

3. Privacy Balancing Process

The Privacy Balancing Process is intended as a tool to guide policy-making and decision-making when competing privacy interests, University values, or obligations exist and for which no statutory provision, common law, or University policy is directly applicable. The balancing process is derived from the UC Privacy Statement, applies the UC Privacy Principles, and rests on the acknowledgement that protecting autonomy privacy depends both on protecting information privacy and on ensuring information security.

The balancing process is intended to achieve consistency in privacy-related decisions. The process will be employed by governance bodies (described subsequently) in such a way that a cumulative body of institutional knowledge will inform policy development and routine practices of campus privacy officials and other UC managers. The process is applicable both to information that the University maintains about individuals (information privacy); as well as to their speech and behavior that is conducted on University premises, that uses University resources, or that is made in their role as a University representative (autonomy privacy).

A balancing decision depends on the specifics of each case, weighing multiple interests and impacts. The relative weights of many factors are analyzed to determine whether the proposed course of action is sufficiently compelling to justify the impacts. For example, proposals to monitor or to collect information about the activities of individuals must articulate a significant University or individual need for such activity. Such a “significant interest” stance gives reasonable deference to the privacy of individuals without unduly constraining institutional operational needs.

The balancing process analysis may result in a conclusion that one party’s interest or position carries the most weight. For example, a University’s policy to require individuals to identify themselves before entering certain campus buildings is approved because the University’s obligation to protect the physical safety of individuals on campus outweighs an individual’s privacy interest in anonymity. The balancing process could also result in striking a balance between the different interests, finding an acceptable middle ground that gives deference to each interest. The balancing process allows the University to remain flexible in light of changes in laws, societal norms, technological change, individual expectations, and University needs.

Privacy Balancing Analysis Factors

The balancing process must expressly consider the parties’ interests, benefits, burdens, and consequences associated with the proposed action. Each analysis will differ depending on the action and the interests involved. A “party” in such an analysis may be, or represent, an individual, a community, or the University; with the recognition that parties may overlap or that a party may have multiple roles.

Some potential factors that are helpful to privacy analysis are given below. This list is not intended to be prescriptive; it is intended to illustrate how a balancing analysis would be conducted.

- What are the benefits to each party in successfully asserting privacy interests or a specific policy stance? What are the burdens, impacts, and risk to each party if the proposed action is not taken?
- What alternative approaches, or reasonable privacy protections, might be used in conjunction with the proposed action to make it less intrusive?
- What are the costs, whether in dollars, time, effectiveness, or other metrics?

- What actions have been taken (or could be taken) by each party to protect their own interests?
- What new technologies or processes might mitigate the privacy concerns, now or in the foreseeable future?

Building Consistency into the Process

The balancing process is inherently subjective. The analysis is based on the facts of each situation, the factors selected to weigh the parties' interests, and the outcome of similar cases. It is more flexible than rules-based decision-making and expressly allows the full circumstances of the parties to be considered. The cost of such flexibility, however, is that similar cases may not be treated in the same way or result in the same outcome. To address this aspect of the balancing process, the University should adopt a case review process whereby the analysis and rationale supporting the University's balancing decisions are reviewed periodically. In addition, a mechanism should be developed for particularly well-reasoned decisions to be shared among campuses and recommended as guidelines for similar situations, without disclosing information of the individuals involved in the matter.