info which should be redacted. Examples of redactions:

- Personal appointments/information – Gov. Code Section 6254(c)
  - Personal emails
  - Home phone numbers
  - Cell phone numbers
  - Home addresses
  - Doctor appointments
  - Vacation info
  - Dinners with friends
  - Info referring to physical ailments
- Family info – Gov. Code Section 6254(c)
- Airline flight numbers, times, confirmation numbers – Gov. Code Section 6254(c)
- Students' names – Family Educational Rights & Privacy Act ("FERPA")
  - FERPA states that "personally identifiable information" regarding a student may not be disclosed absent the student's written consent (20 USCS § 1232g). The FERPA provision is incorporated into the Public Records Act through Gov. Code section 6254(k).
- Personnel matters – specifically interviewee/applicant names – Gov. Code Section 6254(c)

Redactions

Redacting using Adobe, as opposed to redaction tape, has several advantages. Redaction tape tends to come off and cause streaks during photocopying. Redactions using Adobe are permanent.

Prior to performing redactions on Adobe:
- Scan the records into PDF form, if they are in hard copy
- To search within a PDF document, use the OCR function
    - On the top toolbar, select **Document → OCR text recognition → Recognize Text Using OCR…** from the menu.
    - Make sure to save the document under a different name (because OCR generally increases the file size greatly)
    - Note: you don't need to OCR a document in order to redact it in Adobe. It simply makes the document searchable.

Redacting using Adobe:

Prior to redacting:
- Save the records in an original, unredacted PDF. Once you apply the redactions on Adobe, they are permanent and can't be undone.
- On the top toolbar, select **Advanced → Redaction → Redaction Properties** from the menu. Under the Appearance tab, select white for your Redacted Area Fill Color.
    - Check the "Set as default" box in the left-hand bottom corner.

Redacting in Adobe:
- On the top toolbar, select **Advanced → Redaction → Show Redaction Toolbar** from the menu. Use the toolbar to Mark and Apply redactions. Use Search for patterns and specific words to redact. ***Remember to save the redacted file to a different location from the original.***

Bates Labeling

Bates labels are useful in several instances:

- Helps track pages when records are voluminous
- Provides a page count

Bates labeling using Adobe:

- **Add Bates Numbering:** Select **Advanced → Document Processing → Bates Numbering → Add** from the menu. Select **Add Files** button in upper left corner. Browse to files and Add Files.
- Place the documents in the order they are to be Bates Numbered by using the **Move Up ↑** or **Move Down ↓** arrows to order the documents.
- Click **OK**.
- **Appearance Options:** Check the option *shrink document to avoid overwriting the document's text and graphics*.
- **Insert Bates Number:** Click the location on the document for Bates Number (left, middle or right header or footer) and then select the **Insert Bates Number** button to insert Bates Number Options (Number of digits, Start Number, Prefix and Suffix).
- Click **OK** at bottom of dialog box to insert the Bates Number.

Copy costs for CPRA requests

Section 6253 (b) of the California Public Records Act: "[E]ach state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication..."

- Charge requesters $0.20 per page for copies of 15 pages or more (i.e. charge $3.00 for 15 single-sided pages)

    o Charge only $0.20 for double-sided copies (example: 15 double-sided pages will cost $3.00)

    o Waive copy costs for responses 15 single-sided pages or less

- Charging copy costs for PDF versions

    o You *may* charge $0.20 per page for PDF versions

        ▪ Can charge for scanning because 1) it takes the same amount of time as it does to copy and 2) that the same machine is used for copying and scanning

- Following up on copy costs

    o After you send the copy costs to the requester:

        ▪ Calendar 10 days

            • Email the requester with the standard Copy Costs Reminder #1 on the 10th calendar day

        ▪ Calendar 10 days from the date of Copy Costs Reminder #1

            • Email the requester with the CPRA Copy Costs Reminder #2 on the 10th calendar day

                o Include the drop dead date, which is 10 calendar days from the date that CPRA Copy Costs Reminder #2 is sent

Example of copy costs email

{Requester's name}:

In response to your request, _____ double-sided pages for documents relating to {requested records} are now available for release. The California Public Records Act provides that agencies may make records available "upon payment of fees covering direct costs of duplication." (Government Code section 6253(b)). Pre-payment is required before release of public records. Please send a check (checks only, please) payable to "UC Regents" to the address below in the amount of $_____ for the _____ page, double-sided disclosure. Please reference PRA _____ on your check.

When we receive your check, the response will be available for pick-up or mailing.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Example of copy costs waiver language for responses less than 15 pages

Because there are only 6 pages in this response, we are waiving the copy costs for this response. Please note that copy costs may not necessarily be waived in the future. By providing you with these records, we consider your California Public Records Act request _____ to be fulfilled and our file will be closed.

Copy Costs Reminder #1

(Can be used for both CPRA and IPA requests)

{Requester's name}:

We have not received the copy costs for the _____ double-sided pages for copies of {requested records} which are available for release, pending payment. If you still want copies of those documents, please let us know by {insert 10 calendar days for deadline} when we can expect payment. If you no longer want the documents, kindly let us know whether you are withdrawing your request. Thank you.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

CPRA Copy Costs Reminder #2

(For CPRA requests only)

{Requester's name}:

As part of UCOP CPRA tracking, requesters are given a final notification of outstanding CPRA charges for requested records, and provided an opportunity to pay before their requests are closed due to lack of payment or lack of communication from the requester. Please let me know by ____ if you will be sending payment for copies of the items listed in the {insert date of original copy costs notification} email below. Consistent with our standard practice and regular retention policies, requests are considered withdrawn and the documents are disposed if notice of intent to pay is not received by the due date.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Example response to request for copy costs receipt

{Requester's name}:

This is to confirm that we received a check from you in the amount of $_____ for the _____ page, double-sided disclosure for PRA _____.

We do not have a standard receipt form. Please let us know if you need additional documentation regarding this expense. Thank you.

Sincerely,

Public Records Office

Notification of impending release

- If you only need the office to review (and not approve the release), then generally give the office 48 hours to review

    o In the notice of impending release, specify the time of day that we'll release

Example impending notification of release email *to personnel within UCOP* not seeking approval prior to release

All:

You may be aware that the _____ requested documents and correspondence related to the _____. (Original request at the bottom of this email.)

OGC has reviewed the attached disclosure and deemed it to be disclosable. Except for pages _____ of the scan, the attached documents were previously circulated by _____.

