

April 14, 2011

VIA Fax & E-Mail To:

434-924-3792

president.sullivan@Virginia.EDU

Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904-4224

Dear President Sullivan:

We understand that in January 2011, the American Tradition Institute Environmental Law Center, Virginia Delegate Robert Marshall, and one other Virginia resident affiliated with the Competitive Enterprise Institute filed a request with the University of Virginia under the state's Freedom of Information Act (FOIA). The request is substantially similar to the Civil Investigative Demands issued by Virginia Attorney General Kenneth Cuccinelli to the University of Virginia for a variety of records related to Professor Mann's research, and, like the CIDs, this request encompasses a broad array of materials produced and exchanged by Professor Mann in the course of his work as a professor and scholar working on topics related to global climate change.

Although this request was made several months ago, it appears to bear similarities to the FOIA requests recently served upon the University of Wisconsin-Madison and the labor studies departments at the University of Michigan, Michigan State University, and Wayne State University, seeking emails exchanged by professors in the course of their scholarly work.

As you may know, after careful consideration of the FOIA requests, including a review of the emails for any violations of Wisconsin law or university policy (of which it found none), the University of Wisconsin-Madison conducted a balancing test and concluded that it could appropriately exempt "private email exchanges among scholars that fall within the orbit of academic freedom and all that is entailed by it." As Chancellor Biddy Martin explained in her statement of April 1, 2011:

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. . .

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.¹

¹ Chancellor Martin's statement is available on the University of Wisconsin-Madison's website, at <http://www.news.wisc.edu/19190>. In addition, see <http://www.news.wisc.edu/19196> for a letter from the office of the general counsel at the University of Wisconsin setting out the specific exemptions and the university's justification for invoking each.

The undersigned organizations, dedicated both to academic freedom and the exchange of scholarly and scientific ideas and to the critically important ideals of government transparency that are embodied by FOIA, urge the University of Virginia to follow Chancellor Martin's lead in balancing the interests in public disclosure against the public interest in academic freedom, which the University of Virginia has recognized in its faculty handbook as "an essential ingredient of an environment of academic excellence."

In addition, the Virginia FOIA statute expressly provides an exemption for "data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education . . . in the conduct of or as a result of research on medical, scientific, technical or scholarly issues . . . where such data, records or information has not been publicly released, published, copyrighted or patented." Furthermore, the federal Family Educational Rights and Privacy Act compels the university to keep private communications related to students and implies similar protections for potential students. The undersigned organizations therefore also urge the University of Virginia to carefully consider whether the materials sought fall within these statutory exemptions.

As the United States Supreme Court said in the seminal case of *Sweezy v. New Hampshire*, "The essentiality of freedom in the community of American universities is almost self-evident. . . . To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will die."

Please do not hesitate to call upon us if we can be of assistance in your assessment of this FOIA request and your balancing of the twin values of academic freedom and government transparency.

Sincerely Yours,

Alliance for Justice
American Association of University Professors
American Civil Liberties Union of Virginia
Center for Inquiry
Climate Science Watch
Council of Environmental Deans and Directors
National Coalition Against Censorship
National Council for Science and the Environment
People For the American Way
Robert O'Neil, Director of the Thomas Jefferson Center for the Protection of Free Expression
The Ornithological Council
Union of Concerned Scientists

cc:
Richard Kast, Associate General Counsel
Carol Wood, Associate Vice President for Public Affairs