



RALPH J. HEXTER  
Acting Chancellor at Davis

OFFICE OF THE CHANCELLOR  
ONE SHIELDS AVENUE  
DAVIS, CALIFORNIA 95616-8558  
TELEPHONE: (530) 754-7237

OFFICE OF THE CAMPUS COUNSEL

Telephone: (530) 754-6295

September 16, 2016

Richard C. Miadich  
Olson Hagel & Fishburn LLP  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814

Re: *Gary Ruskin v. The Regents of the University of California*  
Case No. PT16-1304

Dear Mr. Miadich:

Thank you for taking the time to meet with Mr. Appelsmith and me last week. I am writing to confirm our discussions, and to provide you with further information about our handling of Mr. Ruskin's various Ca. Public Records Act requests. As discussed during the meeting, we have been working diligently on gathering, reviewing, and preparing the documents responsive to Mr. Ruskin's requests so they can be produced to him. Unfortunately, a variety of factors have complicated our efforts, and although some documents have been produced, others remain outstanding. We are continuing to work on the requests and will continue to produce batches of documents as they are ready.

For purposes of clarity, as we discussed during the meeting, we have grouped the requests by date of receipt. For example, we refer to the original six requests dated January 28, 2015, with the subsequent addition of four faculty members, collectively as Request #1.

We also discussed providing you with the general parameters of documents and portions of documents that are being withheld from production or redacted. Pursuant to your agreement with Michele McCuen, listserv communications have not been included in the production. Non-public information, such as cell phone numbers, home addresses, private email addresses and other personal information, have been redacted for privacy reasons as permitted by Ca. Gov. Code § 6254(c). Communications made outside of the custodians' activities on behalf of the University have been redacted as beyond the CPRA's definition of "public records." Ca. Gov. Code § 6252(e). In addition, pursuant to the public interest balancing test set forth in Ca. Gov. Code § 6255, information constituting on-going or unpublished academic research contained in responsive records has been redacted or withheld. For each record containing potentially exempt information under § 6255, we have carefully considered the specific information at issue and the competing public interests in disclosure versus non-disclosure.

With respect to the records received pertaining to Neal Van Alfen in response to Request #1, Mr. Ruskin inquired as to the limited number of pages for Ketchum. There were a total of 148 pages originally collected from Dr. Van Alfen using the @ketchum.com search term. The production totaled 127 pages. Reviewing the materials side by side, I have determined that through the process of converting the original pages to a single pdf document, all of the blank pages were removed, which is why the page number went from 148 to 127. No full pages were removed. In fact, the few redactions that were made to these records, appear limited to cell phone numbers and a small number of personal notes among the emails.

During the meeting, you requested that we identify the individual who performed each of the searches, and the search terms used. For Request #1, Ms. McCuen collected documents from Dr. Ronald and Dr. Van Alston. Ms. McCuen assisted Dr. Bradford and Dr. Van Eeneennaam with their collections. The other custodians performed their own collections, potentially with assistance from their departments (either IT personnel or others), and provided the documents to Ms. McCuen. The search terms used were those agreed upon between Mr. Ruskin and Ms. McCuen.

For the other requests, with the exception of Ms. Newell-McGloughlin who was no longer an employee, all custodians were provided the search terms agreed upon between Mr. Ruskin and Ms. McCuen, and asked to perform their own searches. The extent to which any of the custodians obtained assistance from their IT staff or others is unknown at this time.

During our meeting, you appeared to express concern that we had asked our faculty to search their own email rather than our doing it ourselves. As we told you, it is not our practice to do it ourselves – we simply do not have the resources to do so – and we believe we can trust our faculty to undertake the process honestly. Moreover, we do not believe a court, all else equal, would ask more of us. However, if you have particular concerns and wish to ask us to consider specific searches, then please let us know and we are happy to consider such a request.

Regarding the future production of records, as we agreed, the campus has instituted the practice of identifying the faculty member and outside organization for each batch of records provided to you. To the extent possible, we are completing our review of records in order to be able to send them in batches by individual.