I plan to release the disclosure on or after **5:00 pm on Friday, _____.** Please call me before Friday if you have questions about this disclosure.

Thanks,

{your name}

Final Notification / Internal Circulation of Pending Response

The responsive record set is provided to the office of record and other relevant UCOP personnel so that these individuals are aware of the contents of the disclosure prior to public release.

FINAL APPROVAL

Who needs to approve the impending CPRA release before it is disclosed?

VS.

FINAL NOTIFICATION

Who should receive a final notice of impending CPRA response with transmittal letter and responsive documents?

Possibilities:

- Office of Record

- Individuals, offices, and/or organizations who were made aware of this request during collection or in initial notifications

Response Letter

Once the requester pays for copy costs, the disclosure and a response letter are released, generally via US Mail, to the requester. Requester also has option of inspecting records prior to obtaining copies.

The response letter may include:

- Brief descriptions of the types of information that were redacted
- List the statutes which exempt certain categories of information from disclosure
- Context (if any)

If any information or records are withheld or redacted, the response letter should have the name and title of Maria or Stella, depending on which worked more closely on the request.

Example of language not requiring copy costs because response is 15 pages or less

Because there are only six pages in this response, we are waiving the copy costs for this response. Please note that copy costs may not necessarily be waived in the future.

Example of language when request is closed

By providing you with these records, we consider your Public Records Act request 11-____ to be fulfilled and our file will be closed.

Referring requester to office of record

Every campus handles the release of its own records. For this reason, if a requester makes a request to UCOP for records held at any of the other campuses, then UCOP will direct the requester to the appropriate campus PRA office.

Example of language referring a requester directly to the office of record for response

{Requester's name}:

In response to your California Public Records Act request for _____, the UCOP _____ Office is working on your request and will respond directly to you. Thank you.

Example of response with exemptions Gov't Code sections 6254(a) for drafts, 6254(k) for attorney-client privilege, and 6255 for balancing test

{date}

VIA U.S. MAIL

{name}
{organization}
{title}
{address}

In re PRA _____

{Requester's name}:

Enclosed are the _____ pages of responsive material to your California Public Records Act (CPRA) request for {records requested}.

Purely personal information – such as personal email addresses and home addresses – has been redacted from the records. Records related to _____ are exempt from disclosure because the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records. (Government Code section 6255). Some records are exempt as preliminary draft documents which are not retained in the ordinary course of business where the public interest in nondisclosure clearly outweighs the public interest in disclosure (Government Code section 6254(a) and Government Code section 6255). Communications seeking or receiving legal advice are protected by the attorney-client privilege and therefore exempt under Government Code section 6254(k).

Thank you for your payment of _____ in copy costs. By providing you with these records, we consider your Public Records Act request _____ to be fulfilled and our file will be closed. Going forward, please direct any questions related to this material to Peter King or Steve Montiel in the media relations office. Thank you.

<div align="center">Sincerely,</div>

<div align="center">UCOP Public Records</div>

Encs.

/{your initials}

Example of response with exemptions Gov't Code sections 6254(c) for personal info, 6254(k) for Evidence Code section 1060, and 6255 for balancing test

{Requester's name}:

After a reasonable search and to the best of our knowledge, only _____ was found in response to your request for _____. {Describe records} is exempt from disclosure under Government Code Section 6254(c), Evidence Code Section 1060 as incorporated into Government Code Section 6254(k)), and Government Code Section 6255.

Sincerely,

UCOP Public Records

Example response where initial search didn't find responsive documents

{Requester's name}:

Initial search efforts by UCOP staff to locate _____ did not turn up any responsive documents.

If you have a specific vendor name that you believe UCOP has an agreement with for such services, please feel free to submit a new California Public Records Act (CPRA) request to pra@ucop.edu.   Otherwise, we will consider this request closed.

For your reference, requests for campus records should be directed to the local CPRA office. http://www.ucop.edu/ogc/ipcoords.html.

Thank you,

UCOP Public Records

Example of response where the request is overbroad

{Requester's name}:

It appears that you are asking the University to assist you in crafting a request for records, and specifically asking that the University "Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated." (Cal. Gov. Code Section 6253.1(a)(1)).

We are happy to try to assist you in this manner. However, as you know, we have already reviewed the records responsive to your initial request, as we understood it; we determined that those records were non-disclosable. We are not aware of other "records and information that are responsive to [your initial] request." Perhaps if you could state "the purpose of the request," we may be able to assist you in identifying additional records that would be responsive to your stated purpose.

Sincerely,

UCOP Public Records

Example of objection to a blanket / overbroad request for records

{Requester's name}:

I write in response to your California Public Records Act requests to the University received on {date received}. You requested {records requested}.

The University objects to your extremely broad requests asking for {records requested} because, among other things, the request encompasses thousands of documents. Many types of confidential information can exist in university records. For example, your blanket requests for these records may include discussion of personnel matters exempt from disclosure under Government Code section 6254(c), the Information Practices Act, and/or other privacy laws; sensitive discussions protected by the deliberative process privilege (and recognized as exempt from disclosure under the "catchall" exemption of Government Code section 6255) and/or the "official information" privilege under Evidence Code section 1140; and communications seeking or receiving legal advice protected by the attorney-client privilege and/or attorney work product doctrine (and therefore exempt under Government Code section 6254(k)). The documents may also contain trade secrets, which are exempt from disclosure under the California Public Records Act (Evidence Code Section 1060, incorporated into Government Code Section 6254(k)).

As such, a blanket request for *all* records without regard to subject or timeframe would likely require substantial redaction, the burden of which would outweigh any possible public interest in disclosing the records. See Government Code section 6255; *ACLU v. Deukmeijian*, 32 Cal. 3d 440, 453-54 (release not required where, under Section 6255, burden of segregating exempt from nonexempt information would outweigh any possible utility of disclosure).

The University regularly responds to focused and effective requests that reasonably describe identifiable records relating to the conduct of the public's business. Government Code section 6252(e), 6253.1(a).

Should you wish to submit a more focused request or you have any questions about this matter, please feel free to contact me.

Example of response asking the requester to focus their request

{Requester's name}:

You have requested {records requested}. Such a request would entail collection and review of a voluminous number of documents. Please also be aware that identification and collection of potentially responsive records is only the first step in the CPRA response process. The collected records must be reviewed to ensure that they are in fact responsive to your request and to assess whether they are subject to redaction to protect privacy rights and consistent with applicable legal privileges & exemptions. Each of the steps in the process takes time.

