

Information Governance: Privacy, Public Access and Confidentiality



San Diego Chapter of ARMA International
General Meeting

Paula Johnson, CRM
presenter
November 29, 2012


Topics

- Public Access and Privacy (State of California)
- Information Resources
- Laws
- Current Issues and Recent Legislation



Public Access and Privacy



- California Constitution
 - Article 1, Declaration of Rights
 - *Section 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and **privacy**.*
 - Right to access information concerning the conduct of the public's business (agencies, officials and institutions)
 - Access is favored over limiting access
 - Access will not supersede or modify the right of privacy
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Information Sites

- Citizen Media Law Project
 - www.citmedialaw.org/
- Californians Aware : The Center for Public Forum Rights
 - www.calaware.org/
- California's Office of Privacy Protection
 - www.privacyprotection.ca.gov

Public Access and Privacy Laws



- § Federal Family Educational Rights & Privacy Act (FERPA)
- § Freedom of Information Act (FOIA)
- § California Public Records Act (CPRRA)
- § California Information Practices Act (CIPA)
- § USA Patriot Act
- § HIPAA – Health Insurance Portability and Accountability Act
- § Sarbanes-Oxley

Calif Public Records Act vs Information Practices Act

○ Calif Public Records Act

- Govt Code 6250
- Modeled on FOIA
- Effective 1968
- Applies to all records
- Excludes State Legislature and Judicial Branch
- Based on every person's right to public information
- Provides rights to public on equal basis
- Disclosure law

○ Information Practices Act

- Civil Code 1798
- Modeled on Fed Privacy Act
- Effective 1978
- Applies to information about individuals
- Excludes State legislature and Judicial Branch
- Based on protection of personal privacy
- Provides rights to individuals
- Access law including collection, maintenance, and disclosure conditions

California Public Records Act



- § Right of Access – Conduct of Public Business
- § Information Disclosure
- § Public Inspection Allowed
- § Obligation does not extend to creating records.
 - § Data and Electronic Media

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 (includes records we create, as well as, any record in our possession)**
- § Regardless of physical form or characteristics (includes any means of recording, tweets, texting, social media sites)

What is a Public Record?

Public Records **ARE:**

- Minutes
- Email
- Correspondence
- Employment Information – Salary and Job Description
- Final reports and drafts (if kept)
- Funded Contract and Grant applications
- Student directory information
- All business transactions
- Databases

What is Not A Public Record?



Public Records are **NOT**:

- ✓ Preliminary Drafts (unless kept)
- ✓ Pending Litigation
- ✓ Police Materials
- ✓ Test Materials
- ✓ Real Estate Appraisals
- ✓ Contracts & Grants Proposals - Pre-award
- ✓ Anonymous gift information

What is Not A Public Record?

Public Records are **NOT**:

- ✓ Proprietary information/Trade secrets
- ✓ Personnel or medical files where disclosure would be an unwarranted invasion of privacy
- ✓ Non-existent records – not required to create records (caveat: computer generated information from databases or electronic systems)
- ✓ Records where the public interest served by not disclosing the record outweighs public interest in disclosure – general catchall

CPRA v. CIPA

○ Calif Public Records Act

- 27+ Specific exemptions
- Agency time limits – 10 days for initial response
- Charge for copies – 20 cents
- Charge for programming \$65/hr
- Denied access – go to court
- Plaintiff prevails in court – court costs & reasonable attorney fees

○ Information Practices Act

- 22 conditions for disclosure – one condition includes CPRA
- Agency time limits – 30 days active/60 days inactive
- Charge for copies 10 cents
- Violation of rights – go to court
- Plaintiff prevails in court – court costs, attorney fees and in some cases actual & exemplary damages

Information Practices Act (IPA)

§ Codifies Individuals Right of Privacy

§ Regulates:

- 1) Information an agency can collect
- 2) Disclosure
- 3) Provides Access Rights to the Individual

§ Information is characterized as non-personal, personal, and confidential

§ Individual's have the right to all information pertaining to them, except "confidential info"

Information Practices Act (IPA)

Non Personal information includes:

- Ø Salary, Current and Historical Information, including total compensation
- Ø Job description and job title
- Ø Employment contract, if contract employee
- Ø Home department (Campus address)
- Ø Business phone may include business cell phone
- Ø Business Email addresses, i.e., @ucsd.edu (unless they will be used commercially)

Information Practices Act (IPA)

Personal information includes:

- Social Security Number
- Performance Evaluations
- Home Address & Phone Number
- Education
- Personal Financial Matters
- Medical History
- Employment History (excluding compensation history)

Information Practices Act (IPA)

Confidential information includes:


- * Medical records (under certain conditions)
- * Police records
- * Test materials
- * Investigative materials
- * Academic Personnel Review files

Information Practices Act (IPA)

The law covers :

- ∅ Collection of Information
- ∅ Maintenance of information
- ∅ Disclosures made to a UC Employee
- ∅ Disclosures made to Subject of Record
- ∅ Disclosures made to Third Party

Information Practices Act (IPA)



Provisions are included for:

- Amendments to the record if incorrect
- Denial (for confidential information)

Do's and Don't Under the Information Practices Act



Do:

- § Collect and record relevant information
- § Record the source of the information
- § Review material when giving access to a file, be sure to redact confidential information about that individual and personal information about third parties

Federal Family Education Rights and Privacy Act (FERPA)

34 Code of Federal Regulations 99

- 34 CFR 99 became federal law in 1974

FERPA

○ Elements

- Protects privacy of records and information
- Parent/Student rights
 - Right to Inspect and Review
 - Right to Request Amendments
 - Consent to Disclose (other than Directory Information)
 - Right to file complaint with US Dept. of Education

Covered Individuals



- Who is covered?
 - Students in their capacity as students
 - Not applicants
 - Not alumni
 - Students as employees if student status is a requirement of the position (e.g. work study)

Types of Information



- Personally Identifiable Information has 2 categories:
 - Directory Information – may be disclosed w/o prior consent
 - Confidential Information – may NOT be disclosed w/o prior consent
 - Exceptions

Directory Information

Student's name

address (local and/or permanent)

e-mail address

telephone numbers

date and place of birth

major field of study, dates of attendance, grade level, enrollment status (e.g. paid or unpaid enrollment, undergraduate, full-time or part-time), Number of course units in which enrolled, degrees and honors received, the most recent previous educational institution attended, participation in officially recognized activities, including intercollegiate athletics, and the name, weight, and height of participants on intercollegiate UCSD athletic teams.

FERPA Disclosures

- Consent to Disclose is chosen when registering and making their student identity public or private
- Disclosure of Other PII
 - Prohibited w/o written consent
 - Exceptions
- Seeking Correction of Student Records

Freedom of Information Act (FOIA)

- Federal law requiring disclosure of information by (Federal) government entities.
- University is not covered by FOIA except in the area of social security # & federally funded research.*
- If the request for data does not meet these two requirements we process the request under CPRA.

Records Management is a Critical Component for Compliance



Records Management is a tool to limit risk and liability in the area of responding to requests for information.



Best Practices

To limit risk and liability in the area of responding to requests for information:

- § Practice good records management
- § Manage and retain by value, not by format
- § Manage from creation to disposition

Current Trends

- Emphasis on providing any information which increases the need for redactions.
- Finding information stored in other facilities and locations
- Providing portions of databases – wholesale data warehousing
- Creating open source means of providing information

Questions?

Thank you for attending.

