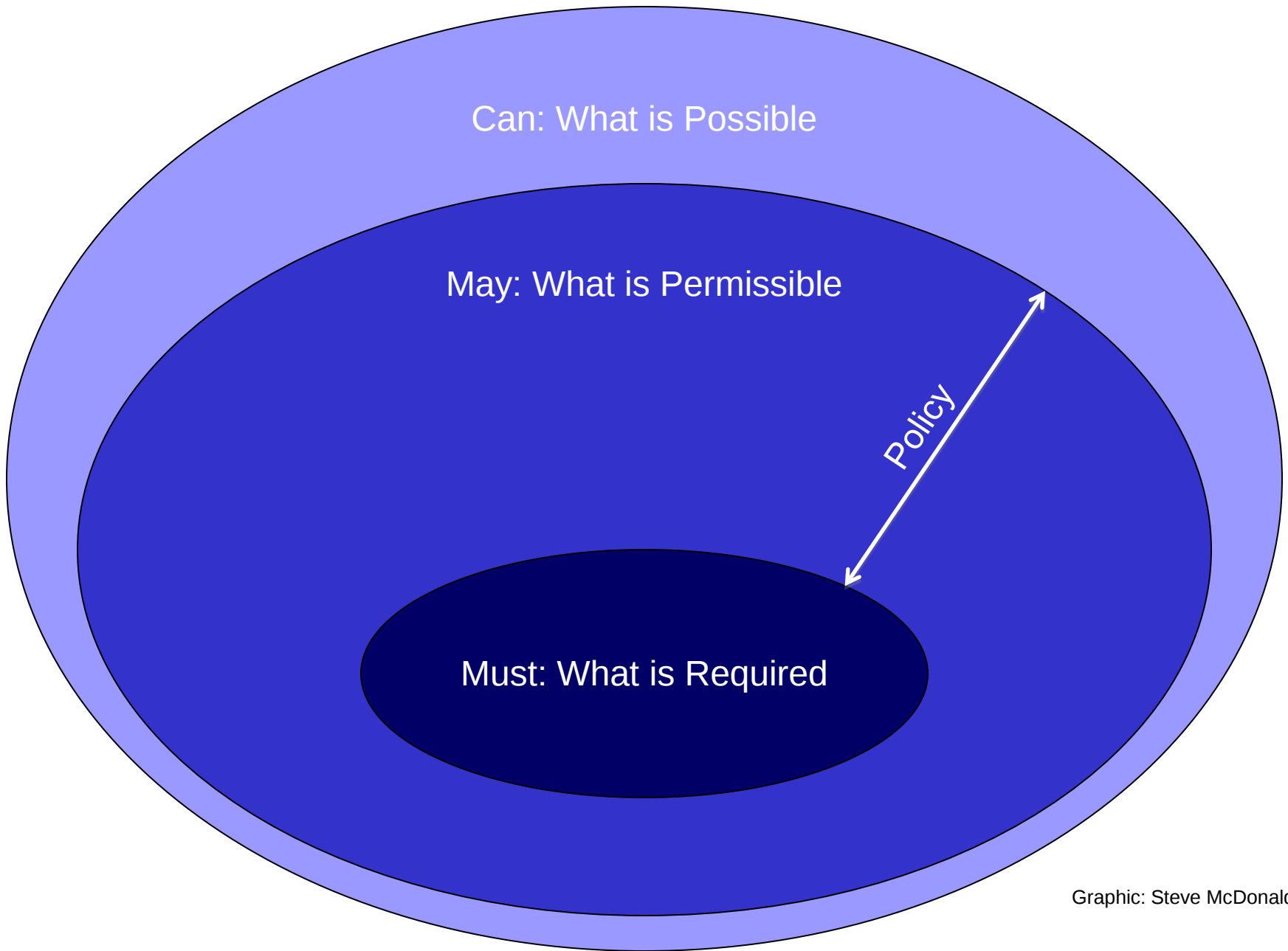


Privacy Policies for Faculty Information: Why You Should Care

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Graphic: Steve McDonald

Privacy:

It's All About Anchovies

<http://www.aclu.org/pizza>

Who? Me?

I Have Nothing to Hide

“The Eternal Value of Privacy”

(Bruce Schneier)

The most common retort against privacy advocates is this line: “If you aren’t doing anything wrong, what do you have to hide?”

Some clever answers: “If I’m not doing anything wrong, then you have no cause to watch me.”
“Because the government gets to define what’s wrong, and they keep changing the definition.”
“Because you might do something wrong with my information.”