Given the number of CPRA requests ahead of yours in the queue, an overbroad request such as yours could easily take several months to complete.

You can facilitate your request by focusing on specific records. For example, are you interested in correspondence between specific individuals? Can you limit your request to a specified time frame?

Please let us know how we can assist you in focusing your request.

Sincerely,

UCOP Public Records

Example of denial of request as drafted

{Requester's name}:

This is to formally acknowledge and respond to your request pursuant to the California Public Records Act ("CPRA"), received on {date}. You have requested:

{Request}

The University regularly responds to focused and effective requests that reasonably describe identifiable records relating to the conduct of the public's business. Government Code section 6252(e), 6253.1(a).

Your request is extremely broad and may encompass hundreds of thousands of documents, likely including many types of confidential information. For example, your blanket request may include discussion of personnel matters exempt from disclosure under Government Code section 6254(c), the Information Practices Act, and/or other privacy laws; sensitive discussions protected by the deliberative process privilege (and recognized as exempt from disclosure under the "catchall" exemption of Government Code section 6255) and/or the "official information" privilege under Evidence Code section 1140; and communications seeking or receiving legal advice protected by the attorney-client privilege and/or attorney work product doctrine (and therefore exempt under Government Code section 6254(k)). Your request may

also contain trade secrets, which are exempt from disclosure under the California Public Records Act (Evidence Code Section 1060, incorporated into Government Code Section 6254(k)).

A blanket request for "all records" for fourteen (14) individuals without regard to subject matter would likely require substantial redaction, the burden of which would outweigh any possible public interest in disclosing the records. See Government Code section 6255; ACLU v. Deukmeijian (1982) 32 Cal. 3d 440, 453-54 (release not required where, under Section 6255, burden of segregating exempt from nonexempt information would outweigh any possible utility of disclosure).

At this time, your request does not meet the provisions outlined in Government Code sections 6252(e) and 6253.1(a), which require focused and effective requests that reasonably describe identifiable records relating to the conduct of the public's business. Therefore, we will not respond further to your request as drafted.

You may elect to focus your request by adding some combination of language that narrows the scope of the subject matter, narrows the time period, and narrows the type of record(s) you are interested in. Should you wish to submit a more focused request or you have any questions about this matter, forward your inquiry to: pra@ucop.edu.

As a courtesy, your request, referenced as {PRA number}, will remain open for 10 calendar days from the date of this correspondence. If we do not hear from you within the allotted time, {PRA number} will be closed. Nevertheless, you may submit a subsequent request.

Regards,

Maria Shanle
Senior Counsel - Governance
Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607
pra@ucop.edu

Saving the Response

Save responses in both soft and hard copy format. Prior to sending, scan the entire response and save it in PDF format. Save the response in soft copy format in:
- PRA service inbox in the corresponding PRA file
- Legal Files (under the PRA file number)

Mailing the Response

Responses are sent in hard copy format, even for responses for which copy costs aren't charged.
- The responses are mailed via USPS. You don't need to add any extra services (i.e. certified mail, proof of delivery, etc.)

FYI AS SENT

After the response is sent, notify the appropriate offices by emailing the response, usually as a PDF attachment. The FYI AS SENT email should go to:
- Office(s) of record
- Person(s) / office(s) to whom you sent the initial notification of request

Don't send the FYI AS SENT email as a CC or BCC on the original response to the requester. We would like to maintain the anonymity of these individual(s) / office(s), which is why we send the FYI AS SENT email separate from the response email to the requester.

The FYI AS SENT email should include:
- Title of email: FYI AS SENT: PRA 11-_____
- Body: FYI As sent.
- Attachments: PDF response
- If the response was sent as an email, simply forward the email with the same title and message as above

Requests for Form 700

Keep in mind that in dealing with a Form 700 requester:

- *No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from these persons.* (Political Reform Act § 81008(a)).

Therefore, we can't require the requester to do any of the following prior to obtaining access to the Forms:

- Completing a request form; or
- Signing and dating a "request log"; or
- Submitting a public records request.

Log the request

- Refer to the section on "Logging the CPRA request"

Making a folder

- Instead of using a light green folder, use a manila folder instead

- Use CPRA file label template to make the file label:

  - *File label must match the info on 1-PRA and include:*

    - CPRA number

    - Requester's name (if applicable, affiliation too)

    - Records being sought

Information needed to locate the Form 700 in our filing system

- From the requester, find out which campus the designated official works at

  - Can also find out which campus by searching Legal Files for the official's name

- Open the correct campus worksheet, which will be one of the following:

Campus / Office	Document name
Agriculture & Natural Resources	ANRdplist
Berkeley	UCBdplist
Davis	UCDdplist
Irvine	UCIdplist

Los Angeles	UCLAdplist
Merced	UCMdplist
Riverside	UCRdplist
Santa Barbara	UCSBdplist
Santa Cruz	UCSCdplist
San Diego	UCSDdplist
San Francisco	UCSFdplist
Lawrence Berkeley National Laboratory	LBNLdplist
Regents / Treasurer's Office	REGENTSTOdplist
Office of the President	UCOPdplist
Office of the General Counsel	OGCdplist

*Note: The Regents and Treasurer's Office spreadsheets are located in the same Excel workbook. Simply choose the correct tab at the bottom by scrolling left or right.

- Go to the Slimcase files

    o Pull the Form 700's requested

    o The Form 700s are organized by:

        ▪ *Year*

        ▪ *Campus*

        ▪ *Type (Assuming Office, Leaving Office, and Initial)*

        ▪ *Alphabetically by last name*

- Scan them into PDF form and save them to your desktop (don't put into Legal Files)

    o Save the Form 700 by name, year, and campus (example: Robinson, Charles - 2010 OGC.pdf)

Notification process for Form 700 requests

- If President Yudof's or a Regent's Form 700 is requested

    o *Within 24 hours after receipt of request, email the Secretary and Chief of Staff's office with the notification email*

        ▪ *Include the original request; do not attach the Form 700s as PDF*

    o *Give SCOS 24 hours to respond, then if no response, then can email the requested forms out*

        ▪ NEVER email Regents. If their Forms are requested, always notify SCOS instead

- For all other Form 700 requests

  - Within 24 hours of receiving the Form 700 request and before releasing the Form 700, send out a preliminary notification email and

