

# UC Business and Finance Bulletin RMP-8, Legal Requirements on Privacy of and Access to Information

July 1, 1992

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## I. REFERENCES

### A. Federal Statutes

Federal Family Educational Rights and Privacy Act of 1974, dated July 17, 1976 (20 U.S.C. Section 1232g)

Federal Privacy Act of 1974 - Public Law 93-579 (5 U.S.C. 552a)

### B. State of California Statutes

State of California Education Code, Section 67100 et seq.

State of California Information Practices Act of 1977 (Civil Code Section 1798 et seq.)

State of California Public Records Act (Gov. Code Section 6250 et seq.)

### C. University Policies

Business and Finance Bulletin:

RMP-7, "Privacy of and Access to Information Responsibilities," dated November 1, 1985.

Policies Applying to Campus Activities, Organizations, and Students:

Part B, Section 10.00, "University of California Policies Applying to the Disclosure of Information from Student Records," dated October 31, 1983.

University of California Academic Personnel Manual:

Section 158, Academic Personnel Records/Rights of Academic Appointees, Including Rights Regarding Records, dated July 5,

1984.

Section 160, Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of, dated December 1, 1986.

University of California Administrative and Professional Staff Program Personnel Policies:

Policy 160, Privacy of and Access to Records, dated December 1, 1990.

University of California Executive Program Personnel Policies:

Policy 20, Executive Program Personnel Records, dated July 1, 1986.

University of California Management and Professional Program Personnel Policies:

Policy 60, Personnel Records, dated December 1, 1990.

University of California Staff Personnel Manual:

Staff Personnel Policy 605, Staff Personnel Records, dated December 1, 1990.

## II. INTRODUCTION

On June 9, 1978, President Saxon advised the Chancellors, Laboratory Directors, and members of the Expanded President's Administrative Council of the passage of the State of California Information Practices Act, and the need for the University to review policies and procedures regarding privacy of and access to records. As the first step in the review, he enclosed a statement describing legal requirements under pertinent State and Federal laws.

Since 1978, there have been changes in the various laws and in University administrative policy and procedures resulting from practical application of these laws. This Bulletin therefore supersedes the Presidential letter and separately issues legal requirements on privacy of and access to information. The provisions of these laws as applicable

to the university are the minimum requirements for developing University policies and procedures, and for dealing with the right of public access to information and the right of privacy of individuals. Other Business and Finance Bulletins in the RMP series deal with responsibilities and specific subjects related to privacy of and access to information.

## III. FEDERAL PRIVACY ACT OF 1974

The Federal Privacy Act is primarily directed to Federal agencies for the purpose of protecting the privacy of individuals identified in information systems maintained by such Federal agencies. Except with respect to social security numbers, the Act applies to the University only in the few instances when a contract (not a grant) is entered into obligating the University to operate a system of records on behalf of a Federal agency in order to accomplish a Federal agency function. "System of records" includes any group of records from which information is retrievable by name of an individual or some identifying number, symbol, or other identifying particular assigned to the individual.

Regarding use of social security number, the Federal Privacy Act does

pertain to the University. Section 7(b) of the Act is applicable to any Federal, State, or local governmental agency. In accordance with Section 7(b), if the University requests an individual to disclose his or her social security number, it must inform that individual whether such disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it. Furthermore, the University may not deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number unless, (a) the disclosure is required by Federal statute, or (b) the disclosure is required in relation to a system of records maintained by the University in existence and operating before January 1, 1975, and if such disclosure was required by statute or regulation adopted prior to that date to verify the identity of an individual. (Sample Federal Privacy Notices are attached as Exhibit A.)

IV. FEDERAL FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, DATED JULY 17, 1976 (Buckley Amendments)

This Federal law pertains to student records. See: Policies Applying to Campus Activities, organizations, and Students, Part B, Section 10.00, "University of California Policies Applying to the Disclosure of Information from Student Records," dated October 31, 1983.

V. STATE OF CALIFORNIA EDUCATION CODE

This State law pertains to student records. See: Policies Applying to Campus Activities, Organization, and Students, Part B, Section 10.00, "University of California Policies Applying to the Disclosure of Information from Student Records," dated October 31, 1983.

NOTE: "Student records" are those records which pertain to students directly in their capacity as students. Such records include, but are not limited to, academic evaluations, transcripts, test scores and other academic records, disciplinary records, and financial aid records. Records which are maintained for purposes unrelated to a student's status as a student, such as medical, psychological, or employment records, are not considered to be student records, nor are records of applicants who have not enrolled in any academic program of the University. Once applicants become students, however, their admissions records become student records. Those records which do not fall within the definition of student records are governed by the California Information Practices Act and the California Public Records Act. (See Sections VI. and VII.)

VI. CALIFORNIA PUBLIC RECORDS ACT (Government Code Section 6250 et seq.)  
Privacy of and Access to University Public Records

The California Public Records Act declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the State, that public records are open to inspection at all times during regular office hours, and are subject to inspection and copying by every person except as provided in the Act.

The numbers in the margin of this section reference the applicable Government Code section.

