



June 11, 2013

Senator Bob Huff  
Senator Jean Fuller  
California State Senate  
State Capitol  
Sacramento, CA 95814

OFFICE OF THE CHANCELLOR  
BOX 951405  
LOS ANGELES, CALIFORNIA 90095-1405

Re: Your Communication of April 2, 2013

Dear Senators Fuller and Huff:

I write to respond to the questions you posed to UCLA Chancellor Gene Block in your April 2 letter to him, as supplemented by further questions you posed, via staff, in an email dated May 2, 2013. Thank you for this opportunity to clear up misperceptions that appear to have been created by unbalanced news accounts regarding the work of UCLA's faculty.

At the outset, I note that a number of the questions you ask seem to challenge the wisdom of the Department of Pesticide Regulation in retaining the services of UCLA Professor John Froines to assemble a committee of scientists to review the risk assessment done by DPR on the registry of methyl iodide (MeI), as well as the decision by the Air Resources Board to continue to call upon Prof. Froines to serve a chair of the Scientific Review Panel CARB has established pursuant to Health and Safety Code section 39670. I respectfully suggest that such questions are best directed to the agencies in question. From UCLA's perspective, Prof. Froines' long and distinguished career as a scientist speaks for itself in terms of his qualifications for such appointments. From UCLA's perspective, we are grateful that one of our scientists has for many years and in different contexts, been called upon by environment protection agencies in California to contribute to our understanding of the impacts of chemicals and airborne particulates on environmental quality and human health.

Your letter raises questions of alleged conflicts of interest in the work done for the State of California by Prof. Froines. In response, I have reviewed the contract under which Prof. Froines performed his services as chair of the Scientific Review Committee ("SRC") for the DPR, as well as the disclosures Prof. Froines has made to UCLA under University of California ethics policies. My review of those documents, as well as my review of the report delivered by the SRC to the DPR revealed no prohibited conflicts of interest. There is no requirement in the contract, or within state law, that a scientist serving in the capacity in which Prof. Froines served be in a judicial or quasi-judicial role, such that professional relationships with stakeholders or prior work in the field would require recusal. To the contrary, the record shows that the SRC was expected to

be populated with scientists who had records of working with the materials and issues before the panel and who would seek input from stakeholders in the process.

Conflicts of interest concerning UCLA scientists are defined in state law, primarily within Regent's policies that rely upon the principles set forth in the Political Reform Act. As implemented by UCLA, the PRA requires disclosures by our scientists of significant financial interests. These laws and policies do not require that a scientist be free of a record of prior work in a particular field or devoid of professional or personal relationship with those who may have an interest in the outcome of research. Rather, they require disclosure of financial relationships that might be impacted by one's research and the management of any potential conflicts that might arise as a result. In this regard, I asked for and reviewed all disclosure documents Prof. Froines submitted as required by UCLA's research policies in the past four years. Those documents disclosed no prohibited financial interests impacting the work of the SRC in analyzing the risk assessment process conducted in the registry of MeI.

In your letter, you challenge UCLA's decision, after much deliberation, to limit production of records to members of the public and not produce all emails and other documents concerning the research and scientific work of Prof. Froines on issues related to MeI and risk assessment. I stand by that decision, as the importance of scholarship and free inquiry is fundamental to institutions of higher education whether public or private.

As I describe more fully below, robust, frequent, and frank intellectual exchange is essential to research and teaching at the university level. Faculty at UCLA carry out a tripartite mission of teaching, service, and research. The faculty service to the institution is, by definition, something that concerns the shared governance, operation, and decision-making at UCLA. In contrast, faculty research and teaching serve the general advancement of knowledge. We recognize and honor the work done by Sen. Fuller with K-12 education, but note that tenured faculty in higher education enjoy much greater freedom in their intellectual inquiry than teachers in a K-12 setting, where school boards and the Legislature have substantial control over the content, curriculum and viewpoint of those who teach our minor children. At the university, the administration has no authority to dictate the intellectual pursuits of its tenured faculty and history has demonstrated the critical importance of protecting the independence of academic inquiry no matter its unpopularity or where it might sit on the political spectrum.

Review and contestation is of critical importance in the exploration of scholarly problems, and that review comes from peers at every stage, from the initial identification of a problem to the publication of scholarly work on the problem. Publications are the final tangible result of scholarly exploration. A published work articulates in detail the methods, materials, and modes of research that led to the findings reported or the narrative constructed. These publications are expected to result in deeper examination of the issues and any challenges to the methods or conclusions are further addressed by other scholars.

