



Chilling Free Speech: The Consequences of Open Records Requests

While requests for public records are fairly routine matters governed by the [open records laws](#) of the state in which they are filed, there have been recent requests that suggest an effort to inhibit the speech of academics at public universities who have engaged in discussions regarding the threats to collective bargaining in various states. They may also be referred to as Freedom of Information Act (FOIA) requests.

In recent days, the Republican Party of Wisconsin filed a public records request for “All emails in and out of [Prof. William Cronon’s] state email account from January 1, 2011 to present which reference any of the following terms: Republican, Scott Walker, recall, collective bargaining, AFSCME [American Federation of State, County, and Municipal Employees], WEAC [Wisconsin Education Association Council], rally, union, Alberta Darling, Randy Hopper, Dan Kapanke, Rob Cowles, Scott Fitzgerald [Senate majority leader], Sheila Harsdorf, Luther Olsen, Glenn Grothman, Mary Lazich, Jeff Fitzgerald [speaker of the assembly], Marty Beil [executive director of the Wisconsin State Employees Union], or Mary Bell [president of WEAC].” <http://hnn.us/roundup/entries/137911.html>. The request came on the heels of an op-ed Professor Cronan authored in the *New York Times* related to the recent attacks against unions.

Similarly, the Mackinac Center, an anti-union organization in Michigan, filed public records requests with three state universities in Michigan: the [Labor Studies Center](#) at the University of Michigan, the [Douglas A. Fraser Center for Workplace Issues](#) at Wayne State University, and Michigan State University.

It is possible that other individuals working within public institutions may receive similar requests. If you think you may be targeted, take some time to learn your rights and responsibilities.

In advance of receiving such a request:

1. Be thoughtful about what is written in email communications and be cognizant of the difference between personal and institutional communication. Individuals other than the intended recipients may read email sent through institutional email accounts and that email may be subject to open records requests.
2. Universities and other public institutions will have document retention policies which should be followed, related both to retaining and deleting email. Find out what your institution’s policy says and act appropriately.

3. Before using institutional email, understand the [open records law](#) in your state. Know in advance if you are subject to the law, and what the law covers and what it does not. For instance, in Michigan, only those documents prepared “in the performance of an official function” fall within the open records law’s scope. And, importantly, even before receiving open records inquiries, be prepared by knowing the timeline for responding and whether there are any avenues to challenge requests.

Upon receiving a request:

1. Working with your institution’s general counsel, determine an appropriate legal, communications, and outreach strategy.
2. Since these requests are often designed to chill speech and rights of association protected by the First Amendment, it is important that information about requests you receive is shared with the larger community.