A. Definitions

- 6252
1. The term "person" includes any natural person, corporation, partnership, firm, or association.
  2. The term "public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any State or local agency regardless of physical form or characteristics.
  3. The term "writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures or sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

B. Access to Public Records

- 6253
1. Times when Records are Open to Inspection

Public records are open to inspection at all times during the office hours of the University and every person has a right to inspect any public records, except as hereafter provided. Regulations may be adopted stating the procedures to be followed when making records available.

- 6256
2. Right to Copy of Public Records: Time Limits

Any person may receive a copy of any identifiable public record or copy thereof. The University is required to determine within 10 days after receipt of a records request whether or not to comply with the request and to notify the person making the request of such determination and the reasons therefor. In unusual circumstances, as specified below, the time limit may be extended by written notice to the person making the request. The notice will set forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 10 working days. "Unusual circumstances, means:

- 6256.1
- a. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
  - b. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.
  - c. The need for consultation, which shall be conducted with all practicable speed, among two or more components of the University having substantial subject matter interest

therein.

6256.2 3. Denial of Request for Records

Any notification of denial of any request for records shall set forth the names and titles of positions of each person responsible for the denial.

6257 4. Fees for Copies

A fee may be charged for copies of records, or information produced therefrom, covering the direct costs of duplication. (See also Section VII.M. for fees for copies under the Information Practices Act.)

C. Records Exempt from Disclosure Requirements

6254 The University is not required to disclose the following types of records:

6254 (a) 1. Preliminary drafts, notes, or inter-agency or intra-University memoranda which are not retained by the University in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

6254 (b) 2. Records pertaining to pending litigation to which the University is a party, until the pending litigation has been finally adjudicated or otherwise settled.

6254 (c) 3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

6254 (e) 4. Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

6254 (f) 5. Records of complaints to, or investigations conducted by the University Police Departments or other agencies for correctional or law enforcement purposes, except that certain information regarding individuals who have been arrested and regarding specified information in complaints received by law enforcement entities are to be released. The local Information Practices Coordinator should be consulted about release of this information.

6254 (g) 6. Test questions, scoring keys, and other examination data used to administer an examination for employment or an academic examination.

6254 (h) 7. The contents of real estate appraisals or engineering or feasibility estimates and evaluations relative to the acquisition of property, or to prospective public supply and

construction contracts, until all of the property has been acquired or all of the contract agreement obtained.

- 6254 (j) 8. Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. This exemption does not apply to records of fines imposed on the borrowers.
- 6254 (k) 9. Records the disclosure of which is exempted or prohibited pursuant to provisions of Federal or State law, including, but not limited to provisions of the Evidence Code relating to privilege such as the physician-patient or lawyer-client privilege.
- 6254 (p) 10. University records related to activities governed by the Higher Education Employee-Employer Relations Act (HEERA) which reveal the University's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under HEERA. Nothing in this subdivision shall be construed to limit the disclosure duties of the University with respect to any other records relating to the activities governed by the employee relations acts.
- 6254 (q) 11. University records related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract

or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

6254 (r) 12. Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

6254 (s) 13. A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code, related to contracts for outside inspection services.

6255 14. In addition to the types of records listed above, the University may withhold any records for which it can be demonstrated that the public interest served by not making the records public clearly, not minimally, outweighs the public interest served by disclosure of the record. The interest of the public and not just the interest of the University is to be considered.

6254 NOTE: Although the statutory exemptions from disclosure allow the University to deny disclosure, they do not require non-disclosure. Nothing in this section is to be construed as preventing disclosure of records concerning the administration of the University, unless disclosure is otherwise expressly prohibited by law.

6254.5 Whenever the University discloses a public record which is otherwise exempt from disclosure requirements as outlined above in numbers 1 - 13 to any member of the public, this disclosure shall constitute a waiver of the pertinent exemption. Once a record otherwise exempt from disclosure has been disclosed to a member of the public that exemption cannot be claimed regarding that public record when requested by another member of the public at a later date. This Section, however, shall not apply to disclosures:

6254.5 (a) Made pursuant to the Information Practices Act or discovery proceedings.

6254.5 (b) Made through other legal proceedings.

6254.5 (c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

6254.5 (e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall be used only for purposes which are consistent with existing law.

D. Confidentiality of University Employee Home Address and Telephone Numbers

- 6254.3 1. The home addresses and home telephone numbers of University employees shall not be deemed to be public records and shall not be open to public inspection, except that disclosure may be made as follows:
- a. To an agent or a family member of the individual to whom the information pertains.
  - b. To an officer or employee of another State agency when necessary for the performance of its official duties.
  - c. To an employee organization pursuant to regulations adopted by the Public Employment Relations Board, except that the home addresses and home telephone numbers of University employees performing law enforcement related functions shall not be disclosed.
  - d. To an agent or employee of a health benefit plan providing health services or administering claims for health services to University employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.
2. Upon written request of any employee, the University shall not disclose the employee's home address or home telephone number to an employee organization and shall remove the employee's home address and home telephone number from any mailing list maintained by the University, except if the list is used exclusively by the University to contact the employee.

E. Public Employment Contracts

6254.8 Every employment contract between the University and any employee is a public record which is not subject to the provisions of Sections 6254 and 6255, i.e., is not exempt from disclosure requirements and may not be withheld on the grounds that the public interest is best served by non-disclosure.