Concerning Request #3, which sought donor information, including the date of contribution, amount, and purpose (if specified) for the last three years from Monsanto, Syngenta, Bayer, BASF, DuPont/DuPont Pioneer, and Dow, I have confirmed that the database from which information was gathered was the donor database maintained by the campus' development office (which we explained is distinct from any records maintained by the Sponsored Programs' Office, which handles research grants). Accordingly, funds provided by these companies for specific research projects would not have been captured in the search.

During the meeting, we advised that we believe the production of records responsive to Request #4 can be completed by the end of December 2016. As requested, we will produce these records in batches as they become available. If the estimated time for completing the production changes, we will let you know.

For the records produced in response to Mr. Ruskin's Request #5, which sought all documents, email correspondence, and email attachments regarding funding for the World Food Center at UC Davis, we have confirmed that funds came from the Short Term Investment Pool, referred to as "STIP funds." As its name implies, STIP funds are income from an investment pool that is maintained by the Office of the President on behalf of all campuses. The sources of the funds are tracked by campus, but not by the source from which the deposited funds were derived. There are funds from corporate donors in the pool, primarily from the indirect recharges the campuses assess on research grants, along with other funds such as those derived from various campus fees. The campus does not attribute its expenditures from the STIP to any particular corporate grantor. If a private entity wants the campus to use funds in a certain way, or to have the campus attribute its donation or grant to the entity, it would do so through a targeted gift or sponsored research project, not a gift that that would end up in the STIP.

Mr. Ruskin indicated that, for his Request #6, which is dated March 24, 2016 and seeks records from 11 individuals and 18 organizations, he would prefer to receive records from the following individuals ahead of any others: Roger Beachy, Alison Van Eenennaam, and Kent Bradford. We will endeavor to comply with this requested preference but will not postpone processing or delivery of records to ensure that these are provided first.

Concerning Request #7, I am informed that we provided Ms. Applegate a copy of Mr. Ruskin's June 14, 2016, request and she performed the search herself, possibly with assistance from her department. I am not aware of Ms. Applegate's email retention practices or communications with various entities, and therefore cannot provide further information with respect to why there were not additional documents.

We understand that, at least as of last week, Mr. Ruskin was in the process of reviewing the documents that had been produced in response to Request #8, dated June 24, 2016, seeking documents from Ms. Lewis and Mr. Hopmans. Should there be concerns about this production, please let me know. Additionally, on Friday, September 9, 2016, we produced records gathered from Dr. Ronald, Dr. Carter, and Dr. Beachy, which completes each of their productions for Request #1. Also produced on September 9, 2016 in response to Request #1 was a first batch of records from Dr. Van Eenennaam.

For Request Nos. 1, 2, and 6, we advised that Mr. Entine and Mr. Bisson are not employees of the University. While both individuals were issued UC Davis email addresses at some point in the past, they have advised that they did not conduct University business with the organizations identified in the requests using either the UC Davis email addresses or any other email addresses. We have requested any emails that constitute University records and are within the search parameters from both individuals, and they have indicated that no such emails exist.

Enclosed is the University of California Electronic Communications Policy we referenced at the meeting, which provides the circumstances under which UC can and will access electronic materials of faculty and staff.

Thank you again for meeting with us, and for Mr. Ruskin's patience through this process. I hope that this information is useful. Please contact Jacob or me if you have any questions. We

look forward to meeting with you again on September 22, at which time we will provide up-to-date estimates of the time needed to complete each of the outstanding requests.

Sincerely,



Kirsten C. Stevenson  
Associate Campus Counsel

cc: Jacob Appelsmith, Chief Campus Counsel

# UC Davis Policy and Procedure Manual

## Chapter 310, Communications and Technology

### Section 23, Electronic Communications—Allowable Use

Date: 5/9/06, reissued 9/6/13

Supersedes: Section 310-16, 10/5/04

Responsible Department: Information and Educational Technology

Source Document: University of California Electronic Communications Policy

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#### Exhibit A, Acceptable Use Policy

#### **I. Purpose**

This section provides UC Davis (UCD) implementing procedures for the allowable use of University Electronic Communications (EC). The UC and UCD EC policies apply to all EC resources owned by the University; provided by the University through contracts and other agreements; users and uses of University EC resources; and all University EC records in the possession of University employees or other users of University EC resources. See also Section 310-24, Electronic Communications—Privacy and Access to Records.

