

MEMORANDUM

To: Deans, Directors, Department Chairs, and Principal Investigators

From: Ronald J. Paprocki, Senior Vice President for Financial Affairs and Planning
Charles E. Phelps, Provost

Date: December 27, 1999

Subject: Research Data and the Freedom of Information Act

A recent revision to OMB Circular A-110 requires that some research data from federally funded projects be made available to the public via the Freedom of Information Act (FOIA). The University, along with many other institutions, was active in encouraging the Office of Management and Budget (OMB) to develop rules for implementing this law in order to provide necessary protection of data and respect for confidentiality without interfering with the research process. After many months, OMB has issued final regulations. While the FOIA still may not be the right vehicle for accountability to the public, we think that the final regulations are a significant improvement over earlier versions.

Appended to this memo are the relevant portions of the final version of the OMB document. The final version notes that the only data that can be requested are those related to findings used by the Federal government in developing an agency action having the force and effect of law. The agency must have publicly and officially cited the findings in conjunction with its actions. Some types of "data" are specifically excluded, including preliminary analyses, plans for future research, and certain communications with colleagues. Moreover, data are excluded when their release would violate personal privacy (for example, medical or other human subject research information which could reveal an individual's identity) or commercially necessary confidentiality. The revised OMB regulations apply to data associated with awards issued after November 8, 1999 and to continuing awards renewed after that date.

As a non-governmental entity, the University is not required to respond to FOIA requests from private persons. Only the awarding agency can require research data and then only if a request for data has been made to the agency. All requests by a Federal agency for University faculty and staff to supply research data under FOIA will be evaluated by the Provost's Office in conjunction with University Counsel or Medical Center Counsel. If you receive any such request for research data, you should notify the Acting Director of Research and Project Administration (Gunta Lidars) immediately to begin this evaluation process. You will receive guidance as to the University's obligation to supply the data. Our goals will be to protect the integrity of our research data and to comply with Federal law. Ordinarily, in an academic environment, the faculty member makes the final decision as to whom research data is to be released and when such release is appropriate. The University's involvement in this process is simply to ensure compliance with requests under the FOIA in accordance with modifications of OMB Circular A-110.

If you have any questions about the process, please contact Gunta Lidars at x5-5373. She will be happy to assist you in this process.

Appendix: From the Federal Register of October 8, 1999.

___ .36 Intangible property.

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(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.