Frequently Asked Questions About AB 700

How the California Public Records Act is Being Used to Harass Researchers and Why We Need to Protect the Freedom to Research

1. What is the California Public Records Act and why is it important?

The California Public Records Act (CPRA) serves a critical public interest and provides the public access to all government records upon request, unless there is a specific reason not to do so. The CPRA, like the federal Freedom of Information Act and open records laws in other states, is a crucial tool for enabling Californians to keep their government democratically accountable. Journalists, nonprofit groups, corporations, and ordinary individuals use public records requests to learn how state officials make decisions, spend taxpayer money, enforce the law, and exercise government authority. Public records laws are also critical to investigating whether special interests are unduly influencing government. Users of public records laws come from a variety of political backgrounds, and many have no political or economic agenda— just a desire to obtain information. There are hundreds of examples of public records laws leading to better government accountability and protecting the public interest.

2. Are California public universities subject to the CPRA? What about private universities?

Yes, California's public universities are subject to the CPRA. While the CPRA is often used to hold government agencies accountable, many people are surprised to learn that the CPRA also applies to California's public universities. State agencies and universities serve different functions. The mission of state agencies is to implement state laws, while the mission of public universities is to produce knowledge and train students for the broad benefit of society. Public universities do receive some public funds, like government agencies, but a smaller share of their overall budget comes from public sources.

No, the CPRA does not apply to private universities or research institutes in California. However, if a researcher or scholar at a private university collaborates with a colleague at a public university, then the private researcher's information in possession of the public university could be subject to CPRA. This difference can put public university scholars at a disadvantage compared to private university peers and can chill collaboration between private and public university researchers.

3. What is the problem with some public records requests of public universities?

The CPRA is being used as a weapon against faculty at public universities to chill research, teaching, and public engagement. In California, as in other states, commercial and industry interests and individuals across the political spectrum are increasingly using broad public records requests to disrupt research, attack and harass scientists, and inhibit professional dialogue and debate that can squelch inquiry, discovery, and innovative research that benefits the public.

When such research conflicts with commercial, industry, or individual political interests, public records requests have discouraged research into policy-relevant areas, such as climate change, agriculture, cancer and public health, tax policy, and labor organizing, making fully-informed policy decisions more difficult and robbing the public of information they could have used to improve their quality of life. What began as tobacco industry tactics to mislead the public about science and intimidate public health scientists has spread to many other fields. Companies, organizations, and activists who disagree with researchers' views, or seek to thwart an entire field of study, may, under existing California law, request virtually all documents in a researcher's possession, including researchers' draft papers, emails with

collaborators where new ideas are tested and refined, personal calendars, and even handwritten notes for classroom lectures.

4. What harms are caused in California by abusive public records requests of public university scholars?

The public interest is harmed when requests:

- Curb the ability of researchers to ask tough questions of each other;
- Chill their communications with collaborators and the public;
- Isolate them from their peers;
- Disparage their personal and professional reputations;
- Discourage them from tackling "hot" topics — in other words, those topics with the most contemporary relevance and benefits to society;
- Scoop or steal research-in-progress, or publicize it prematurely so that either it becomes difficult to publish, or is no longer novel when it appears;
- Threaten personal physical harm from the stalking that records-related inquiries make possible; and
- Subject researchers and universities to incur substantial costs for legal fees and hundreds of hours away from research to defend against overbroad, abusive records requests on a case by case basis.

Many examples of these harms are included in the articles listed in the Resources section below.

5. How many CPRA requests are made of California public universities?

According to a 2019 UCLA law review article, the University of California system receives more than 12,000 public records requests per year, *many of which come from commercial or political interests and are designed specifically to harass researchers that are pursuing lines of inquiry disliked by or unfavorable to those requesting the records.* Harassing CPRA requests often specifically target groundbreaking researchers and thought leaders, so even one request can have a disproportionate chilling effect across the field.

6. How does AB 700 propose to modernize the CPRA to reduce harms to public university researchers while protecting the public's legitimate need for transparency and accountability?

CPRA already includes many exemptions for a wide variety of purposes, but includes nothing related to protecting the research process. AB 700 proposes to add narrow exemptions to include*:* unpublished data and research methods; unfunded grant applications; preliminary drafts of documents intended for publication; some forms of professional peer correspondence; trade secrets; and select information that permits identification of human research subjects. This does not create a blanket exemption for research or researchers; a majority of information related to the conduct of research at universities would continue to be considered responsive to requests under the CPRA (see questions 7 and 8 for more detail).

