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## **The Bakersfield Californian    January 15, 2014**

Tuesday, Jan 14 2014 06:22 PM

### **LOIS HENRY: UCLA slams the door on public access**



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Californian columnist Lois Henry

**By LOIS HENRY, Californian columnist [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)**

Here's a fun way to deal with laws you don't like: make up a policy that says they don't apply to you.

That's essentially what UCLA did earlier this month in regard to the California Public Records Act.

Specifically, the university says faculty emails should not be subject to disclosure because the very thought that public eyes could scrutinize how their particular brand of sausage is made could cause a "chilling effect" on research and the free exchange of ideas and squelch faculty members' academic freedom.

The university came out with a statement of "guiding principles" that claims professors should have a right -- a right, mind you -- not to have anyone prying into their "scholarly communications."

You know, for a bunch of smarty pants, these folks can be pretty dim sometimes.

They work for the state. As such, employee communications are subject to the California Public Records Act.

The act lists a number of exemptions under which certain records may be withheld.

"Academic freedom" is not among them.

"If the Legislature had found that was a legitimate exemption, they had 50 years to design such an exemption and they did not," noted Jim Ewert, a First Amendment attorney for the California Newspaper Publisher's Association.

Not only that, no court has ever found that a public employee, in the scope their employment, can claim their communications are private, whether for academic freedom purposes or otherwise, he said.

That includes professors and researchers who work for the publicly funded University of California.

Even attorneys who felt there could be cases where academic freedom trumped public disclosure, said UCLA's policy was way too broad.

"It would allow them to withhold too many different kinds of records and communications," said Peter Scheer an attorney for the California First Amendment Coalition.

There is an "individual privacy" exemption in the act. But that is always based on very specific circumstances. The public agency must determine that releasing the information would not only invade an individual's privacy but that the information is also not of vital public interest.

It's known as a balancing test. There's no mention of any balancing in UCLA's new policy, noted Ewert.

"They just blow right past the public interest balancing test," Ewert said.

And how.

Accompanying UCLA's guiding principles on this issue, was a step-by-step letter outlining how professors should respond to records requests and explaining what is and isn't a public record.

In that letter, UCLA states that faculty communications may be exempt from disclosure "...because the public interests served by not disclosing the records clearly outweighs the public interest served by disclosure."

Wow.

The school downgrades the public's interest before even knowing what they heck someone might ask for.

UCLA officials refused to talk to me about the new policy, saying it speaks for itself.

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I know this all might seem theoretical and hard to see why you should care. So let me enlighten you.

This all comes on the heels of a fight I've been having with UCLA over one professor's emails.

John Froines, now retired, was a professor at UCLA in 2009 when the Department of Pesticide Regulation contracted with him to chair an independent panel to investigate the fumigant methyl iodide.

Arysta LifeSciences, methyl iodide's maker, requested emails between Froines and anti-pesticide activists during the time Froines was under contract to DPR to determine whether he was being unduly influenced by those groups.

UCLA gave up some, but not all, of Froines' emails.

Sure enough, in the emails that were released, there were lots to Froines from a variety of anti-pesticide groups mostly discussing politics and tactics the groups were employing against approval of methyl iodide. These were not "scholarly communications" regarding scientific ideas.

In fact, an email from Froines' assistant, Elinor Fanning, to the anti-pesticide groups says that Froines agrees with their actions: "But that we have to remain behind the scenes at the moment. John has to protect his position of chair of the review committee for the time being."

Hmm. Really makes you wonder what was in the emails UCLA refused to release (including Froines' sent emails.)

Arysta, which eventually pulled methyl iodide from the market, had some back and forth with UCLA trying to get the missing emails to no avail.

But it was interesting to read the legal team's variety of ridiculous excuses for keeping the information under wraps.

First, they said they asked Froines and he didn't have the emails, sorry. Then they said the emails were on the school's "back up tapes" and since those were only used for disaster recovery, they were no longer be public record. Then they claimed that if the emails were personal in nature, and not related to university business, they weren't public. Oh yeah, and that academic freedom thing, that too.

As an aside, I've found that when a public agency flails around with an ever changing array of legal defenses against public exposure, it typically means A) it doesn't have a legal leg to stand on and B) there's something someone doesn't want the public to see.

State Sen. Jean Fuller, R-Bakersfield, took notice of my fight with UCLA and she and Bob Huff, R-Diamond Bar, also tried to get UCLA to come clean on this. They got the same run around. Now Fuller is concentrating her efforts on the UC trustees.

She's vice chair of the rules committee, which confirms appointees, such as UC trustees.

"I'm very disappointed (UCLA) is not willing to follow the law," she said. "But my angle now is to question trustees on transparency and at least get them on the record."

It's funny how everyone is all for government transparency, in theory. Living with it is a different matter.

UCLA's attitude seems to be that forcing transparency on the school is unfair, and frankly quite a bother.

"...These requests have increasingly been used for political purposes or to intimidate faculty working on controversial issues. These onerous, politically motivated, or frivolous requests may inhibit the very communications that nourish excellence in research," reads the preamble to its new policy.

First Amendment Attorney Ewert thought just the opposite.

"It's transparency that gives even more integrity to their studies," he said.

Excellent point.

Or how about this one: The public has a right to know how its money is being spent.

*Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at (661) 395-7373 or e-mail [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)*

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Lois Henry appears on "First Look with Scott Cox" every Wednesday on KERN 1180 AM from 9 to 10 a.m. The show is also broadcast live on [www.bakersfield.com](http://www.bakersfield.com). You can get your two cents in by calling 842-KERN.

Read more

UCLA's how-to for faculty faced with a public records request:  
<https://www.apo.ucla.edu/resources/recordrequest>

UCLA's "guiding principles" regarding public records requests:  
<https://www.apo.ucla.edu/resources/academic-freedom>