My problem with quips like these – as right as they are – is that they accept the premise that privacy is about hiding a wrong. It’s not. Privacy is an inherent human right, and a requirement for maintaining the human condition with dignity and respect.

Cardinal Richelieu understood the value of surveillance when he famously said, “If one would give me six lines written by the hand of the most honest man, I would find something in them to have him hanged.” Watch someone long enough, and you’ll find something to arrest – or just blackmail – with.

Privacy protects us from abuses by those in power, even if we’re doing nothing wrong at the time of surveillance.

We do nothing wrong when we make love or go to the bathroom. We are not deliberately hiding anything when we seek out private places for reflection or conversation. We keep private journals, sing in the privacy of the shower, and write letters to secret lovers and then burn them. Privacy is a basic human need.

Yeah, but...

Who cares what I do or say?

“Wisconsin Professor’s E-Mails Are Target of G.O.P. Records Request” (*NY Times* March 26, 2011)

As Wisconsin’s capital continued to echo with debate over the controversial legislation that strips public unions of collective bargaining rights, a history professor at the University of Wisconsin in Madison publicly joined the conversation last week with his first post on a new blog.

It was a lengthy and speculative examination of a national organization for conservative lawmakers that the professor, William Cronon, believed was partly responsible for what he described as “this explosion of radical conservative legislation.” The post soon received more than a half million hits, he said.

Two days later, on March 17, while attending a conference of historians, Professor Cronon learned that a public records request had been filed by a state Republican Party official demanding access to months of messages on his university e-mail account that referred to certain politicized words and names, including the governor and a number of legislators.

Response from UW Attorney

You seek various e-mails written or received by UW-Madison Professor William Cronon through his university e-mail account beginning on January 1, 2011. You specifically seek e-mails that reference 20 words, terms and names of individuals that all appear to be related to current political events in Wisconsin.

At our request, Professor Cronon immediately undertook a search of all of his accumulated e-mails for the specific words, terms and names as you stated them in your request. The university's legal staff then reviewed all of the identified e-mails to determine which ones must be made available to you pursuant to the Wisconsin Public records law. Those determinations have been reviewed and approved by the appropriate university officials. Copies of the records determined to be available to you under the law are enclosed.

In reaching our conclusions, we have made several assumptions based upon the nature and context of your request. You asked the university to produce e-mails that contain the word "union." We assume that you are using this word in the context of labor unions. We, therefore, are not producing the numerous e-mails that contain such unrelated terms as "Memorial Union" or "European Union."

Response from UW Attorney (cont)

We have also assumed that you are not interested in copies of e-mailed newsletters from membership organizations or subscription publications that are generally available. ... [lists some example subscriptions]

The university is not producing the following categories of records for the following reasons:

1. Records related to students. [FERPA]
2. Records related to potential students. [FERPA]
3. Records related to professional organizations. ... If the internal discussions and business issues of such professional organizations were to be made public solely as a result of the participation by a faculty member of this university, it would have a significant chilling effect on the ability of the university's faculty members to participate in these important positions.
4. Personal communications.
5. Intellectual communications among scholars. ... The confidentiality of such discussions is vital to scholarship and to the mission of this university.
6. Communications related to personnel matters ... including the evaluation of candidates for tenure and consideration of potential candidates for employment.

Response from UW Chancellor

Two weeks ago UW-Madison received an open records request from Stephan Thompson, deputy executive director of the state's Republican Party, for email records of Professor Bill Cronon. ... He is one of the university's most celebrated and respected scholars, teachers, mentors and citizens. I am proud to call him a colleague.

The implications of this case go beyond Bill Cronon. ... We frequently receive public records requests with apparently political motives, from both the left and the right, and every position in between. I announced that the university would comply with the law and, as we do in all cases, apply the kind of balancing test that the law allows, taking such things as the rights to privacy and free expression into account. We have done that analysis and will release the records later today that we believe are in compliance with state law.

Response from UW Chancellor (cont)

Academic freedom is the freedom to pursue knowledge and develop lines of argument without fear of reprisal for controversial findings and without the premature disclosure of those ideas. Scholars and scientists pursue knowledge by way of open intellectual exchange. Without a zone of privacy within which to conduct and protect their work, scholars would not be able to produce new knowledge or make life-enhancing discoveries. Lively, even heated and acrimonious debates over policy, campus and otherwise, as well as more narrowly defined disciplinary matters are essential elements of an intellectual environment and such debates are the very definition of the Wisconsin Idea.

