

The Tension Between
ACADEMIC FREEDOM
and **STATE OPEN RECORDS LAWS:**
Is There a Need for Re-Examination?

*Sponsored by the George Washington University Law School
in collaboration with
the National Academy of Sciences' (NAS) Committee on Science, Technology, and Law*

April 1, 2014

9:30 a.m. to 4 p.m.

Jacob Burns Moot Court Room

The George Washington University Law School

2000 H Street, NW

Washington, D.C. 20052

AGENDA

9:30 a.m.

Welcome

Alan B. Morrison, Lerner Family Associate Dean for Public Interest and Public Service Law, George Washington University Law School

9:40 a.m.

The Basic Problem

Rachel Levinson-Waldman, attorney, Brennan Center for Justice; author, "Academic Freedom and the Public's Right to Know: How to Counter the Chilling Effect of FOIA Requests on Academic Freedom" (available on conference website*)

Why the Federal FOIA Does Not Fit the Problem

Michael Kirkpatrick, attorney, FOIA litigator, Public Citizen Litigation Group

10:10 a.m.

Panel 1: The UVA Case—*American Tradition Institute v. University of Virginia (ATI v. UVA)*

(briefs on conference website*)

Moderator: Alan B. Morrison

This session will not be a debate about the legal merits of the Virginia case, but rather will serve as an example of the types of requests that universities may field and the concerns that faculty and universities have about responding to such requests. The session will probe the reasons why the requesters want to see these emails and the reasons why faculty want to prevent their release.

David W. Schnare, lead counsel for the Requesters in *ATI v. UVA*

Patrick J. Michaels, Director, Center for the Study of Science, Cato Institute; former research professor of Environmental Sciences, University of Virginia

Madelyn F. Wessel, Associate General Counsel, University of Virginia; co-counsel for UVA in *ATI v. UVA*

Ada Meloy, General Counsel, American Council on Education; co-counsel for amici curiae supporting UVA in *ATI v. UVA*

11:30 a.m.

Panel 2: The Rationales for Disclosure and Withholding More Generally

Moderator: Anne-Marie Mazza, Director, National Academy of Sciences' (NAS) Committee on Science, Technology, and Law

This session will examine the impact of state FOIA laws on records other than email exchanges, including a range of research-related materials, information about university governance and expenditures, and peer review and other recommendations that faculty make in a wide variety of circumstances.

Peter J. Fontaine, Partner, Cozen & O'Connor; counsel for Michael Mann, whose records were requested in *ATI v. UVA*

Jamie Lewis Keith, Vice President and General Counsel, University of Florida

Michael Kirkpatrick, attorney, FOIA litigator, Public Citizen Litigation Group

Jonah Newman, database reporter, The Chronicle of Higher Education

12:45 p.m.

Lunch

1:30 p.m.

Panel 3: Possible Solutions

Moderator: The Honorable David S. Tatel, U.S. Court of Appeals for the District of Columbia Circuit; co-chair, NAS Committee on Science, Technology, and Law

There are many ideas for resolving the tension between open government and academic freedom. Panel members will take turns commenting on options, followed by responses from the other panel members.

William K. Briggs, associate, Irell & Manella; author, "Open Records Requests for Professors' Email Exchanges: A Threat to Constitutional Academic Freedom?" (available on conference website*)

Emily Grannis, attorney, Reporters Committee for Freedom of the Press; co-counsel for amici curiae supporting the requesters in *ATI v. UVA*

Michael Halpern, Manager of Strategy and Innovation, Center for Science and Democracy, Union of Concerned Scientists, an amicus supporting UVA in *ATI v. UVA*

Daniel S. Volchok, partner at Wilmer Cutler Pickering Hale and Dorr LLP; co-counsel for amici curiae supporting UVA in *ATI v. UVA*

3:00 p.m.

Panel 4: Special Questions and Problems

Moderator: Alan B. Morrison

This panel will address two sets of problems that could arise in an open records case involving a state university. The first set involves conflicts where the university and either the faculty members whose records are being requested or the state attorney general assigned to represent the university disagree about disclosure. The second set involves drawing lines for emails and other records between what activities of the faculty member are work-related and hence public and which are private, and hence not subject to Freedom of Information Act laws.

Richard C. Kast, Associate General Counsel, University of Virginia; co-counsel for UVA in *ATI v. UVA*

Diane Krejsa, Deputy Chief Counsel, University of Maryland

David W. Schnare, lead counsel for the Requesters in *ATI v. UVA*

Raymond P. Taffora, Vice Chancellor for Legal Affairs, University of Wisconsin-Madison; former Chief Deputy Attorney General of Wisconsin

4:15 p.m.

Adjourn

NOTE: Conference participants may access the GWLAW_GUESTS wireless network with username "afreedom" and password "2phtk"