Faculty members, researchers, and other scholars often use electronic communications, including e-mail, to develop and share their thoughts, impressions, and ideas with one another. The confidentiality of such discussions is vital to scholarship and the mission of the UCLA campus. As clearly stated in the University of California Los Angeles Academic Senate's Statement on Academic Freedom:

“Institutions of higher learning exist to serve society by discovering, creating, examining, transmitting, and preserving knowledge and by educating students. They can effectively maintain the integrity of these basic functions only if the principles of academic freedom are observed. Academic freedom is freedom from duress or sanction aimed at suppressing the intellectual independence, free investigation, and unfettered communication by the academic community - faculty, librarians, students, and guests of such institutions.”

<http://www.senate.ucla.edu/committees/academicfreedom/StatementonAcademicFreedom.htm>

Scholars must be afforded privacy in these communications in order to pursue knowledge, develop lines of argument without fear of reprisal for controversial findings, and without the premature disclosure of those ideas and theories. The protection of academic freedom is the fundamental foundation of the University of California. See, University of California Academic Personnel Manual 010, <http://www.ucop.edu/acadpersonnel/apm/apm-010.pdf>.

As to the specific questions you raise in your April 2 letter and May 2 email, I attempt to respond below:

1. “Did Prof. Froines participate in a predetermined scheme to bias the results of an ‘independent’ scientific review and lay the foundation for a lawsuit against the Department of Pesticide Regulation, which hired Prof. Froines?”

*Response:*

We have uncovered no evidence that would support the claim that Prof. Froines engaged in any scheme with anyone. The findings of the Scientific Review Committee were subscribed to by all participating scientists, each of whom is distinguished in her or his field. The quality of the report speaks for itself and belies any indication of inappropriate bias. To the extent you intend “bias” to mean a preference by the scientist on the panel for more rigorous study of human health impacts of MeI, we consider such matters to lie within the sound discretion of scientists which principles of academic freedom would prevent the UCLA administration from second-guessing.

2. “Did Prof. Froines take a position on the scientific information before the independent Scientific Review Panel he chaired had even met? If so, did he bias the findings?”

*Response:*

I assume in this question you are asking about the work done by Prof. Froines pursuant to his contract with DPR. The group formed there was referred to as the "Scientific Review Committee." (The "Scientific Review Panel" is the group formed by CARB under H&S Code section 39670.) Our review of the communications of Prof. Froines concerning his work on the Scientific Review Committee provided no evidence that he biased the findings of the scientists on that Committee. Whether he took "a position on the scientific information" before the Committee met is a matter of interpretation. As a scientist, Prof. Froines has a long record of scientific discoveries and conclusions reached which surely were drawn upon in his work with the Committee.

3. "Did Prof. Froines' contact (and that of his assistant) with activists – including Susan Kegley (Pesticide Action Network) -- constitute a violation of state ethics or criminal laws?"

*Response:*

No. There is no policy or law that prohibited members of the SRC from contact with stakeholders and Prof. Froines has disclosed no disqualifying financial interest that would create a prohibited conflict of interest.

4. "Did Prof. Froines engage in similar activities relative to his SRP work on behalf of Mary Nichols or the California Air Resources Board?"

*Response:*

Assuming by "similar activities" you refer to contacts with stakeholders in the scientific, environmental and agriculture communities to inform his work with the SRP, the answer is "yes." The expectation of the legislature in calling for the creation of the SRP is for the SRP to allow for stakeholder input in its work.

5. "Did Mary Nichols and Prof. Froines in their respective capacities at UCLA share or disclose any sensitive or confidential information that would have interfered with or jeopardized any research or findings that had a direct or inappropriate impact on any Air Resources Board's decision-making or regulatory process?"

*Response:*

We have no evidence that shows that Ms. Nichols or Prof. Froines ever inappropriately disclosed or shared any sensitive or confidential information. The work of the SRP is a matter of public record and speaks for itself.

6. "Did Prof. Froines present official findings or conduct other SRP work at a time when he was not formally authorized to serve as chair of the SRP?"

*Response:*

No. It is our understanding that, during the several month period between Prof. Froines appointments as SRP chair, the Panel did not meet or conduct any business.

7. "If improprieties occurred, should funds paid to Prof. Froines be returned to the State of California?"

*Response:*

We are aware of no improprieties. Your hypothetical should best be addressed by the CalEPA, which contracted with UCLA for the work that was delivered.

8. "Should Prof. Froines be removed as SRP panel chair and be prohibited from future work on behalf of the State of California?"

*Response:*

No. The quality of his scientific work and his reputation in the field qualify him for continued appointment and work for the State of California. However, Prof. Froines has retired from active service at UCLA and, I understand, is slowly shedding other obligations. One can imagine he may chose to retire from his service on the SRP in the near future, as well. From UCLA's perspective, any such decision lies with Prof. Froines.