    - *Include the original request; do not attach Form 700s as PDF*

    - *Let the filer know that the Forms are going out in 24 hours and that the Form can be sent as a separate attachment if necessary.*

  - For high-level officials, send the notification email to the following:

    - *Assistant, deputy or chief of staff – check with PRA coordinators for the correct person**
    - *Campus counsel*
    - *PRA coordinator for the campus*
    - *Head of communications for the campus*

  - When a reporter/member of the media requests copies of Form 700

    - *Prior to release and within the 24-hour notification period, notify Pete King and Steve Montiel that the Forms were requested*

  - When a union member requests copies of Form 700

    - *Prior to release and within the 24-hour notification period, notify Karren Yun that the Forms were requested*

*Emailing Alan Kolling suffices to notify UCB's Chancellor, since he currently works in the Chancellor's office

Release process for all Form 700 requests

- Release the requested Form 700s in PDF format to the requester; include original request. **Copy costs are waived for Form 700s.**

FYI AS SENT process for all Form 700 requests

- After the Forms are released, send the entire response to the same person(s) that you sent the notification email to as an FYI AS SENT

    o   Never cc the notified parties on same email sent to the requester with the requested documents

Example notification email to Secretary and Chief of Staff's office for Form 700 requesters

FYI, {Requester's name}, {Place of employment, if known}, has requested your Form 700 Statement of Economic Interests.

In accordance with § 81008 of the Political Reform Act, which requires the Form 700 to be open for public inspection and reproduction as soon as practicable, I anticipate releasing the Form 700 to the requester at 5:00 p.m. on _____.

Please let me know if you have any questions. Thank you!

Example notification email to Secretary and Chief of Staff's office when Form 700 requested hasn't been filed yet

FYI

{Requester's name} requested the Form 700, Statement of Economic Interests for the newly appointed Regent _____ (please see below). Although we have not yet received Regent _____'s Form 700, it should be filed no later than {date}. Therefore, we anticipate releasing Regent _____'s Form 700 during the week of {date}. We will provide you with 24 hours notice prior to the release of Regent _____'s form. Please let me know if you have any questions. Thank you!

Example response when a requester makes identical Form 700 request as before

{Requester's name}:

Please note that we provided a copy of _____'s Annual Form 700 to you via email on _____, which is currently her most recent financial disclosure form. If you would like another copy, please let me know.

Please note that _____'s Annual Form 700, Statement of Economic Interests is not due until _____. If you email Form700@ucop.edu after _____, we will make sure that you receive a copy of this form. Thank you.

Sincerely,

UCOP Public Records Office

Form 700 requests directed to the campus

When a campus receives a Form 700 request, it will notify UCOP immediately.

UCOP will release the Form 700 without requiring the requester to direct their request through UCOP.

Back-up procedures for requests for the Form 700

Backup Plan for In-Person Requesters

The memo below provides instructions as to how to handle walk-in Form 700 requesters. It was circulated to Chief Building Manager Roman Starno and provided to the security desk.

To: Roman Starno
From: Stella Ngai, OGC

OGC is custodian of a form known as the Form 700, Statement of Economic Interests. Members of the public are entitled to copies of the form. If a person enters the building and requests to see a copy of an individual's Form 700, they may remain in the lobby while you contact OGC to retrieve the Form 700. Please call the following OGC employees, beginning from the top, and working downwards until you receive a live response:

I.   **Karin Rice – 79982**
II.   **Sandra Hoy - 79738**
III.   **LeVale Simpson – 79956**
IV.   **Alleen Zulkowski – 79983**

      If no one picks up and the requester is willing to give their contact information, please let them know that we will contact them within 1 business day. Please provide to Karin Rice at 79982 the requester's name and contact info.

      If the requester is not willing to provide contact info, please ask them to email Form700@ucop.edu.

V.   **Please remember the following:**

      Do not ask the requester's identity
      Do not ask the requester's affiliation
      Do not ask to see the requester's ID
      Do not ask why records are being sought

Backup Plan for Calls Requesting the Form 700

On the OGC direct line, the auto attendant provides detailed instructions as to how to obtain a copy of the Form 700. In addition, LeVale, Karin, and Sandra have out-of-office voicemail messages which instruct the requester as to how to obtain Form 700s.

Backup Plan for Emails Requesting the Form 700

Karin and Sandra are primarily responsible for checking the Form 700 mailbox. If they are out of the office, LeVale will check the Form 700 mailbox.

California Public Records Act (CPRA)

CPRA Requests for Contracts or Bids

Requests for strategically sourced or professional services require notification to the vendor prior to release. These types of requests can be protracted, as vendors may engage their counsel in objecting to release of vendor information.

Here is a breakdown of what needs to be done when we receive a CPRA request for a UC strategically sourced contract or RFP:

1. Obtain requested contract or RFP from office of record

   - Check on **http://www.ucop.edu/purchserv/access.php** to see whether the agreement is available on the database

2. Obtain name and email address of vendor relationship manager from office of record

   - The office of record is currently:

     o Alan Maloney (or Brian Agius) for Strategic Sourcing contracts

     o Stephen Benedict for technology contracts

       ▪ Copy Stephen when technology contracts are released

     o Michael Thompson for Health Affairs contracts

   - If the requester asks for bid / RFP's, Diane Diotte or Eric Digman at UCOP are likely to have the records. Strategic Sourcing at UCOP works with Diane and Eric at UCLA re: UCOP bids.

3. Send a 10-day acknowledgment to requester

4. Review contract or RFP to determine if public

   - Bids from companies that were awarded the contract are just like the contract (disclosable)

   - Bid evaluation documents are disclosable

5. Redact non-public information, if any, such as taxpayer ID or home address

   - May be more willing to redact detailed pricing information from companies who lost the bid, as long as the aggregate bid amount can be disclosed (if the bidder pushes back)

6. Confirm with Stella or Maria that contract is public

7. Send "Notification of Impending Release" to vendor relationship manager with request for response (usually in 10 business days)

8. If no objection, send requester copy cost. Release contract upon receipt of copy cost check.

9. If vendor objects to release, work with Stella / Maria to determine if vendor's objections change initial determination that contract is public.

Example notification of impending release to vendor _not seeking approval prior to release_

{Requester's name}:

As a courtesy to _____, this is to notify you that _____ has requested the attached _____contract under the California Public Records Act (Government Code section 6250 et seq). A copy of _____'s request is attached below this email for your reference.

Per the attached agreement, we will also be providing notice of this impending release via facsimile to _____.