When faculty members use email or any other medium to develop and share their thoughts with one another, they must be able to assume a right to the privacy of those exchanges, barring violations of state law or university policy. Having every exchange of ideas subject to public exposure puts academic freedom in peril and threatens the processes by which knowledge is created. The consequence for our state will be the loss of the most talented and creative faculty who will choose to leave for universities where collegial exchange and the development of ideas can be undertaken without fear of premature exposure or reprisal for unpopular positions.

Response from UW Chancellor (closing)

To our faculty, I say: Continue to ask difficult questions, explore unpopular lines of thought and exercise your academic freedom, regardless of your point of view. As always, we will take our cue from the bronze plaque on the walls of Bascom Hall. It calls for the “continual and fearless sifting and winnowing” of ideas. It is our tradition, our defining value, and the way to a better society.

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What would your

–Attorney–

–President–

–Chancellor–

have said/done?

Yeah, but...

**Don't I have a Constitutional
right to privacy?**

Privacy and the Law

- “Privacy” doesn’t appear in the Constitution
 - Jumble of specific and general laws
 - “...the law is a ass...” (Dickens)
- Open records laws, FOIA
 - Any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature [includes SUNY], in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.
- “Litigation Hold” and “e-Discovery”
 - Not just campus servers
- Federal Election Commission
 - A bit of show-and-tell



FEDERAL ELECTION COMMISSION

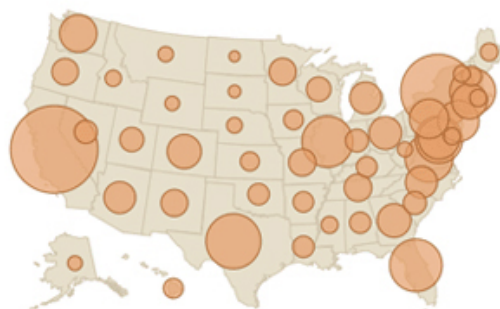
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Administering and Enforcing Federal Campaign Finance Laws

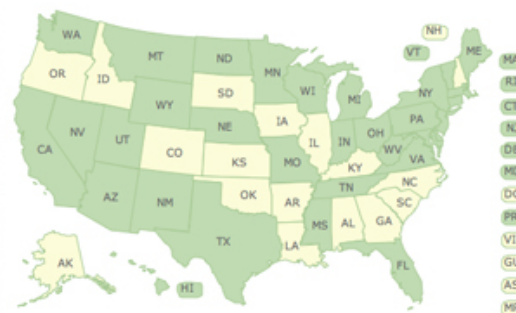
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Campaign Finance Maps. Campaign finance information is now available via easy to use maps of the USA for both [Presidential](#) and [House and Senate](#) elections through the most recent [reporting period](#).

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House and Senate Elections



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For the hearing impaired, TTY (202) 219-3336 Send comments and suggestions about this site to the [web manager](#).

Advanced Transaction Query By Individual Contributor

Search From the Following Criteria:

Individual Name (*Last, First*):

City:

State (Select as many as appropriate):

NEW HAMPSHIRE
NEW JERSEY
NEW MEXICO
NEW YORK
NORTH CAROLINA

Zipcode:

Employer/Occupation:

Professor

Amount Range:

From To

May I Have the Envelope, Please?

- Professor X
 - New York State Committee Of The Working Families Party (\$499)
 - Kilroy For Congress (\$499)
 - Klein For Congress (\$499)
 - Committee To Elect Chris Murphy (\$499)
- Professor Y
 - Friends of Giuliani Exploratory Committee (\$2,000)
- Professor Z
 - Friends Of Sharron Angle (\$400)
 - Friends Of Pat Toomey (\$700)

So Where Does “Policy”

Come In?

Privacy Policy Parameters

- What information housed where?
 - E-mail on campus servers
 - “Personal” computers, iPhones, etc.
- Who may review for what reason based on what procedure?
 - System security
 - Misconduct investigation
 - Court order
- To who may the information be revealed?
 - Internal purposes only
 - Law enforcement

**If not now,
When?**

Resources

- SUNY Counsel's Office: Joe Storch
- Cornell University: Tracy Mitrano
- SUNY Faculty: Janet Nepkie
- University of California: Kent Wada
- Indiana University: Merri Beth Lavagnino
- These Slides: Steve Worona

Discussion