9. "If Prof. Froines is determined to have presented biased or unauthorized findings, should policies developed or influenced by those findings be overturned and reevaluated by an objective and impartial panel of scientists?"

*Response:*

Such questions are best addressed to the state agencies that contracted with UCLA for the assessments done by Prof. Froines. Since there is no such determination, however, I believe this question is moot.

And, in response to the questions raised in the May 2 email sent by your office:

*Questions:*

- "Please describe the UC/UCLA policy that allows faculty to contract or do "independent" research. Does the policy allow for the use of university resources

while performing the research? If so, is the university required to be compensated for that use?"

- "What oversight does UCLA maintain over contract or "independent" research to ensure the integrity and consistency of the work and to protect the reputation of UCLA."

*Response:*

There are many policies that apply to senate faculty members in terms of their duties to teach, conduct research and engage in public service to the University and community. Professor Froines is a full professor governed by Academic Personnel Manual (APM) Policy 220, <http://www.ucop.edu/academic-personnel/files/apm/apm-220.pdf>. That policy defines the roles and responsibility of a Professor in his or her employment with the University.

It is expressly recognized that faculty are permitted to engage in compensated and uncompensated outside professional activities subject to compliance with the University's Conflict of Commitment Policy set forth in APM 025, <http://www.ucop.edu/academic-personnel/files/apm/apm-025-07-01.pdf>. Developing scholarly communications in the form of books, journal or other such activities is considered a "Category III activity" under APM 025-10(c)(3), and as such, is integral to all disciplines and generally are not deemed a conflict of commitment. *See Id.*

There also are many policies that govern the management of sponsored research, *see* UCLA Policy 910, <http://www.adminpolicies.ucla.edu/app/Default.aspx?&id=910>. In addition to these policies that outline responsibilities, the terms of any contract entered into by The Regents for the conduct of research will govern the nature of the obligations and responsibilities of the individual project. Moreover, the policies on research misconduct govern the obligations to conduct research in accordance with professional standards in integrity, *see University Policy on Integrity in Research*, <http://www.ucop.edu/ucophome/coordrev/policy/6-19-90.html> and UCLA Policy 993 Responding to Allegations of Research Misconduct, <http://www.adminpolicies.ucla.edu/app/Default.aspx?&id=993>, which provides:

"UCLA is committed to maintaining the integrity of scholarship and Research and to fostering a climate conducive to Research integrity in accordance with the University's Policy on Integrity in Research. Such integrity includes not only the avoidance of wrong doing, but also the rigor, carefulness and accountability that are hallmarks of good scholarship. All persons engaged in Research at UCLA are responsible for adhering to the highest standards of intellectual honesty and integrity. Those who supervise Research have a responsibility to create an

environment that encourages those high standards through open publication and discussion, emphasis on Research quality, appropriate supervision, maintenance of accurate and detailed Research procedures and results, and suitable assignment of credit and responsibility for Research.”

UCLA Policy 993 also provides extensive procedures for investigation and addressing allegations of research misconduct.

Additionally, the University of California Contract and Grants Manual provides detailed guidance on managing extramurally funded research, including addressing financial obligations. See <http://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contracts-and-grants-manual/chap06.pdf>.

*Question:*

- “Did UCLA have any contact with the Assembly Speaker’s office, or any other stakeholder group in putting together the list of eligible appointees to the Scientific Review Panel before, during, or after President Mark Yudof nominated a group of candidates that did not include Professor Froines?”

*Response:*

I am unaware of any contact from the UCLA administration concerning or leading up to President Yudof’s nomination of Prof. Froines and other candidates to Speaker Perez on November 2, 2010. This process was managed within the Office of the President of the University of California.

*Questions:*

- “How many email systems exist on the UCLA campus? Who uses them, and how long do email archives exist for each system. Who establishes email policy and archive period length? When were those policies established?”
- “As you stated in the meeting on Tuesday, Mr. Froines emails were all deleted at the server level after only a two-month archive. What specific laws exist to allow you to delete faculty emails after such a short archive period and why do you believe these emails would not be subject to a Public Records Request.”

