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**Position Statement on FOIA Request for Dr. Michael Mann's Research Records  
University of Virginia Faculty Senate Executive Council  
May 23, 2011**

In May 2010, the Faculty Senate of the University of Virginia responded to the initiation by the Commonwealth's Attorney General of a Civil Investigative Demand (CID), which sought thousands of e-mails and other documents left by our former colleague, Dr. Michael Mann, who is now at Pennsylvania State University. The Senate affirmed our commitment to established principles of academic freedom and established procedures of scholarly peer review, which the CID placed in jeopardy. (See <http://www.virginia.edu/facultysenate/index.html>.) In making this affirmation the Senate recognized "a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom." (See Statement of Professional Ethics, American Association of University Professors, 1987.)

In view of a recent request for substantially the same material, filed under Virginia's Freedom of Information Act (FOIA) by the Environmental Law Center at the American Tradition Institute and others, the Senate's Executive Council must speak out once again. Now, instead of the danger of overzealous and abusive prosecution, we face the more sweeping danger of excessive and unwarranted intrusion. Fortunately, the FOIA statute explicitly recognizes the value of academic freedom and exempts state universities from having to turn over "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." The Senate is firmly opposed to the release of documents that fall under this exception, as many of the requested documents evidently do.

What lies at stake here is a matter of vital public interest. Academics in public universities perform (to use the language of the FOIA statute) "public business" by creating and disseminating knowledge. We put new ideas into circulation, and we subject received ideas to fresh criticism. We do so with the understanding and expectation that the results of our work remain at all times open to debate, testing, and refinement via painstakingly evolved processes of peer review and subsequent academic inquiry. To challenge, disprove or improve intellectual work is what scholars do. To do it well is the work of a lifetime.

This process is grounded in publication, broadly conceived to include books and articles, conference presentations, classroom teaching, and our ongoing evaluation of each other's effort in these venues. Much intellectual work, however, occurs between the incubation of an idea and its publication. Often it is in articulating to a colleague tentative notions only half-formed and cursorily sketched – in freehand or shorthand, by personal conversation, by telephone, and nowadays increasingly by e-mail – that a scholar seasons ideas not yet ready for publication. It is just this fragile zone that is endangered by the FOIA request now pending before the University.

Essential to an academic idea's healthy development is an unconstrained exchange among colleagues who are qualified by training to appreciate and critique an emerging idea, and who are bound by professional and ethical norms against its misappropriation. Premature disclosure curtails this open exchange of academic ideas, including ideas with potential commercial or economic value. To sterilize or chill academic collegiality, even and especially where controversial issues are in play, is to discourage the life of

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the mind and so to frustrate the public purpose of the state university, putting it at a distinct disadvantage relative to private institutions of higher learning. The academic obligation to publish findings worthy of publication presupposes an antecedent academic freedom from inhibiting surveillance during the seed-time when those findings are still in process of discovery.

We do not shy from the public scrutiny contemplated by the statute. We welcome it. What we object to is an unjustified interpretation of the statute that would mandate the premature disclosure of academic work, before it is ready for full scrutiny. Such an interpretation, by thwarting academic freedom of inquiry, would harm rather than further the public interest. We therefore vigorously support the University in its efforts to respond to the FOIA request in such a way as to protect to the maximum lawful extent the essential element of the scholarly enterprise.

The Executive Council of the Faculty Senate  
For the Senate, May 23, 2011  
University of Virginia  
Charlottesville, Virginia