



May 2, 2019

The Honorable Laura Friedman  
California State Assembly  
State Capitol Room 2137  
Sacramento, CA 95814

**RE: AB 700 (Oppose Unless Amended)**

Dear Assembly Member Friedman:

We write to you as the Presidents of the American Society of News Editors (“ASNE”) and the Associated Press Media Editors (“APME”), the nation’s two oldest and most prominent organizations for news editors which have agreed to merge into the leading organization for news leaders in the United States.

Though our organizations primarily focus on federal legislation, we feel it necessary to convey our opposition to AB 700 because of the profound effect this bill would have on the more than 500 editors around the country, including several in California, who comprise our membership. AB 700’s proposed amendments to the California Public Records Act (“CPRA”) are unnecessarily broad, duplicative of other exemptions, constitute bad public policy, and run entirely counter to California’s longstanding position as a leader on matters of transparency. This legislation was pulled from the April 24, 2019 meeting of the Assembly’s Appropriations Committee but may be considered at an upcoming Committee meeting. We urge you to simply let this bill die.

We understand that this bill has been introduced as a response to a perceived increase to the “targeting” of researchers at California’s public universities via the filing of public records requests with the intent of distracting a researcher from his or her substantive work and/or to pick apart that research in order to attack the individual’s reputation. In addition, the bill is considered crucial to protecting the ability of researchers to exchange information and ideas surrounding their research. The need for protecting researchers and there is summarized in Section 1(a)(2) of AB 700:

Given that productive research requires the unconstrained exchange of ideas to generate new hypotheses and that the pursuit of knowledge through research is an exploratory, cumulative, and continuous endeavor that lacks clear distinctions between ongoing and completed research projects, the public has an interest in allowing postsecondary educational institutions and their researchers to conduct research on, and communicate about, significant and publicly relevant topics that, in limited circumstances, outweighs the right of the public to access information of public postsecondary educational institutions.

This statement rests on a faulty presumption: that the public's interest in research at postsecondary educational institutions is to be balanced equally against the public's right to access information from those postsecondary educational institutions. California's Constitution, the CPRA and prevailing public policy all dictate a different conclusion.

That the State's principal governing document – in its first Article – enshrines a right of access to public records demonstrates the primacy of the public's right to know.<sup>1</sup> The introductory section of the CPRA goes further, explicitly declaring this right to be “fundamental.”<sup>2</sup> In light of this clear constitutional and statutory language, the public's right to know should only be curtailed if the need for secrecy *clearly* outweighs the need for disclosure.

Contrary the language in Section 1(a)(2) of AB 700 quoted above, there is nothing “limited” (or necessary) about this exemption. AB 700 would significantly weaken the CPRA because it broadly applies to information “relating” to a researcher or research, leading the way to virtually limitless application. In addition, the decision to withhold documents rests with the researcher, opening the door to abuse of the exemption for purposes unrelated to the goals of the bill.

But even a limited application of AB 700 is unnecessary because the exemption it creates is duplicative of other, already existing exemptions found in the CPRA. AB 700 withholds, among others, the following documents from disclosure: unpublished research methods; preliminary drafts intended for publication; unpublished data; unfunded grant applications; correspondence (whether or not published and whether or not part of the peer review process); trade secrets; information that would compromise personal privacy.

All of these records could be withheld – when absolutely necessary and in a truly limited fashion consistent with the stated purpose in and general policy behind the CPRA – under exemptions found in Section 6254 of the California Government Code. Further, the “balancing” of the need to protect researchers against the public's right to know is already enshrined in Section 6255(a) – albeit with a burden show why the need for disclosure “*clearly* outweighs” the public interest in disclosure (emphasis added).<sup>3</sup> Finally, to the extent that researchers or institutions are being subjected to truly burdensome or harassing requests, the institution is empowered – obligated, actually – to assist the requester in “[making] a focused and effective request that reasonably describes an identifiable record or records,” with the onus on the custodian of the records to work with the requester to avoid unreasonable requests.

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<sup>1</sup> Article I, Section 3(b)(1) of the California Constitution states: “The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

<sup>2</sup> “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” Cal. Gov. Code § 6250.

<sup>3</sup> “The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

Instead of going out of its way to give unnecessary and overreaching protection to researchers and postsecondary public institutions, the Assembly should recognize the inherent value in oversight of those researchers and their research. Requests filed under the CPRA will help check against misinformation or errors in research, against misuse (in terms of waste, fraud and abuse) of public funds, and against other actions contrary to law and the public good which may occur at these institutions.

AB 700 would set a dangerous precedent, both in terms of access to information generally and in terms of access to information relating to research at postsecondary educational institutions. California is viewed as a leading light on issues of transparency. AB 700 would undercut that reputation. It is also a leader in the percentage of research conducted at its postsecondary educational institutions and the money invested in that research. Other states have considered similar exemptions to their public records laws, but these remain the exception not the rule. AB 700 would kickstart a dangerous national trend towards secrecy surrounding scientific and other research at a time when oversight, fact-finding and the truth are needed more than ever.

We appreciate your consideration of this issue and are happy to discuss this with you or your staff further should the need arise.

Sincerely,

Nancy Barnes  
Senior Vice President of News and Editorial Director, NPR  
President, American Society of News Editors

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President, Associated Press Media Editors