

April 15, 2019

The Honorable Laura Friedman
California State Capitol, Room 2137
Sacramento, California 95814

**Re: AB 700 – as amended 4/4/19
Oppose**

Dear Assemblymember Friedman:

The American Civil Liberties Union of California regrets that we unfortunately remain opposed to your AB 700, which proposes to conceal information in public colleges and universities relating to researchers and their research by excluding it from the California Public Records Act (CPRA).

The CPRA reflects a fundamental principle of democracy: In order for the government to be reflective of and responsive to the will of the people, the public must be allowed to know what the government is up to. Absent some overriding interest, the people are entitled to know the conduct of the people's business in order to "instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." (Cal. Const., Art. 1, section 3.)

Our public colleges and universities have never been exempted from this principle, nor have their faculty and researchers, or the data they create or analyze with public resources, or any other activity they engage in while employed in their capacity as public servants. With the benefits of public funding go the obligations of public accountability, just as surely for colleges and universities as for any other government entity, and for researchers just as surely as engineers, doctors, police officers or any of the myriad professionals on the public payroll.

Despite your laudable goal to protect university researchers from harassment or distractions, or to promote recruitment, collaboration and the acquisition of knowledge, we do not believe the pursuit of truth and education is fostered by darkness rather than sunshine. If it is, the same theory would apply equally to every type of government official that undertakes any inquiry – not only university researchers – and the CPRA would be severely undermined. We also resist the suggestion that avoiding "disruption" of government agencies is a valid reason for cloaking their activities. We have been told that another reason for the bill is to protect university officials from harm to their reputation. Assuming that is a legitimate objective, there are existing methods and laws to address it. So too, if the concern is the protection of intellectual property, existing law provides the means to do so.

As lawyers for the University of California have noted, there are already significant protections under the CPRA to guard against excessive or inappropriate requests. UC lawyers proudly tout that they "have successfully protected unpublished data and researchers' communications from public release, providing greater assurance that the University's interest in promoting scholarly research will be weighed heavily against public disclosure in the court's future analyses of PRA exemptions. In [Humane Society of the United States v. Superior Court of Yolo County], the California Court of Appeal affirmed that records relating to the funding, preparation, and

publishing of a UC Davis research study were exempt from disclosure under the PRA. ... Relying on the PRA's 'catch-all' exemption, which provides for a 'balancing test' between the public's right to know and the public's interest in University confidentiality, the court protected all but 28 pages of the records from disclosure. Specifically, the court held that the public interest in promoting research on important social issues 'clearly outweighed' any benefit the public might receive from gaining access to the remaining documents. Upholding the trial court decision, the Court of Appeal emphasized that disclosing scholarly research communications would have a chilling effect on the candid and objective analysis of controversial social issues in the academic setting—and that such analysis benefits the public."¹

The existing CPRA balancing test demonstrably works to protect the public's right to know while preserving the ability of researchers to perform their work, balancing the respective interests based on a careful consideration of the specific facts involved in each request. Moreover, it is impossible to take the CPRA out of the hands of those who use it for purposes you disapprove of without also extinguishing the rights of those who use the CPRA in the public interest to uncover any number of wrongs. Indeed, the bill seems to rest on the belief that public researchers and university administrators never lie, cheat, steal, commit fraud, falsify data, engage in nepotism or other favoritism, discriminate on the basis of race, sex or other factors, misuse public funds, take bribes, engage in unsafe practices, harm research subjects, or commit any other type of misconduct. Sadly, the University of California and other state higher educational institutions have not been immune from academic fraud, wrongful tenure decisions, personnel abuses, admissions scandals, kick-backs, membership on corporate boards of directors and other improper arrangements.

For these reasons, we must respectfully oppose AB 700. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,


Kevin G. Baker
Legislative Director

cc: Members and Committee Staff, Assembly Appropriations Committee

¹ University of California, Office of General Counsel, Legal Advisory. Aug. 5, 2015. Available at https://www.ucop.edu/general-counsel/_files/legal-advisory/legaladv_130805.pdf