

In March of 2011, an academic freedom controversy arose when the Wisconsin Republican Party filed an open-records request to obtain emails from a University of Wisconsin professor, William Cronon, who had criticized legislation by Wisconsin's Republican governor eliminating collective bargaining rights for the state's public employees. While the University of Wisconsin largely complied with the request, it cited academic freedom to justify withholding private emails between Cronon and other professors. Lost in the national media storm which ensued was the question of whether the university could legally rely on constitutional academic freedom to protect such scholarly email exchanges from disclosure under open-records laws. This Article finds that constitutional academic freedom, to the extent it is even recognized by courts, is not implicated by scholarly email exchanges such as those involving Professor Cronon. Moreover, even if constitutional academic freedom was implicated, the Article finds that it would not offer protection in a state court's adjudication of an open-records dispute because of the fundamental policy interests in favor of open access. Because the importance of academic freedom as a principle makes this answer somewhat unsatisfying, the Article concludes by examining reforms to protect scholarly email exchanges from disclosure under open-records laws. While amendments to open-records statutes are considered, the Article concludes that the best solution is to advance a statutory interpretation argument that scholarly email exchanges should not even be considered "public records" under existing open-records laws.