Nonconsensual Access to UC Berkeley Electronic Communications

An authoritative person asks for “access without consent” (examination or disclosure) of the “contents of University electronic communications records in the holder’s possession”

- No
  - Emergency circumstances?
    - No
      - Access not allowed without the holder’s consent
    - Yes
      - The least perusal of contents and the least action necessary to resolve the emergency may be taken immediately without authorization.
      - Appropriate authorization must then be sought without delay
  - Yes
    - To legal counsel for validation

- Yes
  - Meets at least one of the following
    - (i) required by and consistent with law
    - (ii) substantiated reason to believe that violations of law or of University policies have taken place;
    - (iii) compelling circumstances; or
    - (iv) time-dependent, critical operational circumstances
  - Yes
    - Request from Internal Audit?
      - No
        - Access not allowed without the holder’s consent
      - Yes
        - Campus Approvals met? (see next page)
  - No
    - Get auditor version of form signed
    - Yes
      - Campus Privacy Officer

DEFINITIONS
from the UC Electronic Communications Policy (ECP)

University Electronic Communications Record: Until determined otherwise or unless it is clear from the context, any electronic communications record residing on university-owned or controlled telecommunications, video, audio, and computing facilities will be deemed to be a University electronic communications record for purposes of this Policy. This would include personal electronic communications.

Holder of an Electronic Communications Record or Electronic Communications Holder: An electronic communications user who, at a given point in time, is in possession (see definition below) or receipt of a particular electronic communications record, whether or not that electronic communications user is the original creator or a recipient of the content of the record.

Possession of Electronic Communications Record: An individual is in possession of an electronic communications record, whether the original record or a copy or modification of the original record, when that individual has effective control over the location of its storage or access to its content. Thus, an electronic communications record that resides on an electronic communications server awaiting download to an addressee is deemed, for purposes of this Policy, to be in the possession of that addressee. Systems administrators and other operators of University electronic communications services are excluded from this definition of possession with regard to electronic communications not specifically created by or addressed to them.

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.

Compelling Circumstances: Circumstances in which failure to act might result in significant bodily harm, significant property loss or damage, loss of significant evidence of one or more violations of law or of University policies listed in Appendix C, Policies Relating to Access Without Consent, or significant liability to the University or to members of the University community.

OERCS:CPO March 10, 2016
UC Berkeley Campus Approval Process for
Non-consensual Access to Electronic Communications
per UC Electronic Communications Policy Requirements

Fill out form

Approval by requesting control unit VC

Review by Campus Privacy Officer

Review by Campus Counsel

Student record holder?

Staff or other* record holder?

*other: non-student, non-faculty, non-staff

Faculty record holder?

Approval by VC Student Affairs or EVCP or Chancellor

Approval by VC Admin & Finance or EVCP or Chancellor

Review by Vice Provost for Faculty Affairs

Review by Academic Senate Chair

Approval by EVCP or Chancellor

Jan 2016