The University has reviewed the attached document and determined that it is releasable under the California Public Records Act (CPRA). The University's contracts are generally releasable under CPRA. UC's general practice is to disclose its contracts in their entirety, including pricing and fee information. I anticipate releasing the attached agreement to the requester on or after _____. Please contact me before that day if you have questions about this disclosure.

Sincerely,

UCOP Public Records

Example email to vendor if the vendor is non-responsive to the impending notification _not seeking approval prior to release_

{Requester's name}:

Because we did not receive a response to our email below by {date}, we have released the copy costs to the requester. We anticipate releasing the attached documents in their entirety to the requester as soon as the copy costs are paid, which will be on or after {date}. Please let us know before that day if you have any questions or concerns. Thank you.

Sincerely,

UCOP Public Records

Example response to contracts request without responsive documents

{Requester's name}:

Initial search efforts by UCOP staff to locate _____ did not turn up any responsive documents.

If you have a specific vendor name that you believe UCOP has an agreement with for such services, please feel free to submit a new California Public Records Act (CPRA) request to pra@ucop.edu.   Otherwise, we will consider this request closed.

For your reference, requests for campus records should be directed to the local CPRA office. http://www.ucop.edu/ogc/ipcoords.html.

Thank you,

UCOP Public Records

Example response to requests for contracts involving multiple vendors

{Requester's name}:

This is to formally acknowledge your request pursuant to the California Public Records Act ("CPRA"), received on {date}. You have requested:

{Request}

We are in the process of contacting appropriate UC departments and offices in order to properly respond to your request. In accordance with relevant law and University policy, records identified as responsive to your request will be reviewed and made available for your access.

Although the requested records have not yet been fully gathered and reviewed, it is possible that the requested material may contain information exempt from disclosure pursuant to the California Public Records Act. For example, the records you have requested may be exempt from disclosure pursuant to the California state definition of a trade secret (California Civil Code Section 3426.1, incorporated into Evidence Code Section 1060 (and therefore incorporated into Government Code Section 6254(k)), or otherwise fit into an exemption of CPRA (Government Code Section 6250 et seq.).

This is not a determination that the requested records are necessarily exempt from disclosure. We will provide you with a status update after the requested records have been thoroughly reviewed.

Pursuant to the University's practice, all affected {parties} will be notified that a PRA request has been submitted by {requester's name} for the requested information. Should any of the {parties} object to the release of the requested information on the grounds that some portion of the

information is for example, protected proprietary information under California law, the objecting {parties} will be provided an opportunity to state the legal authority upon which they base their objection. The University will make an independent assessment of whether any of the information can be withheld under the law. Given that {number of parties} participated in this RFQ, the aforementioned process will take some time, as the University reviews all of the requested documentation and dialogues with counsel for the objecting lenders. Therefore, the estimated response date for this request is three months from the date of this email.

The California Public Records Act allows public agencies to make records available "upon payment of fees covering direct costs of duplication." (Government Code Section 6253(b)). Costs of duplication include maintenance of scanning and compilation software, as well as hardware, needed to provide the records whether in electronic or hard copy form. The charge is $0.20 per page for copies. Prepayment is required before release of the requested records.

Inquiries about this PRA request should refer to PRA number _____.

Regards,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607
pra@ucop.edu

CPRA Requests for Billable Hours

Records reflecting fees and costs associated with pending litigation are exempt from disclosure under Government Code section 6254 (b) until the litigation has been finally adjudicated or otherwise settled.

- Once a matter is no longer pending, we will disclose the total litigation fees and costs for that matter upon request. However, actual copies of UC's outside counsel bills are exempt from disclosure pursuant to the attorney-client privilege (Government Code 6254(k)), so the approaches we have taken in the past are to either:

1. Release copies of the last pages of bills that contain only the total amounts due, not the actual descriptions of work, or

2. Provide summaries of amounts paid to outside counsel that simply state amounts paid without descriptions of work

   - Example: Assuming the law firm referenced is one of UC's firms, exclude reference to total number of billable hours as attorney-client privileged, but we could release some kind of summary or roll up of amounts charged by the firm.

UC won't release records or info that concerns current/ongoing litigation (example the "type of work done"), especially if that info is subject to the attorney-client privilege

- We have CPRA obligation to provide the dates and amounts charged. This means disclosing total legal fees and costs, but omitting line by line descriptions of billed work and number of billable hours as attorney-client privileged.

Example response to CPRA request for billable hours

{Requester's name}:

You have requested attorney fees and costs for litigation that is open and pending.

Records reflecting fees and costs associated with pending litigation are exempt from disclosure under section 6254 (b) of the California Public Records Act until the litigation has been finally adjudicated or otherwise settled. Therefore, no records will be disclosed at this time. Once a matter is no longer pending, the University will provide the total litigation fees and costs for that matter upon request. Actual copies of UC's outside counsel bills are exempt from disclosure pursuant to the attorney-client privilege (Government Code 6254(k)).

Sincerely,

UCOP Public Records

Example language for 10-day acknowledgement to CPRA request for billable hours

The University has determined that you have requested a mix of disclosable and exempt material. Descriptions of legal work performed and billable hours are exempt from disclosure pursuant to the attorney-client privilege. (Government Code § 6254(k)) Actual copies of UC's outside counsel bills are also exempt from disclosure pursuant to the attorney-client privilege. (Government Code 6254(k))

Additionally, records pertaining to pending litigation to which the University is a party are exempt from disclosure. (Government Code § 6254(b)) Once a matter is no longer pending, the University will provide the total litigation fees and costs for that matter upon request.

CPRA Requests Involving FERPA

The Family Educational Rights & Privacy Act ("FERPA") states that "personally identifiable information" regarding a student may not be disclosed absent the student's written consent (20 USCS § 1232g). The FERPA provision is incorporated into the Public Records Act through Gov. Code section 6254(k).

For more information on FERPA, please refer to the IPA section of this manual.

Example of FERPA concerns raised by CPRA request

{Requester's name}:

This letter is in further response to your Public Records Act request for data regarding students at the University of California. This request for student-level data was submitted after determining that the University could produce analyses showing statistics in these areas, but only at a significant cost for computer programming.

Family Educational Rights & Privacy Act (FERPA)

The University is not able to comply with your request as submitted, because the information that you have requested is "personally identifiable information" maintained in "education records," and is therefore prohibited from non-consensual disclosure pursuant to the Family Educational Rights & Privacy Act ("FERPA"). (20 U.S.C. 1232g). Therefore, the requested information is exempt from disclosure under the California Public Records Act ("PRA"). The PRA allows the University to withhold records from disclosure where disclosure of the records is exempt or prohibited under federal or state law. (Government Code Section 6254(k)).

