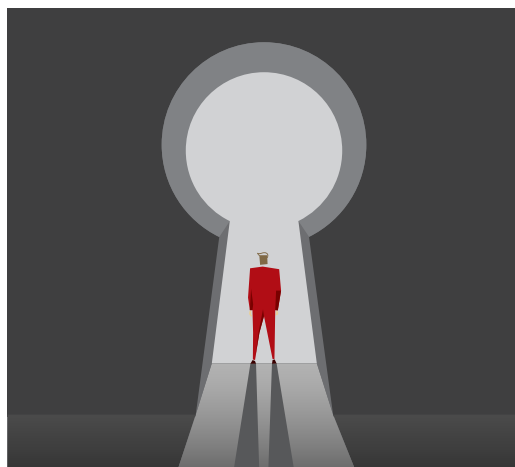


Transparency versus harassment

Open records laws worldwide are critical to holding public institutions, including universities, accountable. Such laws protect against inappropriate influence on the scientific enterprise and promote public trust in the integrity of science and scientists. But the growing use of electronic communications by researchers makes these laws vulnerable to misuse. Conversations that used to occur in person and by other less-recordable means are now electronically written. Increasingly, activists across the political spectrum in several countries are requesting not only records of discussions about the strengths and weaknesses of work, but also preliminary paper drafts and private constructive criticisms from colleagues. These requests can attack and intimidate academics, threatening their reputations, chilling their speech, disrupting their research, discouraging them from tackling contentious topics, and ultimately confusing the public.* So what level of disclosure is appropriate? How can public accountability be balanced with the privacy essential for scientific inquiry?

As AAAS President Rush Holt noted, "...excessively intrusive demands for personal or irrelevant information that go beyond appropriate levels of oversight" can negatively affect scientific discovery.† As recent examples, four U.S. universities received open records requests for years of correspondence between biologists and several private companies from activists who oppose genetically modified organisms. In 2012, a mining company asked West Virginia University for draft documents and peer-review comments about occupational health research. The burden from these requests can be considerable even if documents are ultimately kept confidential. In 2009, British tobacco marketing researchers reported stress and weeks of lost time after a tobacco manufacturer requested not only correspondence but also primary data, questionnaires, and record descriptions. In 2015, University of Arizona climate researchers reported spending weeks culling through e-mails in response to a request for their correspondence documents.



"Open records laws...are...vulnerable to misuse."

Court battles are even more time- and resource-intensive. One of us (M.M.) was subjected to a request for all records created as a University of Virginia professor. The request followed congressional inquests, none of which unearthed any impropriety, but manufactured doubt in public understanding of climate change science.‡ The Virginia Supreme Court ruled in 2014 that excessive disclosure could put the university at a "competitive disadvantage," and cause "harm to university-wide research efforts, damage to faculty recruitment and retention, undermining of faculty expectations of privacy and confidentiality, and impairment of free thought and expression."§ Elsewhere, academics have not been as fortunate. The patchwork of state and national open records laws means that disclosure varies among universities, putting researchers at more-transparent institutions at a disadvantage and giving private university scientists (who are generally exempt from open records laws, even if they receive public funding) an edge over those at public institutions.

Universities should articulate how to respond to requests in accordance with the law and ensure that faculty know their rights and responsibilities. They should better understand requesters' motivations—not to determine the appropriate response, but to help employees understand how access to correspondence could be misused. Legislatures should ensure that laws protect faculty correspondence when disclosure would compromise the conduct of science. The scientific community should develop common disclosure standards for all researchers and creative mechanisms for enforcement. Implementation could become a requirement for university accreditation. The standards could also be adopted by government grant-making bodies, increasing the likelihood that state laws will be modernized, or by legislatures and executive agencies for academics who choose to provide testimony.

Ultimately, more uniform disclosure standards will create more public trust in science.

— Michael Halpern and Michael Mann



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*www.ucsusa.org/openrecordsabuse. †www.aaas.org/news/aaas-balance-scientific-freedom-and-accountability. ‡http://cup.columbia.edu/book/the-hockey-stick-and-the-climate-wars/9780231152549. §www.courts.state.va.us/opinions/opnscvw/1130934.pdf