*Response:*

There are many email systems that exist on the UCLA campus. A good example of the distributed nature of the communications systems on campus can be found at [http://oit.ucla.edu/CommonDocuments/Projects\\_and\\_Initiatives/Repositioning\\_IT](http://oit.ucla.edu/CommonDocuments/Projects_and_Initiatives/Repositioning_IT)

Overview.pdf, which explains an effort undertaken by the campus to restructure some of these services. This document provides an estimate of the various systems on campus, including over 50 email systems. Currently, the most commonly used email systems are Enterprise Messaging and Bruin-On-Line (BOL). Professor Froines utilized the services of Bruin-On-Line. Information about BOL can be found at <https://www.it.ucla.edu/accounts/get-account/bruin-online>. The BOL Acceptable Use Policy can be found at <https://www.bol.ucla.edu/policies/aupdetail.html>. The University's Electronic Communications policy also applies to the use of electronic services of the University, *see* <http://www.ucop.edu/ucophome/policies/ec/html/pp081805ecp.html>. These policies do not identify the length of time any individual must retain emails nor establish how long such email systems must retain individual accounts.

Rather, the rules that govern retention and destruction of records at the University is a lengthy and complex Records Disposition Schedule Manual, <http://www.ucop.edu/recordsretention/>. The substantive content of the record determines whether any retention period applies, there is no schedule applicable in general to "emails". Other regulations and laws may apply to the substantive content of the record, for example, medical records are subject to HIPAA and other such laws.

The California Public Records Act does not create a general requirement that records created by a public entity must be retained for any period of time. Rather, the law permits inspection of non-exempt public records that exist at the time a request for inspection is made. See Cal. Gov't Code Section 5253, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=06001-07000&file=6250-6270>. Thus, there is no general legal requirement to maintain emails.

As I explain at the beginning of this letter, the scholarly communications of Professor Froines that were engaged in through his BOL email account are not subject to the disclosure under the Public Records Act because they are exempt. Scholars must be afforded privacy in these communications in order to pursue knowledge, develop lines of argument without fear of reprisal for controversial findings and without the premature disclosure of those ideas and theories. The protection of academic freedom is the fundamental foundation of the University of California. See, University of California Academic Personnel Manual 010, <http://www.ucop.edu/acadpersonnel/apm/apm-010.pdf>.

Moreover, academic freedom has long been recognized by the United States Supreme Court as a right protected by the First Amendment to the United States Constitution. *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (academic freedom is a special concern protected by the First Amendment); see also, *Regents of the University of California v. Bakke*, 438 U.S. 265, 312 (1978)



(academic freedom “long has been viewed as a special concern of the First Amendment”). To prevent the chilling of such inquiry and investigation, scholars must be protected from premature public disclosure of these intellectual communications.

The consequence to the University of California should such scholarly communications be subject to production whenever demanded by the public would be the loss of talented and creative faculty and researchers who could choose employment with private institutions that can guarantee them the privacy and confidentiality necessary to ensure their academic freedom. Any law that would provide that scholarly communications amongst faculty in private universities is protected from public scrutiny while faculty in public universities have no such protections would be unfair, unreasonable and unquestionably harm the public universities. Such potential disparity would provide an incentive to scholars to avoid public institutions so that they can advance their research and scholarship without interference. The public, of course, would suffer a great loss should that occur.

The California Public Records Act does not require such an outcome. Rather, records protected from disclosure by federal or state law – like the First Amendment – are exempt from disclosure. Cal. Gov. Code § 6254(k). Additionally, where the public interest served by not disclosing a record clearly outweighs the public interest served by disclosure, such records may be withheld from disclosure. Cal. Gov. Code § 6255. The scholarly communications of Professor Froines and his colleagues necessarily include evaluations of arguments, deliberations, and impressions likely to be the subject of controversial political debate – the very heart of protections guaranteed by academic freedom and the First Amendment. As the actual completed report of the review committee already has been made publicly available, under this balancing of public interests, the public interest favoring protection of scholarly communications outweighs the public interest in disclosure. The appropriate avenue to questioning the science of the published report is through further scholarly review of the methodology and conclusions set forth in the report.

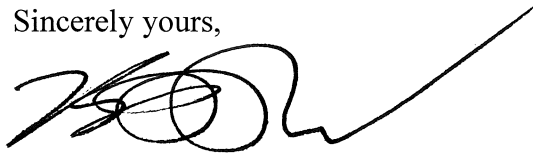
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I trust the foregoing provides you with the detailed response you requested. Professor Froines is a distinguished faculty member with many years of public service to the State of California and the University of California. He is a renowned scientist recognized as an expert in his field who has fully carried out his obligations to conduct sound science. We believe that an objective examination of the work he delivered to the agencies who sought his services reveals the quality and integrity of his efforts.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'K. S. Reed', with a long, sweeping underline that extends to the right.

Kevin S. Reed  
Vice Chancellor, Legal Affairs

cc: Gene D. Block, Chancellor  
Scott Waugh, Executive Vice Chancellor and Provost