6254.9 F. Computer Software

Computer software developed by the University is not itself a public record. The University may sell, lease, or license the software for commercial or noncommercial use. "Computer software, includes computer mapping systems, computer programs, and computer graphics systems. However, the public record status of information is not affected merely because it is stored in a computer-such information shall be disclosed. This section is not intended to limit any copyright protections.

G. Civil Rights & Remedies

6258 1. Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any

public records or class of public records.

- 6259 (a) 2. Whenever it is made to appear, by verified petition to the superior court of the county where the records or some parts thereof are situated, that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so.
- 6259 (b) 3. If the court finds that the public official's decision to refuse disclosure is not justified, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content and with an order supporting the decision refusing disclosure.
- 6259 (c) 4. In an action filed on or after January 1, 1985, an order of the court either directing disclosure by a public official or supporting the decision of the public official refusing disclosure is not a final judgment or order, but shall be immediately reviewable by petition to the appellate court. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.
- 6259 (d) 5. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation. The costs and fees shall be paid by the University and shall not become a personal liability of the University employee. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the University.

Section VII. CALIFORNIA INFORMATION PRACTICES ACT of 1977 (Civil Code Section 1798 et seq.) Privacy of and Access to University Records Pertaining Specifically to Personal Data

The California Information Practices Act of 1977 established certain requirements for the collection, maintenance, and dissemination of any information that identifies or describes an individual. All records maintained by the University that fall within the definitions included in Section VII.A. and B. are covered by this law. The Information Practices Act does not apply to student records, i.e., those records pertaining to an individual directly in his or her capacity as a student. But it does apply to records of potential students before enrollment, i.e., records of applicants for admission. (See Sections IV. and V.)

The numbers in the margin of this section reference the applicable Civil Code section.

A. Definitions - General

- 1798.3 (g) 1. The term "record" means any file or grouping of information about an individual that is maintained by

an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual.

- 1798.3 (h) 2. The term "system of records" means one or more records, which pertain to one or more individuals, which is maintained by the University, from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

NOTE: Subsections 1 and 2 above should not be interpreted to deny an individual access to information pertaining to him or her merely because it is not filed or retrieved by an identifier particular to that individual. An individual has a right of access to information about himself or herself if his/her name or identifier

appears

in a record, even if the information is not maintained by an identifier particular to the individual. Any personal information about an individual is accessible to that individual, regardless of how it is filed, if a reasonable effort would locate it.

- 1798.3 (d) 3. The term "individual" means a natural person.

- 1798.3 (f) corporation, 4. The term "person" means any natural person, partnership, firm, or association.

- 1798.3 (b) 5. The term "agency" means every State office, officer, department, division, bureau, board, commission, or other State agency except:
- a. The California Legislature;
  - b. The California Judiciary;
  - c. The State Compensation Insurance Fund, except as to any records which contain personal information about that agency's employees; or
  - d. A local agency, as defined in subdivision (b) of Section 6252 of the Government Code.

- 1798.3 (i) 6. The term "governmental entity" means any branch of the Federal government or the local government.

- 1798.3 (k) 7. The term "regulatory agency" means the State Banking Department, the Department of Corporations, the Department of Insurance, the Department of Savings and Loan, the Department of Real Estate, and agencies of the United States or of any state responsible for regulating financial institutions.

- 1798.3 (c) 8. The term "disclose" means to disclose, release,

transfer, disseminate, or otherwise communicate all or any part of any record orally or by electronic or any other means to any person or entity.

1798.3 (e) 9. The term "maintain" includes maintain, acquire, use or disclose.

B. Definitions - Categories of Information

The primary significance of distinguishing between confidential, personal, and nonpersonal information is to clarify access rights of the individual to whom records pertain and third party disclosure rights. Generally speaking, everyone has a right of access to nonpersonal information which may be viewed as the equivalent of public information. Full access to personal information is provided to the individual to whom the information pertains, but very limited disclosure of it is allowed to other persons or agencies. Confidential information, as defined in the law, has the most restricted access and so long as the information remains confidential it generally is not accessible even to the individual to whom it pertains. Although recent amendments to the Information Practices Act have altered or deleted those three

categories

of information, University policy continues to classify information as confidential, personal, or nonpersonal. In addition, University policy establishes a special category of confidential academic review records.

1. Confidential Information

Recent amendments to the Information Practices Act delete the term confidential information from Section 1798.3 but retain the limited access rights provided to information previously so denied by addition of a new Section 1798.40. Section 1798.40 provides that an agency is not required to disclose information to the individual to whom the information pertains if certain criteria are satisfied. The criteria listed correspond to those previously used to define the term

confidential

information. Thus, although the term has been eliminated from the Act, no substantive change has been effected regarding disclosure or access rights. The University will continue to use the term confidential information to mean any information which meets any of the following criteria:

1798.40 (a - c) a. Is compiled for the purpose of investigation of suspected criminal activities or identification of individual criminal offenders or alleged offenders.

1798.40 (d) b. Is maintained for the purpose of an investigation of an individual's fitness for University employment, or of a grievance or complaint, or a suspected civil offense, so long as the information

is withheld only so as not to compromise the investigation or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38. (See Section VII.H.1.)

