



March 25, 2019

The Honorable Laura Friedman
Capitol Office, Room 2137
P.O. Box 942849
Sacramento, CA 94249-0043

Re: AB 700 (Friedman) – OPPOSE

Dear Assemblymember Friedman,

I write today on behalf of the Electronic Frontier Foundation, a San Francisco-based non-profit, non-partisan advocacy organization dedicated to digital liberty. We deplore the use of the California Public Records Act (CPRA) to harass academics and to chill scientific inquiry and free expression. This bill, however, would create a broad, categorical exception to this crucial law that would severely limit the public's right to know more about research at California public universities even if that research is of great public interest.

Setting aside that the bill would increase secrecy on academic campuses and harm the public's right to know, the proposed exemption is unnecessary because the CPRA currently prohibits the disclosure of the information that the bill seeks to protect. For example, the CPRA exempts records that document the deliberative process of any state official or agency, which would apply to developing research or academic inquiry or communications reflecting arguments grappling with flaws in research or theories.

There are other provisions that already protect individual privacy and allow universities to assert that other laws, such as the federal student privacy law FERPA, to prohibit the disclosure of certain university records that might contain information about students.

The CPRA also contains a catch-all balancing exemption that would allow universities to argue that the public interest in not disclosing researchers' records—such as that it harms academic freedom or scientific inquiry—that outweighs the public's interest in disclosing the records sought.

The new exemption would weaken the CPRA in a dangerous way, by prohibiting the disclosure of "[information] relating to a researcher or their research at a public postsecondary educational institution, including, but not limited to, any of the following...." Consequently, any academic could argue that their work, at any time in the research process, is exempt from disclosure.

As drafted, such broad language could hamper legitimate requests that in no way intrude upon or chill academic freedom. Exempting all correspondence "relating to research" is not defined and could apply to virtually all academic communications. A requester could be denied, for example, access to University of California records about controversial surveillance technology research, or research to develop analytical algorithms for law

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enforcement agencies. Disclosure of these public records is becoming increasingly important in light of the fact that many government agencies rely on automated decision-making tools to provide a range of public services, from determining people's eligibility for public benefits to whether arrestees can be released on bail. Those systems often rely on algorithms and data developed by academic researchers. Public disclosure would thus help inform whether those systems are built or developed with racial or other biases. That work should not be allowed to hide behind an ironclad CPRA exemption.

Furthermore, this exemption says that if researchers share the information protected by the proposed exemption outside the university "for professionally relevant purposes," then it would not constitute a waiver of the exemption—possibly applying to communications such as presentations. That would mean that research could be presented in open and public places, such as at academic or industry conferences, but would yet not be made available to the public.

For these reasons, we must respectfully oppose AB 700. We are eager to continue this conversation and work toward a solution that balances harassment concerns with the vital protections of the CPRA.

Sincerely,



Hayley Tsukayama
Legislative Activist