Request For **Access Without Consent** to Electronic Communications Records

The [University of California Electronic Communications Policy (ECP)](http://policy.ucop.edu/doc/7000470/ElectronicCommunications) affirms that the University does not examine or disclose electronic communications records without the holder's consent, except:

* under the **limited circumstances** described in ECP Section IV.B *(section 1.B. below)*
* and with appropriate **authorization** *(section 2-5 below)*
* where authorization is limited to **least perusal** of contents and the **least action necessary** to resolve the situation, *(section 1.A. below)*
* and where the affected individuals are **notified** of the actions taken and reason at the earliest opportunity consistent with law and other University policies. *(section 1.D. below)*

*Note:* ***Meeting the provisions detailed below does not guarantee approval for access.***

1. *Section 1 A through D to be completed by requestor. Scan and submit signed form to* *privacyoffice@berkeley.edu* *For assistance, contact Scott Seaborn, Interim Campus Privacy Officer at 510-664-7775.*
2. **REQUESTED RECORDS:**

Name of Electronic Communications "Holder" (Individual):

Record Holder Affiliation: Student Faculty Staff Other

Account and System Name(s)/Description:

Electronic Communications Records Sought: From Date: To Date:

Subject/Description of Electronic Communications Records Sought:

1. **PROVISIONS OF THE ELECTRONIC COMMUNICATIONS POLICY UNDER WHICH RECORDS ARE SOUGHT:**

 **Violation of law or UC Policy** identified in ECP Appendix C \* *excerpt on pg. 3 (Specify below)*

 **Compelling circumstances**: Failure to act might result in significant bodily harm, property loss or damage, loss of significant evidence of one or more violations of law or of University policies listed in Appendix C (see next page) or significant liability to the University or members of the University community. *(Describe circumstances below)*

 **Required by and consistent with law**

 **Time-dependent, critical operational need:** failure to act could seriously hamper the ability of the University to function administratively or to meet its teaching obligations, but excluding circumstances pertaining to personal or professional activities, or to faculty research or matters of shared governance. *(Describe operational need below)*

COMMENTS:

1. **REASON WHY CONSENT CAN NOT BE OBTAINED:**

The record holder cannot be contacted because of absence or illness.

The record holder has denied a request to access the specified University records.

 **Compelling circumstances** (see definition in 1.B.) preclude requesting record holder's consent.

Post-authorization: the records have already been accessed under **Emergency Circumstances** (Circumstances in which time is of the essence and there is a high probability that delaying action would almost certainly result in Compelling Circumstances.)

COMMENTS:

1. **NOTICE TO AFFECTED INDIVIDUAL(S):**

The Electronic Communications Policy requires that affected individuals be notified that their electronic communications have been accessed without consent and the reasons for the action(s) taken at the earliest opportunity that is lawful and consistent with other University policy.

Notification to individuals is prohibited by a valid legal order.

 The requestor has already notified the affected individual(s). *(forward to: privacyoffice@berkeley.edu)*

The requestor will immediately notify the affected individual(s). *(cc: privacyoffice@berkeley.edu)*

The requestor will notify the affected individual(s)upon *(describe circumstances that merit delayed notification, when notification will take place and who will notify)*

1. **REQUESTED BY:** DEPARTMENT/UNIT: CONTACT:

Requesting Control Unit Head (Vice Chancellor):

*Signature*  Print Name  *Date*:

1. **REVIEW by Interim Campus Privacy Officer** (**required for all requests**):

IS NON-CONSENSUAL ACCESS RECOMMENDED? YES NO

COMMENTS:

*Signature*  Print NameScott Seaborn *Date*:

1. **REVIEW by Chief Campus Counsel**

Advice of counsel must always be sought **prior to** any action involving interpretation of legal obligations, including: (a) records requested by means of a search warrant or subpoena; (b) records on equipment not owned or housed by the University, (c) student records protected under FERPA, or (d) medical records.