1798.40 (e) c. Would compromise the objectivity or fairness of a competitive examination or appointment or promotion in University service, or is used to determine scholastic aptitude.

1798.40 (f) d. Pertains to the physical or psychological condition of the individual, if the University determines that disclosure would be detrimental to the individual. The information shall be disclosed upon the individual's written authorization to a licensed medical practitioner or psychologist designated by the individual.

APM 160-20-b(1) 2. Confidential Academic Review Records

A special University category of confidential academic review records is defined in Academic Personnel Manual Section 160-20-b(1). This category pertains to academic evaluations and letters of recommendation. Access to this type of information is specially controlled both for the individual to whom the information pertains and to all third parties. Academic Personnel Manual Section 160-20-c(2) and 160-20-d define these access rights.

3. Nonpersonal Information

The recent amendments to the Information Practices Act also delete the term nonpersonal information from the Act. The deleted Section 1798.3 (c) defined nonpersonal information as "...limited factual data, which could not, in any reasonable way reflect or

convey

anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications." Although the term has been deleted from the Act, Section 1798.24 (g) continues to permit disclosure of such information pursuant to the California Public Records Act. Disclosures under this section do not require consent of the individual to whom the information pertains. Under the California Public Records Act, disclosure of personal information is allowable so long as the disclosure does not constitute an "unwarranted invasion of personal privacy." With both acts in mind, the University will continue to use the term nonpersonal information as defined above and will disclose such information in accordance with the Information Practices Act, the Public Records Act, Staff Personnel Policy 605, Academic Personnel Section 160, Administrative and Professional Staff Program Personnel Policy 160,

Executive Program Personnel Policy 20, and Management and Professional Program Personnel Policy 60.

The University has determined that the following information about University employees is nonpersonal:

- a. Name
- b. Date of hire or separation
- c. Current position title
- d. Current rate of pay
- e. organization unit assignment, including office address & telephone number
- f. Current job description
- g. Full time or part time, and career, casual or probationary status
- h. Prior non-University employment
- i. Additional employment information may be required to be released to the public as determined by the General Counsel and the Senior Vice President-Administration

1798.3 (a) 4. Personal Information

In further interpretation of the Information Practices Act as amended, the University will use the term "personal information" to mean all information that identifies or describes an individual except that information which is determined to be confidential, confidential academic, or nonpersonal as discussed in Subsections 1, 2, 3 above, and the disclosure of which would constitute an unwarranted invasion of personal privacy. Thus, much information about individuals will fall under the personal category. Some examples of the most common types of personal information are:

- a. Birthdate
- b. Citizenship
- c. Social security number
- d. Home address and home telephone number
- e. Income tax withholding
- f. Staff performance evaluations or letters of corrective actions

g. Spouse's or other relatives' names

C. General Requirements

Under the Information Practices Act, the University of California shall:

- 1798.14 1. Maintain in its records only that information about an individual which is relevant and necessary to accomplish a purpose of the University required or authorized by the California Constitution or statute or mandated by the Federal government.
- 1798.15 2. Collect information about an individual to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.
- 1798.16 3. Maintain the source or sources of information about an individual unless the source is the data subject, and maintain the information in a readily accessible form so as to be able to provide it to the data subject upon request.
- 1798.18 4. Maintain all records to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.
- 1798.60 5. Ensure that an individual's name and address are not  
1798.62 distributed for commercial purposes or sold or rented by the University unless such action is specifically authorized by law. Upon written request of any individual, any University office which maintains a mailing list shall remove the individual's name and address from such list, except that the office need not remove the individual's name if such name is exclusively used by the University to directly contact the individual.
- 1798.20 6. Establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing information about an individual, and instruct each such person with respect to such rules of the requirements of the Information Practices Act and related University policies and of  
the remedies and penalties for noncompliance. (Sample Rules of Conduct are attached as Exhibit D.)
- 1798.21 7. Establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the Information Practices Act and the security and confidentiality of records.
- 1798.19 8. Cause, consistent with its authority, the requirements of this policy to be applied to any information about an individual contained in any records the University has contracted to operate or maintain.

1798.77 9. Ensure that no record containing information about an individual is modified, transferred, or destroyed for the purpose of avoiding compliance with these legal requirements. The University shall not remove or destroy information about an individual who has requested access to the information before allowing the individual access to the record containing the information. Violation may lead to civil action under the State law.

D. Notice Requirements - To the Individual

1798.17 The University shall provide the notice specified in this section on or with any form used to collect personal information from individuals. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals shall satisfy this requirement. The notice shall include all of the following:

1798.17 (a) 1. The name of the University office that is requesting the information.

1798.17 (b) 2. The title, University address, and University telephone number of the official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in these records.

1798.17 (c) 3. The authority, whether granted by statute, regulation, or University policy which authorizes the maintenance of the information.

1798.17 (d) 4. With respect to each item of information, whether submission of such information is mandatory or voluntary.

1798.17 (e) 5. The consequences, if any, of not providing all or any part of the requested information.

1798.17 (f) 6. The principal purpose or purposes within the University for which the information is to be used.

