HOT TOPIC TRAINING SESSION:
FOIA AND CPRA REQUESTS
UC San Diego

RESEARCH COMPLIANCE AND INTEGRITY

- Conflict of Interest (COI)
- Dual Use Research of Concern (DURC)
- Export Control and Facility Security
- Institutional Animal Care and Use Committee (IACUC)
- Research Ethics and Integrity (Research Misconduct)
- ClinicalTrials.Gov, NIH Good Clinical Practices (GCP) and Responsible Conduct of Research (RCR) Compliance
- General Research Compliance Activities

Website: RCI.UCSD.EDU
Helpline: (858) 822-4939
Email: rci@ucsd.edu
FOIA AND CPRA REQUESTS

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Information Practices
Policy & Records Administration
AGENDA

Introduction

Freedom of Information Act (FOIA)
- Summary
- Process
- Best Practices

California Public Records Act (CPRA)
- Summary
- Process
- Best Practices

Q&A
Functions

- Campus Notices & Flyers
- Campus Organization Charts
- Chancellor Signature Items
- Delegations of Authority
- Notary Program
- Policy & Procedure Manual
- Public Records & Information Practices
- Records and Information Management

Website: https://rmp.ucsd.edu/policy-records/

General Email: adminrec@ucsd.edu

Public Records Email (internal): publicrecords@ucsd.edu
FREEDOM OF INFORMATION ACT
What it does

• Public access to records of the federal government
• UC is not subject to FOIA directly
• University records may become accessible under FOIA if they are in the possession of a federal agency
  – Grant proposals, progress reports, regulatory filings, etc.

Requirements

• Federal agencies have 20 business days to respond
• Records must be disclosed unless an exemption applies
• Once disclosed, information is available to anyone
• Agencies notify outside entities when their records are subject to disclosure

• Campus has the opportunity to object to release of information
  – Must demonstrate that a FOIA exemption applies

HOWEVER...

• Agencies make final decision

• Once information is in their hands UCSD has no control
<table>
<thead>
<tr>
<th>Internal agency rules and practices</th>
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</thead>
<tbody>
<tr>
<td>Information exempted by another statute</td>
</tr>
<tr>
<td>Deliberative process or policy-making communications</td>
</tr>
<tr>
<td>Financial regulator records</td>
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<tr>
<td>Law enforcement records</td>
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<tr>
<td>Private personal information</td>
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<tr>
<td>Classified information</td>
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<tr>
<td>Trade secrets and commercial or financial information</td>
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<td>Geological and geophysical data about wells</td>
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</tbody>
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Exemption 4

*trade secrets and commercial or financial information obtained from a person and privileged or confidential*

Requirements

Must show that:

1. UCSD treats the information as confidential
2. UCSD and/or the PIs have a commercial interest in the information
3. The government was reasonably expected to maintain confidentiality
Examples of Exemption 4 Withholdings

- Unfunded grant proposals
- Preliminary research data
- Plans for future research
- Information for which IP protections will be sought
- Pre-publication research findings
- Trade secrets
- Sensitive details of industry collaborations
- Other information that could lead to commercial harm if disclosed
Exemption 6

personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Requirements

• Federal agencies apply this exemption by default
• Information may be redacted without UCSD having to ask:
  - Social security number
  - Date/place of birth
  - Personal addresses and phone numbers
  - UCSD salaries and effort %’s
  - Sources and amounts of pending support
  - Sources of private support
  - User IDs
  - Biographical sketches
FOIA – PROCESS

Federal agency notifies PI(s) and grant officer
- Identifies material to be disclosed
- Typically allow 5 business days to respond

P&RA notified by PI or grant officer
- Works with PI to identify exempt information
- Communicates with federal agencies

Response based on the PI’s objections to disclosure
- Exception: Records relating to animal research activities
**FOIA – BEST PRACTICES**

**Submitting Information to Federal Agencies**

- Consider what level of detail is “need to know” for sensitive topics: what does the agency ask for or require?
  - **Do not** include room numbers or locations of animal research unless specifically required.

- Check the ‘Confidential’ box on grant proposals if there is any proprietary and confidential information in the proposal.

- Segregate and clearly identify particularly sensitive confidential information.

- When in doubt: discuss with agency representatives before sharing information.
FOIA – BEST PRACTICES

If You Receive a Notification

• Contact P&RA immediately upon receipt of a FOIA request notification: publicrecords@ucsd.edu

• Share copies of the requested materials with P&RA if available

• Consider reaching out to the original requester if comfortable sharing portions of the materials directly
CALIFORNIA PUBLIC RECORDS ACT
Access to public records is a fundamental right in California:

“The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

California Constitution, Article I, Section 3(b)(1)
What is a Public Record?

