

# Revision of UCLA Policy 410

*Summary of Proposed Changes — March 3, 2021*

UCLA Policy 410 implements the provisions for Access without Consent to Electronic Communications Records of the 2005 UC Electronic Communications Policy (ECP). Policy 410 has not been updated since it was first adopted in August 2010.

The changes being proposed are needed to align with current systemwide and UCLA practice in the interpretation of the ECP and with current legal need. All changes remain consistent with the ECP itself. All provisions of the ECP not addressed by Policy 410 will continue to be governed directly by the ECP, campus practice since 2010 when Policy 410 was first adopted.

This document summarizes the proposed changes to Policy 410. Campus feedback is being sought from key stakeholders and through a thirty-day public review as per [UCLA Policy 100](#), Administrative Policies & Procedures.

The Request Form in Attachment A has been revised to track these changes.

## 1. Summary of Changes

### 2. “Access without Consent” (AWOC)

Consistent with systemwide usage, “nonconsensual access to electronic communications records” is now referred to as “access without consent to electronic communications records” (including in the title of this Policy).

### 3. Issuing Officer

The Issuing Officer for this Policy has been changed from the Vice Provost, IT to the Chief Compliance and Audit Officer.

### 4. Scope of records subject to access without consent (Section I)

A sentence has been added to clarify applicability, consistent with the defined terms of Electronic Communications Policy (which depend upon UC RMP8, Legal Requirements on Privacy of and Access to Information, now rescinded).

### 5. Application to separated employees (Section III)

When a faculty or staff employee separates from the University of California, they are no longer considered the “holder” of electronic communications records as defined by the ECP. Thus, no consent or authorization for access without consent is needed to access a separated employee’s electronic communications records. This is a longstanding interpretation by the Office of General Counsel that has been UCLA practice for more than five years. This change captures practice as a policy statement. Of note, any access is still constrained by least perusal of contents and least action necessary to resolve the situation.

This does not apply to UCLA Emeritus faculty and Emeritus staff, as they remain holders of their electronic communications records.

This also does not apply pursuant to an agreement for continuing provision of an Electronic Communications Services (e.g., a faculty member retains a departmental email account to continue an existing project after moving to another institution, or if a faculty or staff member remains eligible for a Bruin Online email account after separation).

### 6. Access by auditors (Section VI.A and Section VI, Reference 4)

Acknowledgement of the authority of UC and State of California auditors is more explicitly referenced.

## 7. Authorizing and advisory signatures (Section IV.A.1 and Table 1)

The Chancellor and the Executive Vice Chancellor and Provost may, at their discretion, authorize access without requiring advisory signatures other than that of Campus Counsel / Health Legal Affairs. This change is primarily to ensure a method of complying with the ECP's requirements when external (legal or regulatory) obligations limit UCLA's ability to involve others.

The signature of Campus Counsel / Health Legal Affairs remains advisory in the access without consent process, but is now required, not optional, to better track the ECP's requirements.

The advisory signature of human resources (AVC-CHR and Sr Assoc Director, Medical Center Human Resources) is no longer on the access without consent form.

1. UCLA's current process, which requires an advisory signature either from human resources or legal counsel, did not adequately track the ECP's requirement for advice from counsel.

The Chief Privacy Officer (both campus and UCLA Health) has been added as an advisory signature in the access without consent process as a privacy voice distinct from legal counsel.

## 8. Investigations (Section IV.A.4)

Request for access without consent for purposes of an investigation, by specific offices authorized to conduct investigations, are now recognized as a distinct category of request. This is a practical acknowledgement that requests for investigations are on behalf of the office rather than an individual. Otherwise, the process is the same and ultimately the authorization of a vice chancellor is still required.

## 9. Recourse (Section IV.D)

Recourse now points to existing campus grievance processes rather than a different process just for this Policy.

## 10. Preservation of evidence (Section V)

Preservation of evidence occurs only at the direction of Campus Counsel or Health Legal Affairs, as appropriate, mirroring actual authority and practice (generally with respect to e-discovery).

2. In the current policy, a dean or department / unit head could request authorization to preserve evidence, which was never used.

Consent or authorization for access without consent is no longer needed to preserve evidence. If examination or disclosure of the preserved evidence is needed, consent or authorization for access without consent is required.

3. The current policy requires consent or authorization for access without consent both at time of preservation and a second time if the preserved evidence is to be examined or disclosed. This is out of alignment with systemwide practice and now a routine cause for legal risk.

#### 11. UCLA Emeritus (Attachment B)

“UCLA Emeritus” is a new term defined, for the purposes of Policy 410, as “a retired UCLA Employee, either member of the faculty or staff, upon whom has been conferred formal emeriti status.” This allows recognition of Emeritus Staff, about which the current Policy is silent.

#### 12. Violations of criminal law

The provision defining the role of the UCLA Chief of Police in this policy has been removed. Law enforcement requirements are addressed through appropriate existing channels, so this provision was unused in practice.