1798.17 (g) 7. Any known or foreseeable disclosure which may be made of the information to Federal, State, or local governmental agencies.

1798.17 (h) 8. The individual's right of access to records containing personal information which are maintained by the University.

1798.17 This section does not apply to any enforcement document issued by an employee of a law enforcement agency in the

performance of his or her duties wherein the violator is provided an exact copy of the document, or to accident reports whereby the parties of interest may obtain a copy of the report pursuant to Section 20012 of the Vehicle

Code.

The notice required by this section does not apply to University requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the University, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974. (A sample State Privacy Notice is attached as Exhibit B. For information concerning use of social security number, see Section III, and Exhibit A.)

E. Notice Requirements - To the State

- 1798.9 In accordance with the Information Practices Act, the University shall file notices with the State Office of Information Practices, on March 31 of each year, for any system of records containing personal or confidential information.
- 1798.10 Notices required to be filed by the Information Practices Act shall specify each of the following:
- 1798.10 (a) 1. An index or list showing each record system by name or title.
- 1798.10 (b) 2. The procedures to be followed for an individual to gain access to, and contest the contents of, records containing personal information. The procedures shall include the name or title and business address of the University's designated contact person for each record system.
- 1798.10 (c) 3. Each known instance during the reporting period in which  
personal information has been distributed by the University or obtained by any person in a manner not in accord with law.
- 1798.10 (d) 4. Each known instance during the reporting period where access to records requested under the Information Practices Act or the California Public Records Act has been denied, and each known instance of delay in providing access to, or copies of, records beyond the statutory limits imposed by the applicable provisions of the Information Practices Act or the California Public Records Act, and the statutory basis or other reasons therefor.
- 1798.10 If the University fails to file such a report the State Office of Information Practices promptly shall inform the

University and if the University fails to comply within 30 days thereafter, the State Office shall report the failure as a violation in its annual report to the Legislature pursuant to the Information Practices Act.

In addition, upon the request of an individual who is identified in a record system, or upon the request of the Office of Information Practices, the University shall, with respect to any personal information in the record system, explain the authority and purpose for maintaining the information, the routine or probable disclosures of the information, and the retention and disposal policies pertaining to the information.

F. Inquiries About Information

1798.32

1. Each individual shall have the right to inquire and be notified as to whether the University maintains a record about himself or herself. Inquiries shall specify the name or title of the system of records. The University shall allow individuals to review the notices submitted to the State Office of Information Practices (see Section VII.E.). and shall take reasonable steps to assist individuals in making their requires sufficiently specific.

2. When notifying an individual as to whether or not the University maintains records about the individual, such notice shall include the title and business address of the University official responsible for maintaining the records, the procedures to be followed to gain access

to

the records, and the procedures to be followed for an individual to contest the contents of such records unless the individual has received this notice during the past year.

G. Disclosure of Information

1. Nonpersonal Information

The University will disclose all nonpersonal information in response to any request.

2. Confidential Academic Review Records

Disclosure of confidential academic review records is governed by University policies contained in Academic Personnel Manual Section 160.

3. Confidential Information

Most confidential information, as defined in the law, is nondisclosable to the individual to whom it pertains or to others except as provided by law. For example, medical records are subject to the Confidentiality of Medical Information Act; Mental health records, records

related to alcohol and drug abuse, and records related to AIDS are subject to similar special laws, as are criminal law enforcement records and investigative materials. Questions pertaining to the release of confidential information should be directed to the Office of The General Counsel or the local Information Practices Coordinator for guidance.

1798.24 4. Personal Information

The University will not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

- 1798.24 (a) a. To the individual to whom the information pertains.
- 1798.24 (b) b. With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.
- 1798.24 (c) c. To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty that such person is the authorized representative of the individual to whom the information pertains.
- 1798.24 (d) d. To those officers, employees, attorneys, agents, or volunteers of the University if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.
- 1798.24 (e) e. To a person, or to another agency when the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is listed in the notice filed with the State Office of Information Practices or accounted for in accordance with Section VII.I.1. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.
- 1798.24 (f) f. To a governmental entity when required by State or Federal law.

- 1798.24 (g) g. Pursuant to the California Public Records Act.
- 1798.24 (h) h. To a person who has provided the University with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.
- 1798.24 (i) i. Pursuant to a determination by the University that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure, notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other State or Federal law.
- 1798.24 (k) j. To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.
- 1798.24 (l) k. To any person pursuant to a search warrant.
- 1798.24 (n) l. For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, related to provision of aid and services to the needy and distressed.
- 1798.24 (o) m. To a law enforcement or regulatory agency when required for an investigation of unlawful activity, or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.
- 1798.24 (p) n. To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the University of a failure to comply with a specific State law which the University is responsible for enforcing.
- 1798.24 (q) o. To the State Office of Information Practices when the transfer is necessary for that office to investigate a complaint it has received regarding an alleged violation of any provision of the Information Practices Act or to perform its mediation functions, provided that the Office of Information Practices has received written voluntary consent of the individual to whom the information pertains for such a transfer.

1798.24 (t) p. To a committee of the Legislature or to a member of the Legislature, or his or her staff when authorized in writing by the member, where such member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting in behalf of the individual.