The FERPA definition of "personally identifiable information" includes, but is not limited to:

(a) The student's name;
(b) The name of the student's parent or other family members;
(c) The address of the student or student's family;
(d) A personal identifier, such as the student's social security number, student number, or biometric record;
(e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
(f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
(g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. (34 CFR 99.3).

Therefore, names and unique identifying numbers of students are not the only categories of information that constitute "personally identifiable information." Any information that could make an individual student's identity identifiable by a reasonable person is protected under FERPA from disclosure without consent. The categories of information that you have requested for each University of California student constitute personally identifiable information under this definition. The combination of information such as race/ethnicity, language spoken at home, age and high school GPA can result in making an individual student's identity identifiable.

Other Public Records Act Issues

The extensive scope of information you submitted in your written request could potentially lead to the identity of one or more UC students. You have asked that the information not contain any identifying information, and the University has absolutely no doubt that your intention is to review aggregate trends and statistics, rather than discovering personal information about individual students. However, release of information in response to your request would have the effect of requiring the University to release the same information to anyone who made a request – the PRA does not permit the University to pick and choose who will receive information. (Government Code Section 6254.5). Therefore, even though you do not intend to utilize the requested information to discover private information about individual students, releasing the information to you would require us to release the same information to another requestor, even if they did intend to discover such private information. The University would be required to produce the same information to another requestor even if the requestor was a person with special knowledge about an individual student's background (for example, a college roommate), and who therefore could easily identify an individual student.

While FERPA is the primary reason that the University is unable to comply with your request as submitted, there are other related legal issues to consider. Personally identifiable information about UC students is also prohibited from disclosure pursuant to the California Information Practices Act ("IPA") (Civil Code Section 1798 et seq.) The IPA prohibits the disclosure of personal information that may be linked to any individual, without the individual's consent, except in very limited circumstances. (Civil Code Section 1798.24). Like the FERPA prohibition, this provision is incorporated into the Public Records Act through Government Code Section 6254(k).

In addition to FERPA and the IPA, the University also asserts that the requested records are exempt from disclosure pursuant to Government Code Section 6254(c), as constituting an unwarranted invasion of privacy. Finally, the requested records are exempt from disclosure pursuant to Government Code Section 6255, which permits the University to withhold records where the public interest in withholding the information clearly outweighs the public interest in disclosure. In this case, while the public interest in these records may be substantial, it is clearly outweighed by the public interest in withholding the information so as to protect the privacy rights of its students. The University's educational mission could be significantly harmed if students were concerned that private information about them and their academic achievement would be released to the public.

The Wisconsin Court Decision

You referred me to a court opinion from the Supreme Court of Wisconsin, in which the court concluded that the University of Wisconsin was not precluded by FERPA from disclosing requested student data, because the requested information did not constitute "personally identifiable information" under FERPA. (Osborn v. Board of Regents of the University of Wisconsin (2002) 647 N.W.2d 158).

The University's position is generally consistent with the Osborn opinion which you provided. Unlike the University of Wisconsin, which apparently took the position that FERPA protects all education records regardless of whether they are personally identifiable, the University recognizes that the appropriate standard under FERPA is whether the information is "personally identifiable information" by virtue of making an individual student's "identity easily traceable." (34 CFR 99.3). Moreover, the analysis in the Osborn opinion does not lead to the conclusion that the student data that you have requested is unprotected under FERPA.

First, the Osborn opinion makes clear that it is limited to the specific facts that were before the court. "Based on the written requests and his counsel's statements at oral argument, … we conclude that under the circumstances here, the information is not personally identifiable." (647 N.W.2d at 171). The data fields at issue in the Osborn case were narrowed until the request asked only for the "minimal necessary information," which consisted of the following five characteristics: test scores, grade point average, race, gender, and ethnicity. (Id. at 170-171).

The Osborn opinion further clarified that, although as a general matter these five fields of information do not appear to constitute "personally identifiable information," the University still has the discretion to withhold specific portions of the requested data which are in fact personally identifiable:

We conclude that Osborn's list of minimal necessary information is not a list of personal characteristics that would make a student's identity easily traceable. We do not intend, however, to deprive the University of a discretionary decision, in an individual case, to conclude that providing Osborn's list of minimal necessary information would involve disclosure of personally identifiable characteristics. The University should comply with FERPA and, in those few situations, refuse to disclose the information if it would indeed involve the release of personally identifiable information. (Id.)

Therefore, the Osborn decision stands for the relatively narrow proposition that, given the data set maintained by the University of Wisconsin, the release of the five specific requested fields of information was not precluded by FERPA – except for those portions of the data that the University in its discretion concluded were in fact personally identifiable. This opinion sets out the appropriate standard under FERPA and a state public records law that is relatively similar to California's Public Records Act, and is generally consistent with the University's interpretation of FERPA. But, due to the limited scope of its holding, this opinion does not necessarily lead to the conclusion that the information that you have requested from the University of California is not protected under FERPA.

Your request asks for more fields of information than were under consideration in the <u>Osborn</u> decision, creating a much greater likelihood that the requested information constitutes "personally identifiable information." Particularly in a small major, the combination of information such as race/ethnicity, gender, and year of graduation can much more easily identify individual students than the more generic categories of information requested from the University of Wisconsin in <u>Osborn</u>.

<u>Department of Education Guidance Letters</u>

The University is generally guided in its interpretation of FERPA by the United States Department of Education, Family Policy Compliance Office (FPCO), which is the agency responsible for enforcement of FERPA.

1. *Letter to Tennessee Department of Education*

You have referred me to a November 18, 2004, FPCO guidance letter to Mr. Pepper, a policy analyst at the Tennessee Department of Education. That letter permits the disclosure of student data for educational research if certain privacy-related requirements are met. The second listed requirement states: "2. The anonymous data file is populated by data from education records in a manner that ensures that the identity of any student cannot be determined, including assurances of sufficient cell and subgroup sizes." As discussed above, the University does not believe that information in the format you have requested would meet this standard. Even where the information did not directly identify a single individual student, it would certainly contain "small cell sizes" that would make the identity of the few students in that subgroup "easily traceable."