#### **II. Definitions**

The UC EC policy, Appendix A, defines terms used in this policy. Some terms are further defined at UCD as follows:

- A. Department head—the head of a teaching, research, administrative, or other organizational unit as designated by the Chancellor. For students, "department head" shall be the Director of Student Judicial Affairs.
- B. Record (EC record)—EC records residing on University-owned or –controlled EC resources are University records for the purposes of this policy and subject to disclosure as required by the California Public Records Act.
- C. Restricted personal information—unencrypted data in which the individual's first and last name appears in combination with the Social Security number, driver's license number, California identification card number, or credit card or account number together with the security code, access code, or password that would permit access to the account.
- D. Security Coordinator—the Electronic Information Security Guidelines Coordinator, as designated by the Chancellor pursuant to UC Business and Finance Bulletin IS-3.
- E. System administrator—department designee who has the physical or logical control over EC resources.

#### **III. Policy**

The use of electronic communications resources is limited by restrictions that apply to all University property and by constraints necessary for the reliable operation of electronic communications systems and services. The University reserves the right to deny use of its electronic communications services when necessary to satisfy these restrictions and constraints.

#### **IV. Allowable Users**

- A. University users may be granted access to University EC resources and services for purposes

in accordance with allowable use. University users are defined as follows:

1. UCD students, staff, academic appointees, and emeriti. Department heads may grant access in support of teaching, research, public service, and patient care mission of the University, and the administrative functions that support that mission.
2. Other individuals who are affiliated with the University, including those in program, contract, or license relationships. Department heads may grant access for the term of the affiliation, when such access supports the mission of the University and is not in competition with commercial providers.

These individuals must be sponsored by a UCD department and must complete a Temporary Affiliate form (<http://email.ucdavis.edu>).

- a. Students, academic appointees, and staff at other UC campuses.
  - b. University Extension students enrolled in courses requiring access.
  - c. Retirees.
  - d. Volunteers.
  - e. Contractors, independent consultants, and certain agents of the University other than employees may be given access for the sole purpose of conducting their business on behalf of the University, unless agreed otherwise in writing.
- B. Public users. Individuals and organizations that are not University users may only access University EC resources under programs sponsored by the University, as authorized by the Vice Provost—Information & Educational Technology or other administrator designated by the Chancellor for the purpose of public access in accordance with allowable use.
- C. Separation from the University
1. Access to records. If a separating individual is unable or unwilling to turn over the University records in his or her possession, the department may seek the records through the procedures for access without consent. (See Section 310-24.)
  2. Mail forwarding upon separation.
    - a. Forwarding services for email may be provided indefinitely, subject to biennial renewal, for separated users unless they leave for disciplinary reasons.
    - b. Separated employees whose mail is being forwarded must agree that any mail that pertains to the University's business will be returned to the department. The department head may require that all mail forwarded to a terminated user from the UCD address also be forwarded to a departmental account.

## V. Allowable Uses

### A. Acceptable Use Policy

All users must comply with the Acceptable Use Policy (Exhibit A) and with applicable laws and

University policies (see References, below). Users must acknowledge, in writing, that they have read and understand the Acceptable Use Policy before they are allowed access to UC Davis electronic communications resources.

B. Use for University purposes

Access to EC resources is provided at the discretion of the department in consideration of educational requirements, job demands, departmental needs, and cost and efficiency factors. EC resources may be provided to UCD employees and others for the purpose of conducting the University's business and such other purposes that conform to the Acceptable Use Policy.

