

6.6 Freedom of Expression (Freeman)

Action:

The Freedom of Expression committee moves the adoption of the following “sense of the Senate” resolution:

Resolved: That it is the sense of the SDSU Senate to endorse the "Statement on the Principles of Scholarly Research and Public Records” (below) adapted from a Resolution of September 2012 of the UCLA joint Senate-Administration Task Force on Academic Freedom (<https://www.apo.ucla.edu/resources/academic-freedom>), and be it

Resolved: That this resolution be distributed to the

- Academic Senate, The California State University,
- CSU campus senates, and • California Faculty Association.

Statement on the Principles of Scholarly Research and Public Records

Preamble

Robust, frequent, and frank intellectual exchange is essential to research and teaching at the university level. It is therefore a matter of great concern that faculty at public universities throughout the country are increasingly the objects of requests through state (California Public Records Act, or PRA) and federal (Freedom of Information Act, or FOIA) public records acts for emails, notes, drafts, and other documents. Public access laws are an important component of the democratic process in our society, and scholars themselves frequently benefit from this legal framework. However, faculty scholarly communications (including faculty supervised student research communications) must be protected from PRA and FOIA requests to guard the principle of academic freedom, the integrity of the research process and peer review, and the broader teaching and research mission of the university. Moreover, 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 and teaching, threatening the long-established principles of scholarly research.

The Principles of Scholarly Research

Faculty at SDSU carry out a triple mission of teaching, service, and research/creative activity. The three parts of this mission are not identical: our service to the institution is by definition something that concerns the shared governance, operation, and decision-making here at SDSU and CSU wide. By contrast, our research and teaching are often conducted in collaboration with others in our discipline at institutions around the world, and serve the general advancement of knowledge.

Sound, high-quality scholarship is a collective process of trial and error, peer review, and questioning that happens in classrooms, laboratories, offices, conferences, workshops, at work and at home, day and night, in the university and in the field. Through this collective process, scholarship is scrutinized, questioned, improved, and ultimately accepted or rejected by the community. There are a number of principles that underlie this process and are accepted across the disciplines, including the following:

Frank exchange among scholars is essential to advancing knowledge. Scholars frequently test ideas in extreme form, explore possibilities through hypotheticals, or play "devil's advocate," making claims they may not themselves believe in edgy, casual language not intended for public circulation or publication. These communications are frequent and diverse in nature because scholarship is a competitive and fast-paced process, requiring intensive communication among a diverse array of participants.

Peer review is built into the academic enterprise at every level. Review and contestation is a nearly constant feature of the exploration of scholarly problems, and that review comes from peers at every stage, from the initial

identification of a problem to the publication of scholarly work on the problem. Publications are the final tangible result of scholarly exploration. A published work articulates in detail the methods, materials, and modes of research that led to the findings reported or the narrative constructed. Publications are written with the expectation that they will contribute new knowledge to a field and spur deeper examination of the problems addressed within them. In essence, peer review never ends.

Faculty often choose research topics that are highly relevant to society and therefore may generate strong reactions. These topics may be controversial and highly politicized (e.g., global warming), deal with illegal or criminal behavior, or focus directly on contentious social questions (e.g., ethnicity, sexual orientation). Faculty must be free to work on these important topics without fear of retribution, threats, or interference.

Faculty members regularly collaborate with colleagues at other institutions. Faculty within the CSU system require, and deserve to have, the same freedom of communication with people at other universities and corporations, public and private. Faculty at private universities who perform equivalent research need not fear interference through state public records act requests pertaining to their scholarly contributions; neither should faculty at public universities such as SDSU.

Teaching and research are conducted and governed by the generally accepted professional and ethical commitments specific to each academic discipline. University policies generally incorporate, rather than supersede, those requirements and expectations. Thus, university faculty members already are held to very high professional and ethical standards in the conduct of their scholarly work.

The Potential Harms of Public Records Requests for Scholarly Records

Frank, honest exchange depends on the maximum protection of the informal and everyday work, personal email, drafts, and records related to research and teaching. It is essential that regular and frequent communications among faculty within SDSU and with colleagues in other institutions remain within faculty control. Public records requests can lead to unnecessary and unwarranted increased time commitments necessary to monitor all that is written or said in case of potential public disclosure. A lack of protection from such requests can directly impinge on academic freedom (the "chilling effect") by causing faculty to avoid investigating controversial issues.

Principles Endorsed to Protect Scholarly Communications

Clarity concerning what is considered a public record by the university is essential to the success of faculty research and teaching endeavors. The university must do its utmost to protect those records not subject to public records oversight and to prevent the chilling effect of public records requests on frank scholarly exchange. These principles are consistent with the letter and intent of the open records laws:

Protect the system of peer review at all levels.

Public records requests are neither a substitute for nor an effective check on peer review by the scholarly community, but instead damage the process by threatening scholars into silence when they should be speaking truthfully and frankly about their concerns. The published record is the gold standard on which scholarship rests and it is readily available to the public. Public records requests of private, draft, or pre-publication materials only serve to confound the peer review process, rather than leading to an improvement or check on this process.

Protect the right of faculty to choose topics and research areas based on intrinsic criteria. Research that is politically or socially controversial should be subject to the same protections as any other kind of research. If the scholarly process is to function correctly, it must be protected from political, social, religious or other non-academic criteria of evaluation.

Provide the same protections to SDSU faculty that colleagues in private universities or corporations enjoy. Scholarship is inherently collaborative and extends beyond the bounds of a single lab or office or university. Hence, faculty at SDSU should be afforded the same kinds of protection offered elsewhere, including at private universities. Maximum protection of SDSU faculty also is necessary to ensure that our colleagues at other institutions do not

experience "second-order" chilling effects, i.e., a fear of collaborating with SDSU faculty due to concern about potential public disclosure of private materials.

Reiterate the value of the longstanding traditions of ethical and professional codes of conduct. Disciplines possess necessary and effective standards that govern the ethics of research. It is this time-tested oversight that ensures accountability. Public records requests should not be allowed to undermine these traditions.

Conclusion

The academic enterprise is intrinsically different from other enterprises conducted for the benefit of the public. Its product, knowledge, is intangible, yet it informs all of society in countless tangible ways, including technology, medical care, ecology, and art. Academia can only make these tremendous contributions to the quality of our lives if it operates according to the standards that have ensured its freedom from bias and its unwavering devotion to truth, whatever that truth may be. The threat to faculty of forced disclosure of scholarly communication through PRA/FOIA requests can damage intellectual freedom and interfere with robust scholarly communication. The proper forum for evaluating and vetting academic research is through the time-honored and rigorous process of peer review. The world's academic community, including its faculties and administrative leaders, must protect itself from these requests if it is to continue to function and contribute to society in the highly valuable manner that it has for centuries.

Discussion: **(Provost Marlin):** Federal agencies are now requiring open access to data. How does this comport with those institutions getting federal funding? Is this just a statement that we don't like the law? **(Senator Freeman):**

Yes

2 abstentions

MP To adopt the above "sense of the Senate" resolution.