- Any writing containing information relating to the conduct of the public’s business
- Prepared, owned, used, or retained by the University
- Regardless of physical form or characteristics
What is a Writing?

- any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.
Examples

- Email and paper correspondence
- Electronic and paper documents
- Microfiche and microfilm
- Maps, designs, and drawings
- Calendar entries
- Voicemail
- Text messages
- Social media postings
- Pictures and videos
- IM chat logs
- Databases
What about records not held by UC?

• Communications in employees’ personal email accounts or personal cellphones are still public records if they relate to University business

• Records held by outside entities may be public records if they were created, owned, or used by UC, or are retained on the University’s behalf

• Records sent to employee of other public entities may also be subject to their own public records laws: e.g., FOIA
CPRA – SUMMARY – REQUIREMENTS

Generally

• Public records must be disclosed upon request unless an exemption applies

• No obligation to create new records to respond to a request, or to answer questions

Time Limits

• 10-day initial response period

  – Must identify if disclosable records exist and the estimated response date

  – May be extended by 14 days in exceptional circumstances

• Agencies must make reasonable efforts to produce records promptly
Requests

- Requests may be made orally or in writing
- Requests must be reasonably focused and specific; however,
  - Not necessary to identify the exact record, a general description is sufficient
- Agencies must assist requesters by:
  1. Identifying relevant information
  2. Describing the IT and/or physical location of the records
  3. Suggesting ways to overcome any practical basis for denying access
CPRA – SUMMARY – REQUIREMENTS

Disclosures

• Must be made in native electronic format upon request
• Must identify basis for all redactions and withholdings
• The University doesn’t base CPRA disclosure decisions on the identity or motivations of the requester

Programming

• Specialized data compilation, extraction, or programming may be required to produce the records
• Requester pays for programming services if required to produce the records
Selected Exemptions

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained in the ordinary course of business

- Records specifically prepared for pending litigation

- Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy

- Police records relating to complaints, investigations, intelligence, and security procedures (excludes arrest records)

- Test questions, scoring keys, and other data used to administer examinations

- Library circulation records
Selected Exemptions

- Records where disclosure is prohibited by state or federal law, e.g.:
  - Attorney-client privileged communications
  - Trade secrets
  - Therapist and counseling records
  - Student records (FERPA)

- “Catch-all” exemption: Withholding permitted when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.
What to do if I receive a request?

From an outside entity

- Forward the request to P&RA immediately publicrecords@ucsd.edu
- Indicate if you have the records or know where they are
- Share any context that might be helpful for P&RA to know
- Preserve copies of the records sought by the request – do not destroy or modify relevant records after a request is received
What to do if I receive a request?

From P&RA

• Confirm if you are the correct department
• Advise if you know where else P&RA should look for the records
• Share helpful information:
  – Estimated volume of records and time to compile
  – Any relevant background or concerns about disclosure
• Preserve copies of the records sought by the request – do not destroy or modify relevant records after a request is received
CPRA – BEST PRACTICES – RECORDS MANAGEMENT

• Follow the UC Records Retention Schedule: https://recordsretention.ucop.edu/

• Create a departmental file plan

• Review and manage records at conclusion of a project or transactional process
  – Don’t retain transitory records: e.g. notes, drafts, schedules

• Plan for consistent and timely disposition
  – Too late to dispose of records once they are subject of subpoena or CPRA request
CPRA – BEST PRACTICES – EMAIL MANAGEMENT

• Use specific, accurate, and meaningful subject lines

• Try not to comingle information about disparate topics in a single email
  – Don’t mix personal and business communications

• Don’t use email to store important long-term records

• Assume that any information that is recorded and retained may be subject to disclosure
QUESTIONS?
COMMUNICATIONS

- Research Compliance and Integrity Helpline: (858) 822-4939, rci@ucsd.edu
- Conflict of Interest Helpline: (858) 534-6465, info-coi@ucsd.edu
- Export Control Helpline: (858) 246-3300, export@ucsd.edu
- IACUC Helpline: (858) 534-6069, iacuc@ucsd.edu
- Hot Topics and Newsletters:
  - Website: http://blink.ucsd.edu/sponsor/rci/news.html
  - Research Compliance and Hot Topics Training Program
  - To be added to the RCI list serv, please email rci@ucsd.edu