C. Incidental Personal Use

1. University users may use EC resources for incidental personal purposes provided that such use does not directly or indirectly interfere with the University's operation of EC resource; does not interfere with the user's employment or other obligations to the University; does not burden the University with noticeable incremental costs; and does not violate the law or University policy. Accordingly, regular or voluminous personal messages delivered via lengthy email lists are impermissible.
  - a. University users are prohibited from, among other things, using EC resources in a manner that creates a hostile working environment (including sexual or other forms of harassment) in violation of the law, or violates obscenity laws.
  - b. When noticeable incremental costs for personal use are incurred (e.g., telephone long distance charges), users shall reimburse the University.
2. Incidental personal use on behalf of an outside organization is permitted only under the circumstances listed below. Before such use, users shall verify with their supervisors that the proposed use complies with UC and UCD policy. A UCD EC resource shall not be published as the point of contact for non-University activities.
  - a. Charities. UCD EC resources may be used only for charitable activities that have been approved by the Chancellor (e.g., the United Way campaign). Before such use, the user must obtain written authorization from the Chancellor or designee.
  - b. Professional and public service organizations. UCD EC resources may be used on behalf of outside professional or public service organizations when the individual is participating as a representative of the University in the activities of an organization of which the University is a member, or when the individual is a member of an organization in support of the University's mission.
  - c. Civic committees or task forces. UCD EC resources may be used on behalf of national, state, and local committees or task forces when associated with an approved University activity.

D. Policy violations

Uses that violate this policy, other University policies, or any federal or state law or regulation may result in:

1. Service restriction;

2. Corrective action under applicable University policies and collective bargaining agreements; and/or
3. Civil lawsuit or criminal prosecution.

## **VI. Restrictions on Use**

- A. Use of University EC resources is accorded at the discretion of the University and can be restricted or revoked without prior notice and without consent of the user.
1. A system administrator may temporarily restrict access to perform required maintenance. The system administrator shall give reasonable notice if possible.
  2. A system administrator may temporarily restrict access to control an emergency or prevent damage or loss. The system administrator shall notify the department head and users as soon as possible.
  3. A system administrator may restrict or rescind a user's access as described in UC Policy, III.E, Access Restriction. The system administrator shall:
    - a. Obtain approval from the department head prior to restricting the individual user's access.
    - b. Notify the user of the reason for the restriction and the name of the person who authorized the restriction.
    - c. Restore access when authorized to do so by the department head who authorized the restriction.

B. Recourse

The decision to restrict access may be appealed to the Vice Provost—Information and Educational Technology within 30 days of notification.

C. Copyright infringement

As permitted by the Digital Millennium Copyright Act (DMCA), the University may suspend access to EC systems by any user allegedly violating copyright law upon receipt of a DMCA notification. (See Section 250-05.)

## **VII. References and Related Policies**

- A. Office of the President: University of California Electronic Communications Policy (<http://www.ucop.edu/ucophome/policies/ec/>).
- B. UCD Policy and Procedure Manual (<http://manuals.ucdavis.edu/PPM/about.htm>):
1. Section 250-02, Use of Copyrighted Materials.
  2. Section 250-05, Digital Millennium Copyright Act.



3. Section 270-20, Use of University Properties.
  4. Section 270-25, Commercial Activities.
  5. Section 310-10, Telecommunications Services.
  6. Section 310-24, Electronic Communications—Privacy and Access to Records.
  7. Section 310-65, Use of the University's Name and Seal.
  8. Section 310-70, World Wide Web (pending approval).
- C. State of California, Education Code Section 92000 (<http://www.leginfo.ca.gov/calaw.html>).
- D. Digital Millennium Copyright Act of 1998 (U.S. Code Title 17, Section 512) (<http://uscode.house.gov/search/criteria.shtml>).
- E. UC Davis Principles of Community (<http://occr.ucdavis.edu/poc/>).
- F. Business and Finance Bulletin IS-3, Electronic Information Security (<http://www.ucop.edu/ucophome/policies/bfb/is3.pdf>).

