INFORMATION ON DONORS: WHAT IS CORRECT, ETHICAL, BOTH OR NEITHER?

KATE FULTZ HOLLIS
UCLA
CARA Conference June 28, 2012

OUR SEMINAR
Welcome
- Institutional rules and ethics: FOIA, FERPA, HIPAA, APRA, CASE and your institution
- What is public information, what is private, what would you do?
- Social Media and new guidelines
- Determining best practices for your shop

LAWS AFFECTING THE USE OF INFORMATION IN FUNDRAISING
- Sunshine Laws (1898)
- FOIA Freedom of Information Act (1966)
- HIPAA Health Insurance Portability and Accountability Act of 1996
- Gramm-Leach-Bliley Act (1999)

SUNSHINE LAWS
- Utah and Florida had the first sunshine laws in the US (1898 and 1905 respectively)
- At their simplest level, sunshine laws aim for transparency in the decision making processes of government agencies by requiring the meetings and records of those bodies to be made accessible.
Today, every state has sunshine laws, and in every case, those laws have been applied to public higher education systems and institutions.¹


SUNSHINE LAWS

FOIA FREEDOM OF INFORMATION ACT

- FOIA generally provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure.
- Tax laws and FOIA have been helpful for development research in terms of access to court documents including bankruptcies, property records and divorce records.

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

The Family Educational Rights and Privacy Act is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. (This includes both private and public schools.)

FERPA

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. Schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them.
### HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Information that can be utilized for fundraising purposes without obtaining a patient's authorization includes:
- Date of Service
- Demographic Information
- Name
- Address
- Contact information (phone numbers, e-mail, etc.)
- Age
- Gender
- Insurance status

### HIPAA PART 2

Protected health information that cannot be used without a patient first signing an authorization includes:
- Diagnosis
- Nature of services
- Treatment
- Place within health care provider where patient receives treatment that identifies the treatment, such as:
  - Department of Psychiatry
  - Department of Obstetrics
  - Department of Radiation Oncology

### GRAMM LEACH BLILEY ACT (GLBA) OF 1999

What does this mean on the NEXIS property record search: "If you select a GLBA permissible use, your search will run against data regulated by the GLBA"?

### GRAMM LEACH BLILEY ACT (GLBA)

- Under the GLBA, financial institutions must provide their clients a privacy notice that explains what information the company gathers about the client, where this information is shared, and how the company safeguards that information.
- Colleges and universities are subject to some of the provisions of GLBA because they collect financial information about their students and others.
FERPA, FOIA, HIPAA, GRAMM-LEACH-BLILEY ACT, SUNSHINE LAWS

- What do these Acts and laws mean for your institution and your data?
- Many non-profits make it a point to follow these laws and tell you.

Nature Conservancy website
Our Accountability

We carry out our work with a deep commitment to accountability and transparency.

LAWS REGARDING YOUR WORK

- Sources falling under FOIA—is this information important to fundraising?
- How do you know what rules to follow?
- The culture of your institution

ETHICAL GUIDELINES

APRA Statement of Ethics
1992

ETHICAL GUIDELINES

Advancement researchers must balance an individual's right to privacy with the needs of their institutions to collect, analyze, record, maintain, use, and disseminate information. This balance is not always easy to maintain.
APRA’S FUNDAMENTAL PRINCIPLES

- Integrity—truthful in regards to identity for any research purpose
- Accountability—respect the privacy of donors
- Practice (Accuracy)—the goal is to provide accurate and appropriate information for fundraising
- Conflicts of Interest—avoid competing professional and personal interests

THINKING ABOUT PUBLIC INFORMATION

“The availability of information in the public domain does not drive the collection of data nor supersede ethical principles and practices in its use.”

APRA, “Privacy and Prospect Research.”
http://dlc181.4shared.com/doc/OSgsbf7m/preview.html
(includes 2004 APRA Ethics Statement)

REPORTS ON DONORS/APPLIED ETHICS

- Name
- Address
- Giving
- Family information (marriages, divorces)
- Health information
- Fundraisers comments about prospect

PUBLIC INFORMATION

- We want to use sources that you trust in terms of accuracy.
- Sometimes much of what we see in the press can be derogatory. Is it important?
- Linked-In, Facebook, Google +, Twitter
- Your skill is the ability to tell a story and present a prospect who is either good for your organization or maybe not the best fit.
CASE STATEMENT OF ETHICS

Adopted in 1982
They (institutional advancement professionals) safeguard privacy rights and confidential information. They do not grant or accept favors for personal gain, nor do they solicit or accept favors for their institutions where a higher public interest would be violated. They follow the letter and spirit of laws and regulations affecting institutional advancement.

CASE DONOR BILL OF RIGHTS

6. To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.
7. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
8. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
9. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
10. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

ASSOCIATION OF FUNDRAISING PROFESSIONALS (AFP)

http://www.afpnet.org/Ethics/ Standard 10 Guidelines

Examples of Ethical Practice:
1. Developing policies for non-disclosure of privileged information.
2. Assuring that staff and contractors are aware of the laws and regulations governing the appropriate use and disclosure of privileged information.

Examples of Unethical Practice:
1. Using privileged information for purposes other than those specified by law or explicitly approved by the protected party.
2. Failing to take reasonable steps within a member’s control to protect privileged information from unauthorized use or disclosure.