1798.24 (u) q. For scientific research within the University of California or to a nonprofit educational institution conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the information and assurances that the personal identity of the subject shall not be further disclosed in individually identifiable form.

#### H. Deletion of Information Prior to Disclosure

##### 1798.38 1. Deletion of Source of Letters of Recommendation

If information, including letters of recommendation, compiled for the purpose of determining suitability, eligibility, or qualifications for employment, advancement, renewal of appointment or promotion, was received with the promise or, prior to July 1, 1978, with the understanding that the identity of the source of the information would be held in confidence and such source is not in a supervisory position with respect to the individual to whom the record pertains, the University shall fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of such material with only such deletions as are necessary to protect the identity of the source, or by providing a comprehensive summary of the substance of the material. Whichever method is used, the University shall insure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications, or be used by the University to make a determination that would affect an individual's rights, benefits, privileges, or qualifications. "Supervisory positions" shall not be deemed to include chairpersons of academic departments.

NOTE: With respect to confidential academic review records, see Academic Personnel Manual Section 160-20-c(2).

##### 1798.42 2. Deletion of Personal or Confidential Information About Others

In disclosing information contained in a record to an individual, the University shall not disclose any

personal or confidential information as defined in the law relating to another individual which may be contained in a record. To comply with this section, the University, in disclosing information, shall delete from disclosure such information as may be necessary.

1798.43

3. Deletion of Confidential Information About the Individual

In disclosing information contained in a record to an individual, the University need not disclose any confidential information as defined in the law pertaining to that individual. To comply with this section, the University, in disclosing personal information contained in a record, may delete from disclosure any confidential information.

NOTE: The above subsection does not apply to confidential academic review records. See Academic Personnel Manual Section 160-20-c(2).

I. Accounting of Disclosures

1798.25

1. In compliance with the Information Practices Act, the University shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to Subsections i, j, k, m, and n of Section VII.G.4. This accounting shall also be required for disclosures made in accordance with Subsections e and f of Section VII.G.4., unless notice to the State office of Information Practices has been provided as described in Section VII.E. The accounting shall also include the name, title, and business address of the person or agency to whom such a disclosure was made. (A sample Accounting of Disclosure Form is attached as Exhibit C.) For the purpose of an accounting of a disclosure made under Subsection m of Section VII.G.4., it shall be sufficient for a law enforcement to record the date of disclosure, the law enforcement agency or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency.

Routine disclosures of information pertaining to crimes, offenders, and suspected offenders, to law enforcement or regulatory agencies of federal, state, and local government shall be deemed to be disclosures pursuant to Subsection e of Section VII.G.4.

1798.27

2. The University shall retain the required records of disclosure for at least three years after the disclosure, or until the original record is destroyed pursuant to the University's disposition schedule, whichever is shorter.

1798.28                    3. The University shall inform any person or agency to whom a record containing personal or confidential information has been disclosed during the preceding three years, of any correction of an error or notation of dispute, if an accounting of such disclosure was required and has not been destroyed, or if the name of the person or agency to whom the disclosure was made is known.

J. Right of Access by Individuals to Whom Information Pertains

1798.34 (a)                1. Confidential Academic Review Records

The right of access to confidential academic review records by the individual to whom such information pertains is governed by University policies contained in Academic Personnel Manual Section 160.

2. Confidential Information

1798.40                    a. The University is not required to disclose information determined to be confidential, as set forth in Section VII.B.1., to the individual to whom such information pertains. This shall not be construed to deny an individual access to information relating to him or her if access is allowed by another statute or decisional law of this State.

1798.41 (a)                b. Except as provided in Subsection J.2.d below, if the University determines that information requested is exempt from access as confidential, the University shall inform the individual in writing of its findings that disclosure is not required by law.

1798.41 (b)                c. Except as provided in Subsection J.2.d. below, the University shall conduct a review of its determination that particular information is confidential and exempt from access within 30 days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the local Information Practices Coordinator.

1798.41 (c)                d. If the University believes that compliance with Subsection J.2.b. above, would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the University to respond

to the individual that no record is maintained.

### 3. Personal Information

- 1798.34 (a) a. The University shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information, and maintained by reference to an identifying particular assigned to the individual. In addition, the individual shall be permitted to inspect any personal information about himself or herself where it is maintained by reference to an identifying particular other than that of the individual, if the University knows or should know that the information exists. The individual also shall be permitted to inspect the accounting made in accordance with Section VII.I.
- 1798.34 (b) b. The University shall permit the individual, and, upon the individual's request, another person of the individual's own choosing to inspect all the personal information in the record and have an exact copy made of all or any portion thereof. The University may require the individual to furnish a written statement authorizing disclosure to another person.
- 1798.34 (c) c. The University shall present the information in the record in a form reasonably comprehensible to the general public.
- 1798.34 (d) d. Whenever the University is unable to access a record by reference to name only, or when access by name only would impose an unreasonable administrative burden, the University may require the individual to submit other identifying information, to facilitate access to the record.
- 1798.34 (e) e. The information or a true copy thereof, shall be made available to the individual at a location near the residence of the individual or by mail, whenever reasonable.