2. *Letter to University of Georgia*
In addition to the above 2004 letter, I would like to refer you to another FPCO letter. In September, 2003, the FPCO drafted a guidance letter interpreting FERPA's definition of "personally identifiable information" in a context which appears to be relevant to your request. The letter is available on the web, at:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/georgialtr.html>

This guidance letter discusses the University of Georgia's concern that release of student-level data, in response to a public records request from a newspaper, could make an individual student's identity easily traceable. The University was asked to provide the following fields of information: Georgia HOPE scholarship eligibility, Pell Grant eligibility, Pell Grant amount, and Federal expected family contribution; the information was also to be categorized by the student's secondary institution, college or university, and county of residence. The newspaper did not ask for student names or social security numbers or other unique identifiers. The newspaper also agreed to allow the University to follow its policy of not releasing information in cohorts of 10 or fewer students. The University stated that it nonetheless believed that FERPA precluded it from releasing the information in the format requested, because a recipient of the information would be able to identify individual students and their families with relative ease by cross-referencing the information provided.

The FPCO concluded that disclosure of the requested information would likely violate FERPA (even though apparently no cohorts fewer than 10 would have been released), under the following rationale:

> The FERPA prohibition on disclosure of "personally identifiable information" allows agencies and institutions to aggregate data and disclose statistical information from education records, without consent, so long as the student's identity is not "easily traceable." Just as the removal of names and identification numbers is not always adequate to protect against personal identification with student level data, there are circumstances, such as those described in your letter, in which the aggregation of anonymous or de-identified data into various categories could render personal identity "easily traceable." In those cases, FERPA prohibits disclosure of the information without consent. This is true whether personal identity is revealed through a single request or through a series or combination of requests that are available to those in possession of the data.

The FPCO went on in the opinion letter to strongly warn the University of Georgia, and other institutions, of the institutions' responsibility to avoid FERPA violations in this context:

> Any agency or institution that releases aggregated or anonymous student-level information from education records must first review the details of the resulting datasets to ensure that personal identity is not easily traceable. Clearly, agencies and institutions themselves are in the best position to analyze and evaluate these requirements based on their own data, and under FERPA the burden is on the agency or institution not to release aggregated or de-identified student level data if it believes that personal identity is easily traceable based on the specific circumstances under consideration. Indeed, this Office will initiate an investigation of any complaint that provides specific allegations of fact giving reasonable cause to believe that FERPA is violated by the release of aggregated or de identified student level information.

This guidance letter reinforces the University of California's concerns about releasing data sets which could make an individual student's identity easily traceable. The letter also indicates how complex this analysis can be, by indicating that in some circumstances, even redacting cohorts of fewer than ten people may not be enough to eliminate "personally identifiable information" from a data set. In this context, the University believes that its approach of protecting information containing small "cell sizes" is appropriate to comply with FPCO's interpretation of FERPA.

Next Steps

The University would be happy to discuss with you possible approaches whereby information that is useful to you could be provided, while still appropriately protecting the privacy of UC students. Please let me know if you have any questions, or if you wish to submit a revised request for information.

Information Practices Act (IPA)

Overview of the Information Practices Act (IPA)

These are requests made by individuals for records directly pertaining to themselves. Such records would often not be disclosable to the general public under the CPRA (because they often contain personnel information that would constitute an unwarranted invasion of privacy), but UCOP processes those requests as Information Practices Act requests.

The Information Practices Act (IPA) (California Civil Code Section 1798 et seq.) entitles individuals to see any "personal information" that is maintained by a state agency that pertains to them. "Personal information is defined very broadly, to include any information that identifies or describes an individual, and to include statements made by or about the individual. The IPA provides rights to individuals with respect to information about themselves that are in addition to any access rights of the general public under the California Public Records Act (CPRA). In providing information related to the person who requests it, we still need to protect the privacy rights of other individuals that may be contained in the report; so the main thing to keep in mind is that the requester should receive information that pertains to them, without providing information that pertains to others, to the greatest extent possible.

The Family Educational Rights and Privacy Act (FERPA) entitles students to have access to their education records when they contain any information related to the student who has requested it. Investigation reports constitute education records when they contain any personally identifiable information about a student, whether as a complainant, subject, or witness. Similar to the IPA, FERPA entitles the student to review any information contained in an investigation report that pertains to them, while protecting the privacy rights of any other student identified in the report.

Differences between IPA and CPRA:

IPA sets a 30 day deadline for production of documents.

Section 1798.34 of the IPA: "(a) Except as otherwise provided in this chapter, each agency shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual **within 30 days** of the agency's receipt of the request for active records, and within 60 days of the agency's receipt of the request for records that are geographically dispersed or which are inactive and in central storage. Failure to respond within these time limits shall be deemed denial."

IPA sets a copy costs charge of $0.10 per page.

Section 1798.33 of the IPA: "Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and **shall not exceed ten cents ($0.10) per page**, unless the agency fee for copying is established by statute."

Information Practices Act (IPA)

Logging and opening a file for a new IPA request

Logging the IPA request

- Log into 1-PRA log, under IPA tab (2nd tab, bottom of spreadsheet). From left → right columns, fill in the following info:

  - The date received

    - *This is the actual date it gets here, not the date that it was sent*

    - *List the requester's name and any organization the requester is affiliated with (example: John Smith, New York Times)*

  - Assign a new IPA number, sequentially

  - Requester's name

  - Indicate what records the request seek

  - Number of requests column

    - *Add up the separate number of requests that a single requester may have. This is an art, not so much a science. Things to consider when you're filling in this column:*

    - Types of documents being requested

    - Number of items, if the request is itemized

  - Make notes in the "Action" column when:

    - A request is completed (fill in "Completed")

    - A request has been transferred to a campus

    - A request is being handled by anyone other than our PRA office (example: "Employment litigator is handling")

- DON'T log into the Open PRA log.xls

Making an IPA folder

- Obtain a 1 divider, end tab classification folder (light green, 4 fasteners)

- On the left-hand side:

  o Original request

- On the right-hand side:

  o Communications with requester

  o Impending notifications of release

  o Final notifications

  o Response

- After the divider, put:

  o *Any non-responsive docs*

  o *Communications with person(s) / office(s) of record which should be retained (example: when approval is required prior to release)*

Create a IPA folder in the PRA service inbox

- Outlook → Mailbox - UCOP-PRA → Inbox → IPA requests

  o Left-click on IPA requests → select "New folder"

  o Name the new folder the IPA number (must match the info on 1-PRA, under IPA tab)

    - In the service inbox folder, save these types of documents:
      - *Original request*
      - *Communications with requester*
      - *Approval prior to release*
      - *Initial notifications*
      - *Impending notifications of release*
      - *Final notifications*
      - *Response*
      - *FYI AS SENT*

Information Practices Act (IPA)

General Redaction Guidelines for IPA Requests

Provide an individual with only:

- The information that pertains directly to them; or
- Is otherwise subject to disclosure under the CPRA (e.g. factual information such as policy information that may be detailed in the report does not implicate personal privacy, so can be released to the general public, and therefore should be provided to the requester).