The Use of the Internet

- Recording and reporting information
- Obtaining information from the donors themselves. Individuals are choosing to disclose more information about themselves via new technologies such as social networks.
- Electronic transactions enable information brokers easy dissemination of personal information.

SOCIAL MEDIA

- To use or not to use?
- Personal use as opposed to institutional use
- How useful is social media for fund raising?
- Researching donors on LinkedIn
- How relevant is a profile on Facebook to your search for accurate information?

Social Media Policies

The decision to use a social networking site as a communications tool requires active participation and monitoring by staff to ensure that all content posted to the site, by staff or others, adheres to the relevant laws and university policies.

Linking to message boards and/or social networking sites, even if not hosted on the University network, risks the outside service being interpreted as an organizational "recommendation."

From UC Berkeley: http://technology.berkeley.edu/policy/socialmedia.html

SOCIAL MEDIA INSTITUTIONAL VIOLATIONS

Some possible damages according to UC Berkeley:
- Defamation lawsuit
- Copyright, patent, or trademark infringement claims
- Privacy or human rights complaint
- Workplace grievance under a collective bargaining agreement or unfair labor practice complaint
- Criminal charges with respect to obscene or hate materials
- Damage to the University's reputation and business interests
CASE STUDY: AMERICAN CIVIL LIBERTIES UNION (ACLU) AND PRIVACY

New York Times 12/18/2004: The ACLU is using sophisticated technology to collect a wide variety of information about its members and donors in a fundraising effort that has ignited a bitter debate over its leaders' commitment to privacy rights.

Some board members say the extensive data collection makes a mockery of the organization's frequent criticism of banks, corporations and government agencies for their practice of accumulating data on people for marketing and other purposes.

ACLU: DATA COLLECTION AND FUNDRAISING

Mr. Michael Meyers said he learned on Nov. 7 (2004) that the ACLU's data collection practices went far beyond previous efforts. "If I give the A.C.L.U. $20, I have not given them permission to investigate my partners, who I'm married to, what they do, what my real estate holdings are, what my wealth is, and who else I give my money to," he said.

On Nov. 8, the privacy statement on the A.C.L.U. Web site was replaced with an "Online Privacy Policy." Until that time, the group had pledged to gather personal information only with the permission of members and donors. It also said it would not sell or transfer information to a third party or use it for marketing.

RELATE THE ACLU STORY BACK TO POLICIES

- Internal sunshine laws needed. Why wasn't the board informed?
- Notification about the use of personal information
- APRA and CASE ethical guidelines: The group's new data collection practices were implemented without the board's approval or knowledge, and were in violation of the ACLU's privacy policy at the time, said Michael Meyers, vice president of the organization and a frequent and strident internal critic.

WHAT IS CORRECT, ETHICAL, BOTH OR NEITHER?

- Fundraiser asked me to use department money to have a credit report done on the donor and I should use a fake name.
- Donor asked me for giving amounts of his friends to the institution.
- Throwing profiles un-shredded in the garbage
- I found it on the TMZ website and so it must be right and ethical to use
### Determining Policies for Your Shop

- What would the donor think of the information you collected?
- Prospect research is gathered from publically available resources...But when all the information is put together into a profile format the information is highly confidential.
- Who is responsible for collection and security of prospect/donor Information? Everyone.

### Fundraising Information Best Practices

#### 1. Set Policy

- Define what is included as confidential
- Delineate who has access
- Set parameters for information gathering & use
- Write it into policy...read it, know it, live it

#### Step 2: Confidentiality Statement

- Everyone that handles confidential information signs statement (staff, relevant faculty, volunteers, students)
- Include APRA Statement of Ethics and CASE Donor Bill of Rights with Statement

#### Step 3: Security

- Clearly mark files/documents "Confidential"
- Lock-up hard copy docs in secure filing cabinet
- Password protect files/maintain on secure server
- Be aware of what you send via email & fax
- Shred documents no longer needed
SOMETHING TO THINK ABOUT

We are drowning in information while starving for wisdom

- E.O. Wilson

MORE TO THINK ABOUT

- There are many restrictions on what data we can use.
- However, we need to be aware of how we use the data that is given to us and that we protect that data as expected.
- Keep in mind what you report from your laptop, cell phone and any new device (data cards with all donor data).

GOOD ADVICE

One implication for philanthropy is that, as with for-profit companies, access to marketing data about purchasing patterns can help nonprofits be more targeted with their solicitations and marketing. But we also must engage in that balancing act of protecting privacy, while using information to be more efficient with our time and, ultimately, to serve our philanthropic mission. (David Lamb)

BE AWARE OF YOUR DATA AND WHERE IT GOES

Since donor information was on index cards, we have had to give information on our prospects to other people.

The methods we use now are perhaps harder to manage as more people use the computer or try to use the computer to find out their own information.

Who is the best person in my organization to engage in a discussion about ethical use of our information?

What would the donor think of the information you collected?
**FINAL THOUGHTS**

Be critical of every new service that appears and how the information is gathered e.g. CriminalSearches.com.

Understand how everyone in your department handles data and respects people and data.

Everyone respects an individual’s privacy. You can maintain only good and relevant information in your database to the best of your abilities.

Surprise: your best collaborators for ethical standards in your organization are the CEO, the chief counsel, and your donors.


---

**QUESTIONS?**

---

**THANK YOU FOR COMING!**

katef@support.ucla.edu
310-794-6933

Thank you
APRA Ethics Committee
Stephen Wright, WWF

---