

Faculty FAQ for Public Records Requests

What is a Public Records Request?

The California Public Records Act (Statutes of 1968, Chapter 1473; currently codified as California Government Code §§ 6250 through 6276.48) is a law passed by the California State Legislature and signed by the Governor in 1968 requiring inspection and/or disclosure of governmental records to the public upon request. The California Public Records Act (“CPRA”), “mindful of the right of individuals to privacy,” declares that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” As a state institution, UC Merced and its public records, including the public records of its faculty, are subject to disclosure pursuant to the Act.

Is a FOIA request the same as a CPRA request?

No. The Freedom of Information Act (“FOIA”), 5 U.S.C. §552, et seq., is a Federal law that applies only to Federal – not state agencies. It requires federal agencies to make documents available to the public, including documents that federal agencies may have obtained from UC Merced. The law provides certain exemptions set forth in 5 U.S.C. § 552 (b), <https://www.justice.gov/oip/blog/foia-update-freedom-information-act-5-usc-sect-552-amended-public-law-no-104-231-110-stat>. Because UC Merced is not a federal agency, it is not subject to FOIA requests, but UC Merced’s records may be disclosed by a federal agency that holds such records. An example may include a FOIA request for an NIH grant that was awarded to a UC Merced faculty member. If a federal agency receives a FOIA request that includes records that UC Merced’s faculty might deem proprietary, the agency will typically notify the affected faculty member of the request so that the faculty member can provide input. The decision as to disclosure, however, remains with the federal agency. If a faculty member receives such notice from a federal agency, he or she may seek assistance from the Assistant Vice Chancellor of Research Compliance & Integrity, Deb Motton at (209) 383-8655.

What should I do if I have directly received a Freedom of Information Act or California Public Records Act request?

If a faculty member receives a Freedom of Information Act (FOIA) or California Public Records Act (CPRA) request, the faculty member SHOULD NOT RESPOND DIRECTLY to the requestor. It is very important to IMMEDIATELY NOTIFY the principal campus officer responsible for these requests, the Public Records Act (“PRA”) Coordinator, Angela Counts at publicrecords@ucmerced.edu or by telephone at (209)228-2406. The law requires certain information be provided to the requesting party within 10 calendar days, so time is of the essence. The PRA coordinator will assist faculty members and administer a timely response to the request, and if necessary, establish a reasonable timeframe for submission of documents to comply with the request.

Are records of the faculty considered to be public records?

Generally, yes. The California Public Records Act broadly [defines](#) a “public record” to include any “writing” (which includes any tangible recording such as hard-copy or electronic records, photographs, audio recordings, handwritten notes, University related email communications including those stored on personal devices or email accounts, etc.) that “relates to the conduct of the public’s business” and which is “prepared, owned, used, or retained” by a state agency, including the University of California.

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

Generally, yes, unless an exemption applies. The types of records requested must be individually assessed to determine if they are public records and whether there are any exemptions that apply. There are a number of enumerated exemptions. Examples of exemptions applicable to typical faculty records are: test questions and scoring keys, personal records that “constitute an unwarranted invasion of personal privacy”, scholarly communications and records prohibited from disclosure under federal and state law such as FERPA (federal Family Educational Rights and Privacy Act). Additionally, records may be considered exempt on a case-by-case basis when the University determines that the public interest served by not disclosing a record clearly outweighs a public interest served in disclosing it. The University bears the burden of justifying an exemption and the courts typically favor disclosure.

How should I respond to a notice from the PRA Coordinator that my records have been requested?

The PRA Coordinator will engage faculty in direct conversations should their records be identified as responsive to a request and will work with faculty members collaboratively to develop an appropriate approach to responding that is specifically tailored to the request at hand. It is important that the PRA Coordinator administer the request on behalf of the campus, including consultation with counsel as appropriate; therefore, faculty should NOT attempt to respond to a CPRA request independently.

1. If you receive a request for information directly, forward it to the PRA Coordinator immediately.
2. When the PRA coordinator informs you that your records have been requested, you should carefully review the request to determine if you have records and to raise any concerns you may have as to the appropriateness of disclosing such records. Please notify the PRA Coordinator if you believe that the requested records are exempt from disclosure. The obligation to disclose records rests with the University. Thus, it is the University administration, through Campus Counsel, that makes the determination of whether and what records must be disclosed.

3. Forward copies of the responsive records, including those that you believe may not be public records, to the PRA Coordinator. Do not create records that do not otherwise exist to respond to a public records request.

Will the campus provide legal counsel to a faculty member who is subject to CPRA or FOIA requests? Or alternatively, if I, as a faculty member, receive a CPRA or FOIA request, am I responsible for my own legal defense?

The short answers are: (1) yes, university counsel often gives legal advice on CPRA and FOIA issues to faculty members, with the caveat that the “client” is the Regents, not the individual faculty member; (2) generally, no, faculty members who are acting within the course and scope of their employment are not required to find their own legal counsel. Some explanation may be helpful.

1. University counsel represents the Regents as a body, and this includes defending faculty members and other university employees who are acting in the course and scope of their employment duties (since the Regents generally bears responsibility for the actions of its employees). University counsel does not, however, represent individual faculty members or University officers in their personal or individual capacities. Generally, this may become an issue in public records cases involving faculty because it goes to the issue of who decides which records must be disclosed. Under the law, the Regents has the legal obligation to provide the records, including any records in the possession or control of its faculty, staff, and employees, that relate to University business. The Regents is the “client” and decisions about the representation and legal strategy are made by the Regents or its designee, the Chancellor.
2. As a practical matter, in cases seeking faculty records, especially matters potentially impacting the faculty’s academic freedom, research, and other restricted or sensitive information, the University’s counsel works closely with the faculty to determine legal strategy; however, if there is a dispute over the scope of the legal duty of disclosure, such issues are within the authority of the “client” -- here, the Regents -- to resolve.
3. In the past, the Regents has taken strong positions in support of protecting sensitive academic research materials as exempt from disclosure. See, e.g., [Humane Society of the United States v. Superior Court \(Regents of the Univ. of Calif.\)](#), (2013) 214 Cal. App. 4th 1233 (upholding Regents’ decision to withhold UC Davis researchers’ pre-publication research data from public records request). The position the Regents take in individual cases necessarily depends on the facts of specific cases.