### K. Requests for Amendment of Records

- 1798.35 1. The University shall permit an individual to request in writing an amendment of a record and shall, within 30 days of the date of receipt of such request:
- 1798.35 (a) a. Make each correction and inform the individual of such correction; or
- 1798.35 (b) b. Inform the individual of its refusal to amend the record, the reason for the refusal, the procedures established by the University for the individual to request a review of the refusal, and the name, title, and business address of the reviewing

official.

1798.36            2. Any individual who disagrees with a refusal to amend a record may request a review of such refusal. The review shall take place within 30 days, unless for good cause shown the University extends the review by an additional 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the University shall permit the individual to file a statement of reasonable length setting forth the reasons for the individual's disagreement.

1798.37            3. The University, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available to any person to whom the disputed record has been or is disclosed copies of the individual's statement and copies of a concise statement of the reasons of the University for not making the amendment.

NOTE: For procedures regarding requests for corrections or deletions in records and additions to such records, see Academic Personnel Manual Section 160, Administrative and Professional Staff Program Personnel Policy 160, Executive Program Personnel Policy 20, Management and Professional Program Personnel Policy 60, and Staff Personnel Manual Policy 605.

L. Deadlines for Release, Copying, and Amendment of Information

1798.34 (a)        1. The University shall make available all disclosable information within 30 days of the receipt of a request for active records, and within 60 days for records that are geographically dispersed or which are inactive and in storage. Failure to respond within these time limits shall be deemed denial.

1798.34 (b)        2. When an individual inspects disclosable information the University shall provide, upon the individual's request, exact copies of such information within 15 days of the inspection.

1798.41 (b)        3. If requested information is determined to be confidential and thus exempt from access, the University shall inform the individual in writing within 30 days from the receipt of the request.

1798.35            4. Requests for an amendment of a record requires University action within 30 days of request. See Section VII.K. for the action required.

NOTE: See Section VI.B.2. for deadlines under the Public Records Act.

M. Fees for Copies

1798.33 The University may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record and shall not exceed ten cents per page. (See Section VI.B.4. for fees for copies under the Public Records Act.)

N. State Office of Information Practices

1798.6 In accordance with the Information Practices Act, the  
1798.8 State Office of Information Practices, upon receiving a complaint, may investigate violations of the Act and may attempt to mediate any dispute between the University and a complaining individual. The Office of Information Practices shall not have access to personal information except pursuant to the written voluntary consent of the individual to whom the information pertains.

O. Civil Remedies

1798.45 1. An individual may bring a civil action against the University whenever the University does any of the following:

1798.45 (a) a. Refuses to comply with an individual's lawful request to inspect personal information.

1798.45 (b) b. Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness to any determination relating to the qualifications, character rights, opportunities of, or benefits to the individual that may be made on the basis of such record, if, as a result of such failure, a determination is made which is adverse to the individual.

1798.45 (c) c. Fails to comply with any other provision of the Information Practices Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

1798.46 2. In any suit brought under the provisions of Subsection O.1.a., above, the court may enjoin the University from withholding the records and order the production to the complainant of any University records improperly withheld. The court shall assess against the University reasonable attorney's fees and other litigation costs reasonably incurred in any suit in which the complainant has prevailed.

1798.48 3. In any suit brought under the provisions of Subsection O.1.b. or c. above, the University shall be liable to the individual in an amount equal to the sum of:

- 1798.48 (a) a. Actual damages sustained by the individual, including damages for mental suffering.
- 1798.48 (b) b. The costs of the action together with reasonable attorney's fees as determined by the court.
- 1798.50 4. The above authorized civil actions shall not apply with respect to an allegation that an opinion which is subjective in nature, as distinguished from a factual assertion, about an individual's qualifications in connection with a personnel action, was not accurate, relevant, timely or complete.
- 1798.53 5. Any University employee, other than when acting solely in his or her official capacity, who intentionally discloses information not otherwise public, which he or she knows or should reasonably know was obtained from personal or confidential information maintained by the University, or from "records" within a "system of records" (as such terms are defined in the Federal Privacy Act of 1974) maintained by a Federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual to whom the information pertains. In any successful action the complainant, in addition to any special or general damages awarded, shall be awarded a minimum of \$2,500 in exemplary damages as well as attorney's fees and other litigation costs reasonably incurred in the suit.

P. Penalties

- 1798.55 1. Any officer or employee of the University who intentionally violates any provision of the Information Practices Act or any rules or regulations adopted thereunder may be disciplined, and such discipline may include termination of employment.
- 1798.56 2. Any person who willfully requests or obtains any record containing personal or confidential information from the University under false pretense shall be guilty of a misdemeanor and fined not more than \$5,000, or imprisoned not more than one year, or both.
- 1798.57 3. Except for disclosures which are otherwise required or permitted by law, the intentional disclosure of  
medical,  
psychiatric, or psychological information in violation of the disclosure provisions of the Information Practices Act is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.

Q. Relation of the Information Practices Act to Other Laws

- 1798.70 1. The Information Practices Act shall be construed to

supersede any other provision of State law, including any exemption in Section 6254 or 6255 of the Public Records Act, which authorizes any agency to withhold from an individual any record containing personal information which is otherwise accessible under the Information Practices Act.