In order to protect the ability of public university researchers to conduct and communicate candidly about research, it is necessary to limit the public's right of access to certain information relating to a researcher or their research. The intent of AB 700 is to promote the ability of California's public universities and their faculty to conduct research on, and communicate about, significant and publicly relevant topics while also maintaining public access to university records. Clarifying the types and categories of requests that do not meet these criteria would streamline the ability of California public

universities to process and manage public records requests, many of which now require extremely time-consuming and costly determinations on an individual, case-by-case basis that often end up in court.

7. Does AB 700 exempt public access to information about public university researchers' funders, university discrimination, employee sexual harassment, and other administrative, operational, and financial disclosures?

In short, no.

The CPRA must continue to serve its important role in providing public oversight of California's public universities, including their funding, administration, and independence. Public access to information remains for information about university investigations of discrimination and harassment complaints, and the identities of and potentially biasing influence of third-party funders of academic work.

In AB 700, specific language is included that information will *not be exempt* regarding research funders, past or ongoing, communications among funders and researchers and other university staff, records related to institutional audits of compliance, or records related to disciplinary action taken against researchers. The bill's author is considering additional language to clarify what should continue to be available under the CPRA.

8. Does AB 700 prevent public scrutiny of academic research?

Public scrutiny of any research is a critical part of the research process. That's why scientists routinely make research methods and data publicly available when they publish papers (subject to federal privacy requirements, such as protecting private medical data). At that point, other scientists and the public have free rein to reinterpret the data, criticize research methods, replicate experiments, and discuss the importance of the results.

Much public scrutiny is also possible during the research process before a paper is published. Under AB700, the public can still request grant agreements and any communications with funders directly related to the research process. Further, the public can request Institutional Research Board approvals, which govern the use of human and animal participants, and any communication between IRB representatives and researchers or federal authorities. If scientists do not follow those agreements, they won't be able to publish the research. Further, there is a compelling public interest in learning whether universities have found that researchers are violating approved protocols, or IRBs are either not adequately overseeing researchers or not complying with subject protections required by federal funders, such as the misconduct described in this ProPublica article. Oversight of compliance with scientific or legal standards does not compromise scientific research.

AB 700 would protect a limited number of communications among researchers during the research process that would preserve their ability to have frank conversations with their peers. A scientist's email correspondence with scientific peers to test out and refine ideas provides little to allow the public to better understand the research itself. Indeed, it can and does chill conversation and discourage scientists from fully criticizing the work of others and from pursuing research questions they know will open them up to attacks from powerful interests.

9. What about the specific concerns related to researchers involved with animal research and how to protect animal welfare?

Animal welfare laws, procedures and protocols are important safeguards to protect the welfare of animals used in this research. The public has genuine concerns about animal welfare and researchers' necessary adherence to approved and legally required protocols and professional ethical standards for animal experiments. ***AB 700 does not limit the public's ability to request records related to researchers' compliance with laws, protocols, certifications, and guidelines for related to animal research.*** In addition, within the University of California (UC) system there are numerous means, outside of the CPRA, to investigate and report suspected violations of animal research protocols and ethical standards, including:

- Reporting to Institutional Animal Care and Use Committees;
- Reporting through the University's whistleblower process; and
- Reporting as "faculty misconduct," through the academic personnel process.

Complaints can also be lodged with the US Department of Agriculture, which monitors compliance with the Animal Welfare Act. Animal welfare advocates also have the ability to seek membership in the very committee that approves research protocols, which include slots for non-UC, non-specialist community members, such as ethicists.

10. Are these types of protections in place anywhere else?

Yes, other states have these types of protections, including Maine, Virginia, and Delaware*.** According to a report published by the Climate Science Legal Defense Fund in 2017 – a 50-state scorecard of research protections in state open records laws – California received a grade of C on rankings of research protections. The grades are based on statutory provisions, court decisions, attorney general opinions, state open records board decisions, and others. ***Fifteen states received a grade higher than California.

Resources:

- *Freedom to Bully* by Union of Concerned Scientists (2015)
- *Open Records, Shuttered Labs: Ending Political Harassment of Public University Researchers* by Claudia Polsky, UCLA Law Review (2018)
- *Transparency versus Harassment*, *Science* magazine editorial by Michael Halpern and Michael Mann (2015)
- *Research Protections in State Open Records Laws: An Analysis and Ranking* by Climate Science Legal Defense Fund (2017)

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