Redact witness names and other personally identifying information of any witness or complainant who was promised confidentiality, or is particularly vulnerable to retaliation.

- Do not redact the identity of the person who has requested the report and those in a supervisory position to them.
- Do not redact the identity where the person is a resource of information about an administrative process and is providing factual information (e.g. representatives of Human Resources often are interviewed and provide information about best practices or advice that was given in a particular situation).
- Do not redact the names of individual(s) to whom the report is addressed, and do not redact the identities of those in a supervisory position to the individual(s) receiving the report.
  - o The Information Practices Act specifically provides this exception (Civil Code § 1798.38); the idea being that an individual has a right to know what those in a supervisory position to them are saying about them, or what actions are being taken by them, etc. (see item #4 below for information about when a supervisors name should be redacted). We interpret someone in a supervisory position to be not only an individual's immediate supervisor, but those at higher levels than the individual's supervisor (e.g. the chair of a department, deans, etc.).

Redact any personal information that pertains to individuals other than the requester.

- The exception is if the information is non-personal information about someone in a supervisory position or serving as a resource for factual information, as described above (e.g. length of time an individual has served in their position).

While the requester is entitled to see what their supervisor has said about them in the report, personal information about the supervisor that does not also directly pertain to the requester should be redacted (e.g. statements from individuals about the supervisor that are not related to the requester). See examples below.

When preparing a report for an employee, Joe Smith, whose supervisor is Mary Jones:

- "Candace reported that she heard Mary Jones yelling at Joe so loudly it could be heard outside the building."   [Redact the name Candace and "she" but leave the rest since it concerns the supervisor's behavior toward the requester, Joe Smith (had Mary Jones not been a supervisor then we would redact her name as well, but not the content of the statement)]

- "Candace reported that Mary Jones is the worst supervisor that she has ever had." [Redact entire sentence because it does not concern Joe Smith at all, so he is not entitled to access under the IPA. He would not be entitled to access under the CPRA because the statement implicates the personal privacy of both individuals mentioned].

- Before actually beginning any redaction process it can be helpful to read the entire report as the overview may provide information that will assist you in making redactions (i.e. learning reporting relationships, whether allegations were substantiated or not, etc.).

Due Process Rights

When an individual is receiving disciplinary action based on the contents of an investigation report they are entitled to receive any portions of the report that were relied upon in making the decision to discipline, without redaction (i.e. the identities of all witnesses should be disclosed).

For example, if there were 5 allegations that were investigated and only 2 were substantiated, the disciplined employee would receive unredacted information about the 2 substantiated allegations. Sections in the report concerning the 3 unsubstantiated allegations would be prepared according to the redaction guidelines described earlier. In other words, the identities of confidential witnesses who provided information concerning unsubstantiated allegations would be redacted in accordance with the Information Practices Act, to protect their rights to privacy.

If personal information concerning someone other than the disciplined employee exists in a report it can most likely be redacted from any portion of the report, unless it is relevant to the findings upon which the discipline is based.

Availability of Reports

An individual who is not a student should have access to a copy of the investigation report that has been prepared for them within 30 days of the date they made the request. However, the IPA allows you to withhold records while an investigation or a related investigation is still ongoing. It is the campus' practice to wait until all administrative actions resulting from the investigation are complete before providing access to the report. And, if a related investigation occurs then a determination may be made to withhold a copy of the original report until the latter investigation is complete and all administrative actions are final. Decisions about making reports available are made on a case-by-case basis; generally they are withheld when there is a concern that release of information may compromise the investigation or related investigation.

FERPA requires schools to provide a student with an opportunity to inspect and review his or her education records within 45 days from the receipt of a request. There are no exceptions to this time period.

Information Practices Act (IPA)

Copy Costs Procedure for IPA requests

Section 1798.33 of the Information Practices Act of 1977 (Civil Code Section 1798 et seq.): "Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents ($0.10) per page…"

1. Charge requesters $0.10 per page for copies of 15 pages or more (i.e. charge $3.00 for 15 single-sided pages)

    a. Charge only $0.10 for double-sided copies (example: 15 double-sided pages will cost $1.50)

    b. Waive copy costs for responses 15 single-sided pages or less

2. Charging copy costs for PDF versions

    a. You *may* charge $0.10 per page for PDF versions

        i. Can charge for scanning because 1) it takes the same amount of time as it does to copy and 2) that the same machine is used for copying and scanning

3. Following up on copy costs

    a. After you send the copy costs to the requester:

        i. Calendar 10 days

            1. Email the requester with the standard Copy Costs Reminder #1 on the 10th calendar day

        i. Calendar 10 days from the date of Copy Costs Reminder #1

            1. Email the requester with the IPA Copy Costs Reminder #2 on the 10th calendar day

                a. Include the drop dead date, which is 10 calendar days from the date that IPA Copy Costs Reminder #2 is sent

Copy Costs Reminder #1

(Can be used for both CPRA and IPA requests)

Requester's name:

We have not received the copy costs for the _____ double-sided pages for copies of ___ which are available for release, pending payment. If you still want copies of those documents, please let us know by {insert 10 calendar days for deadline} when we can expect payment. If you no longer want the documents, kindly let us know whether you are withdrawing your request. Thank you.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607

IPA Copy Costs Reminder #2

(For IPA requests only)

Requester's name:

As part of UCOP IPA tracking, requesters are given a final notification of outstanding IPA charges for requested records, and provided an opportunity to pay before their requests are closed due to lack of payment or lack of communication from the requester. Please let me know by ___ if you will be sending payment for copies of the items listed in the {insert date of original copy costs notification} email below or if you prefer to inspect the records. Consistent with our standard practice and regular retention policies, requests are considered withdrawn and the documents are disposed if notice of intent to pay is not received by the due date.

Sincerely,

Public Records Office
UC Office of the President
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607