- 1798.71            2. The Information Practices Act shall not be deemed to abridge or limit the rights of litigants, including parties to administrative proceedings, under the laws, or case law, of discovery of this state.
- 1798.76            3. Nothing in the Information Practices Act shall be construed to revoke, modify, or alter in any manner any statutory provision or any judicial decision which (a) authorizes an individual to gain access to any law enforcement record, or (b) authorizes discovery in criminal or civil litigation.

EXHIBIT A

(See Section III., pages 4 and 5)

SAMPLE FEDERAL PRIVACY NOTICES

Section 7(b) of the Federal Privacy Act of 1974 provides that any Federal, State, or local government agency which requests an individual to disclose his or her social security account number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it. The notification requirements of Section 7(b) of the Act may be met in one of three ways.

OPTION 1

For requesting the mandatory disclosure of social security numbers to be used for record keeping systems established prior to January 1, 1975, pursuant to Federal or State statute or regulation.

Pursuant to the Federal Privacy Act of 1974, you are hereby notified that disclosure of your social security number is mandatory. Disclosure of the social security number is required pursuant to (Federal or State statute or regulation - provide citation.) The social security number is used to verify your identity.

OPTION 2

For requesting the mandatory disclosure of social security numbers to be used for record keeping systems established prior to January 1, 1975, pursuant to the authority of The Regents.

Pursuant to the Federal Privacy Act of 1974, you are hereby notified that disclosure of your social security number is mandatory. This record keeping system was established prior to January 1, 1975 pursuant to the authority of The Regents of University of California under Art. IX, Sec. 9 of the California Constitution. The social security number is used to

verify your identity.

OPTION 3

For requesting the voluntary disclosure of social security numbers for record keeping systems established subsequent to January 1, 1975, pursuant to the authority of The Regents.

Pursuant to the Federal Privacy Act of 1974, you are hereby notified that disclosure of your social security number is voluntary. This record keeping system was established pursuant to the authority of The Regents of the University of California under Art. IX, Sec. 9 of the California Constitution. The social security number is used to verify your identity.

EXHIBIT B  
(See Section VII.D., page 19)

SAMPLE STATE PRIVACY NOTICE

The State of California Information Practices Act of 1977 (effective July 1, 1978) requires the University to provide the following information to individuals who are asked supply information about themselves:

The principal purpose for requesting the information on this form is to (state purpose - payment of earnings, administration of University Benefits Program, process application for admission, determine eligibility for ..., report payments for income tax purposes, etc.). State and/or Federal statute and/or University policy authorize maintenance of this information.

Furnishing all (or specifically designated) information requested on this form is mandatory - failure to provide such information will delay or may even prevent completion of the action for which the form is being filled out.\* Information furnished on this form may be used by (state departments which will use the information) for (state other uses, if applicable), and will be transmitted to the State and Federal governments as required by law.

Individuals have the right to review their own records in accordance with University personnel policy and collective bargaining agreements. Information on applicable policies and agreements can be obtained from campus, Laboratory, or office of the President staff and Academic Personnel Offices.

The official(s) responsible for maintaining the information contained on this form is (are): (name of office/title of responsible officer).

\* Alternate - "Furnishing the information requested on this form is voluntary. There is no penalty for not completing the form."

EXHIBIT C  
(See Section VIII., page 26)

SAMPLE ACCOUNTING OF DISCLOSURE

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(of Person or agency to whom disclosure was made)

Nature/Purpose of disclosure: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Signature and department of University official authorizing disclosure:

\_\_\_\_\_

Attachments: Written request of party asking for disclosure  
Copy of material/records which are disclosed

EXHIBIT D  
(See Section VII.C.6., page 18)

RULES OF CONDUCT FOR UNIVERSITY EMPLOYEES  
INVOLVED WITH INFORMATION REGARDING INDIVIDUALS

- A. Employees responsible for the collection, maintenance, use, and dissemination of information about individuals which relates to their personal life, including their employment and medical history, financial transactions, marital status and dependents, shall comply with the provisions of the State of California Information Practices Act. Business and Finance Bulletin RMP-8, "Legal Requirements on Privacy of and Access to Information," shall be used as a basic guide in administering the Act's provisions.
- B. Employees shall not require individuals to disclose personal or confidential information about themselves which is not necessary and relevant to the purposes of the University or to the particular function for which the employee is responsible.
- C. Employees shall make every reasonable effort to see that inquiries and requests by individuals for their personal or confidential records

are responded to quickly, courteously, and without requiring the requester to repeat the inquiry to others unnecessarily.

- D. Employees shall assist individuals who seek information pertaining to themselves in making their inquiries sufficiently specific and descriptive so as to facilitate locating the records.
- E. Employees shall not disclose personal or confidential information relating to individuals to unauthorized persons or entities. The intentional disclosure of such information to such persons or agencies may be cause for disciplinary action.
- F. Employees shall not seek out or use personal or confidential information relating to others for their own interest or advantage. The intentional violation of this rule may be cause for disciplinary action.
- G. Employees responsible for the maintenance of personal and confidential records shall take all necessary precautions to assure that proper administrative, technical, and physical safeguards are established and followed in order to protect the confidentiality of records containing personal or confidential information.