



April 1, 2011

Stephan Thompson
Republican Party of Wisconsin
148 East Johnson Street
Madison, Wisconsin 53703

Dear Mr. Thompson:

I am writing on behalf of and as legal counsel for the University of Wisconsin-Madison in response to your records request e-mailed to me and dated March 17, 2011. By that request, 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."

You have also requested e-mails that contain the word "recall." Again, we have made the assumption that you are using this word in the context of the current efforts to recall certain public officials in Wisconsin. We are not producing e-mails containing the word "recall" in the sense of recalling a past event (e.g., "I recall from our meeting last week ...").

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. Professor Cronon receives regular newsletters from organizations that are of personal and professional interest to him – e.g., Wisconsin Historical Society; Wisconsin Academy of Sciences, Arts and Letters; Forum on Religion and Ecology, etc. None of these

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organizations are overtly political, nor are they involved in the current efforts to recall any public officials in Wisconsin. Professor Cronon also subscribes to e-mail delivery of generally available publications – e.g., The Economist. The university is not producing any of these e-mails that have been identified as containing any of your specific words, terms or names.

If we are wrong in any of these assumptions, please let us know immediately.

You should further note that the e-mails that we have reviewed contain absolutely no evidence of political motivation, contact from individuals outside normal academic channels or inappropriate conduct on the part of Professor Cronon. The university finds his conduct, as evidenced in the e-mails, beyond reproach in every respect. He has used his university e-mail account appropriately and legitimately. He has not used his university e-mail account for any inappropriate political conduct. In fact, none of the e-mails contained any reference whatsoever to any of the specific political figures that you identified (except Governor Scott Walker), nor do they in any way reference the proposed recall efforts.

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

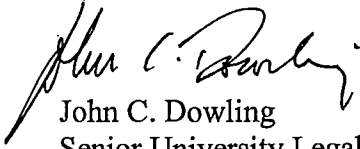
1. Records related to students. The Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g and 34 CFR Part 99, requires the university to keep confidential all education records directly related to students. E-mails between Professor Cronon and specific students are included in this requirement.
2. Records related to potential students. FERPA, by its specific terms, does not apply to records relating to individuals who are contemplating becoming students at the university. However, we have performed the common law balancing test incorporated in the Public Records law (State ex rel. Journal Co. v. County Court, 43 Wis. 2d 297 (1969)) and have concluded that the public interest in communications between Professor Cronon and potential students is outweighed by other public interests favoring protection of such communications. There is a strong public interest in recruiting the best and brightest students to this state's public universities. Individuals who correspond with faculty members about the possibility of coming to the university to pursue their education deserve at least as much privacy as those who eventually enroll and are protected by the specific terms of FERPA. Making such communications public, especially if the individual eventually decides not to come to this university, would have a detrimental effect on the university's ability to recruit and enroll the best and brightest students.
3. Records related to professional organizations. Professor Cronon, like many other faculty members, is involved in professional organizations related to his fields of study. In fact, he is the current President-Elect of the American Historical Association and was a member of the Executive Board of the Organization of

American Historians. In these roles, he has had significant e-mail communication with officials of the organizations concerning internal issues specific to those organizations. We have performed the common law balancing test incorporated in the Public Records law and have concluded that the public interest in such communications is outweighed by other public interests favoring protection of such communications. 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. The Wisconsin Supreme Court's decision in Schill, et al. v. Wisconsin Rapids School District, et al., Case No. 2008AP967-AC (July 16, 2010), allows the university to withhold e-mails containing purely personal communications that do not relate to Professor Cronon's employment as a faculty member or the official conduct of university business, even though they were sent or received on university e-mail and/or computer systems.
5. Intellectual communications among scholars. Faculty members like Professor Cronon often use e-mail to develop and share their thoughts with one another. The confidentiality of such discussions is vital to scholarship and to the mission of this university. Faculty members must be afforded privacy in these exchanges in order to pursue knowledge and develop lines of argument without fear of reprisal for controversial findings and without the premature disclosure of those ideas. The consequence for our state of making such communications public will be the loss of the most talented and creative faculty who will choose to leave for universities that can guarantee them the privacy and confidentiality that is necessary in academia. For these reasons, we have concluded that the public interest in intellectual communications among scholars as reflected in Professor Cronon's e-mails is outweighed by other public interests favoring protection of such communications.
6. Communications related to personnel matters. Professor Cronon's e-mails include several dealing with personnel matters, including the evaluation of candidates for tenure and consideration of potential candidates for employment. Section 19.36(10)(d), Wisconsin Statutes, exempts from the Public Records law the performance evaluations of university employees. Section 19.36(7), Wis. Stats., which allows the identities of final candidates for employment positions to be made public, is an indication of the public policy favoring the confidentiality of inquiries about possible employment prior to an actual position opening or application. We have performed the common law balancing test incorporated in the Public Records law and have concluded that the public interest in such communications is outweighed by other public interests favoring protection of such communications.

The university is required to inform you that to the extent that this amounts to a denial of your request, it is subject to review by mandamus under sec. 19.37(1), Wis. Stats., or upon application to the Attorney General or District Attorney.

Sincerely,



John C. Dowling
Senior University Legal Counsel

JCD/mb
Enclosures

cc: Chancellor Biddy Martin
Prof. William Cronon