



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

November 26, 2018

ROBERT MAY
Chair, Academic Council

Subject: Proposed revisions to Presidential Policy BFB-RMP-7—Protection of Administrative Records Containing Personally Identifiable Information

Dear Robert,

On November 19, 2018, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposal cited in the subject line, informed by commentary of our divisional Committee on Computing and Information Technology (CIT).

DIVCO endorsed the CIT report, which is appended in its entirety. While some of the points speak to campus-level issues, most are germane systemwide. DIVCO was dismayed to find that the proposed revisions tend to weaken, rather than strengthen, privacy protections. We strongly recommend that the proposal be reconsidered through the lens of ensuring privacy protection for members of the University community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara Spackman'.

Barbara Spackman
Chair, Berkeley Division of the Academic Senate
Cecchetti Professor of Italian Studies and Professor of Comparative Literature

Encl.

Cc: Ethan Ligon, Chair, Committee on Computing and Information Technology
Sumei Quiggle, Associate Director

CIT COMMENTS ON PROPOSED RMP-7

Our committee reviewed and discussed the proposed revision of RMP-7/11/12 at our meetings on October 11, and November 8, 2018. We have both some general and some specific concerns.

1. GENERAL CONCERNS

- (1) The explicit acknowledgement of privacy values is new and a valuable addition to the policy.
- (2) Though it's advertised as being a "consolidation" of existing policy, the new policy is in fact a wholesale replacement. Not a single sentence in any of the existing three documents survives in the new policy. Further, the total length of the original documents was 11 pages, including extensive references and specific guidance; the new policy runs to 14 pages with less useful specific guidance.
- (3) The old policy spoke of the responsibilities of the administration in protecting privacy and ensuring access to non-student information (See Old RMP-7 IV.A,B). Vice Presidents, Chancellors, and Laboratory Directors were "responsible for ensuring that departments. . . comply with all records privacy and access requirements." The new policy is explicit in reassigning responsibility to employees, including "all faculty, staff, and other individuals associated with the University" (New RMP-7 III.A), who risk discipline or termination should they fail to follow any of seven broadly framed "rules of conduct."
- (4) In practice, the old policy expected senior administrators to appoint local "Coordinators of Information Practices" to develop local policy and guidelines for employees (Old RMP-7 IV.B). The old policy offered a reasonably detailed and list of concrete responsibilities for these coordinators (Old RMP-7 p. 3).
- (5) The new policy also envisions a central role for both "Information Practice Coordinators" and "Campus Privacy Officials". We know of no official with the former title on the Berkeley campus. There is supposed to be a Campus Privacy Officer, but that position has been vacant for the last six months.

. *Date:* November 12, 2018.

- (6) We have heard that there will soon be a search for a new campus Privacy Officer. We think it is very important that this new hire have both the stature and independence necessary to push back against possible encroachments on privacy, whether those come from security-minded people on campus (e.g. the CISO) or from UCOP.
- (7) The new policy also refers to campus “Record Management Coordinators”. Does our campus even have such a person?
- (8) The new RMP-7 offers much less concrete guidance about policy or best practices than the documents it’s meant to replace. Our committee considered a number of real-world privacy issues that we would hope the policy could speak to, but had difficulty finding language in the revised policy that provided useful guidance.
- (9) Related to the previous; we note that the revised policy has a “Frequently Asked Questions” section, but its only content is “Not applicable.”

2. SPECIFIC CONCERNS

Where there are clear differences between the old and new policies, on their face the changes often seem to involve a weakening of privacy protections. Examples we were able to identify (with references to the new document):

2.1. V.A Protection of records of foreign-born student applicants. The old policy was explicit in offering the same privacy protections to “U.S. and foreignborn student applicants” (Old RMP-11 II.A). Those explicit protections of foreign applicants do not appear in the new policy.

2.2. V.A Removal of reference to some legal protections for enrolled students. The old policy (Old RMP-11 II.B) asserted that access to student records should be governed by (i) the Federal Family Educational Rights and Privacy Act (FERPA); (ii) the State Donahoe Higher Education Act; and (iii) additional University policies. Reference to the latter two protections has been excised from the present policy.

2.3. V.A Student applicant records. Enrolled students have FERPA protections. Why should applicants have any different or weaker privacy protections?

2.4. V.A.2 Disclosure allowed to any third party. The old policy allowed disclosure of applicant information to three classes of people under various conditions: The applicant; the parents of the applicant; and “school administrators and teachers”. Sharing information with this last class was justified under certain narrow conditions (e.g., inquiries regarding “eligibility status or lack of certain grades”).

This last class has been broadened to include any third party, and it appears that this third party could literally be *anyone*. Conditions under which information can be shared include it being necessary to the third party’s duties or “other legal exceptions.” It is not clear what restrictions, if any, this actually places on the sharing of applicant information.

- Restrictions here and “narrow conditions” need local interpretation. Perhaps this is another job for the Privacy Officer.

2.5. V.A.3 Advancement, Development, and Alumni Staff. Language in the old policy (old RMP-11 IV.D) restricting access to non-students records has been greatly weakened.

2.6. V.B University Mailing Lists and Telephone Directories. The entirety of the old RMP-12 policy has been translated into two sentences in the new policy, and important privacy protections (such as an “opt-in” requirement, RMP-12 VI.A.1; privacy notifications, and restrictions on advertising) have been entirely removed.