IS NON-CONSENSUAL ACCESS RECOMMENDED? YES NO

COMMENTS:

*Signature*  Print Name  *Date*:

1. ***For faculty records only:***

**i) REVIEW by Vice Provost for Faculty Affairs:**

IS NON-CONSENSUAL ACCESS RECOMMENDED? YES NO

COMMENTS:

*Signature*  Print Name  *Date*:

**ii) REVIEW by Chair, Berkeley Division of the Academic Senate:**

IS NON-CONSENSUAL ACCESS RECOMMENDED? YES NO

COMMENTS:

*Signature*  Print Name  *Date*:

**5) CAMPUS APPROVAL**

For Student Record Holders: Vice Chancellor of Student Affairs

For Faculty Record Holders: Executive Vice Chancellor and Provost

For Staff and Other Affiliate Record Holders: Vice Chancellor of Administration

OR For any Record Holders: Chancellor or EVCP

*Signature*  Print Name  *Date*:

*Rev 02/09/2018*

**\*APPENDIX C: POLICIES RELATING TO ACCESS WITHOUT CONSENT**

[*http://policy.ucop.edu/doc/7000470/ElectronicCommunications*](http://policy.ucop.edu/doc/7000470/ElectronicCommunications)

The Electronic Communications Policy cites circumstances under which access to electronic communications may occur without the prior consent of the holder (see Section IV.B, Access Without Consent). Following are University policies that may trigger nonconsensual access following procedures defined in Section IV.B, Access Without Consent.

1. University policies governing sexual or other forms of harassment, specifically: Policies Applying to Campus Activities, Organizations, and Students, Section 160; Section APM-035, Appendix A of Affirmative Action and Nondiscrimination in Employment; and Personnel Policies for UC Staff Members. Sexual harassment concerning students is covered by item 6 below.
2. Certain portions of policies governing access to University records, specifically RMP-1, Section IV.B; RMP-8, Sections on Disclosure of Information and Rules of Conduct.
3. The Academic Personnel Manual, APM-015, Section II, Part II, Professional Responsibilities, Ethical Principles, and Unacceptable Faculty Conduct, and the University Policy on Integrity in Research, APM 190, Appendix B.
4. Personnel Policies for Staff Members and Appendix II for Senior Managers
5. Collective bargaining agreements and memoranda of understanding.
6. Section 102 governing student conduct of the policy entitled Policies Applying to Campus Activities, Organizations, and Students.
7. Sections III, Allowable Use, and IV, Privacy and Confidentiality, of this Electronic Communications Policy.

Violations of other policies can normally be detected and investigated without requiring nonconsensual access to electronic communications. On occasion, attention to possible policy violations is brought about because of the receipt by others of electronic communications. However, it is acknowledged that electronic communications can be forged, the true identity of the sender can be masked, and the apparent sender might deny authorship of the electronic communication. In such circumstances and provided there is substantiated reason (as defined in Appendix A, Definitions) that points to the identity of the sender, nonconsensual access to the purported sender’s electronic communications may be authorized following the procedures defined in Section IV.B, Access Without Consent, but only to the least extent necessary for verifying unambiguously the identity of the sender, and only for major violations of the following policies:

* Business and Finance Bulletin A-56, Section IV.H, governing sales of goods or services outside the University.
* Business and Finance Bulletin BUS-29, Section N, governing use of University materiel or property.
* Business and Finance Bulletin BUS-43, Part 3, Section X.A, governing use of University credit, purchasing power, or facilities.
* Policies Applying to Campus Activities, Organizations, and Students, Section 42.40, governing use of University properties for commercial purposes and personal financial gain.
* Business and Finance Bulletin BUS-65, Section VII, governing provision of University mailing lists to others.
* Policy and Guidelines on the Reproduction of Copyrighted Materials for Teaching and Research.
* Campus Access Guidelines for Employee Organizations.