

Office of the Vice Provost for Research

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To: Deans, Directors and Department Chairs
From: Jack W. Lowe, Executive Vice Provost for Research
Re: Research data and the Freedom of Information Act

As many of you know, a recent law requires some research data on Federally funded projects to be made available by the federal government to the public via the federal Freedom of Information Act (FOIA). Cornell, along with many other institutions, was very active in encouraging OMB (the Office of Management and Budget) to develop rules for implementing this law that would not interfere with the research process, and provide necessary protection of data and respect for confidentiality. After many months, OMB has now issued final regulations. While we continue to believe that FOIA is not the right vehicle for accountability to the public, a position we have continued to express to OMB, we also believe that the final regulations are a significant improvement over earlier versions.

I have appended to this memo the relevant portions of the final version of the OMB document. As you can see, data that can be requested must be related to findings that are used by the Federal government in developing an agency action that has the force and effect of law. The agency must have publicly and officially cited the findings in conjunction with the agency's actions. Some types of "data" are specifically excluded, including preliminary analyses, plans for future research, and communications with colleagues. Moreover, data is excluded when it would violate personal privacy (for example medical or other human subject research information when an individual could be identified) or when confidentiality is required to protect intellectual property. The OMB regulations apply to federal awards issued after November 8, 1999, or to continuing awards renewed after that date.

All requests for University faculty and staff to supply research data under FOIA will be evaluated by the Vice provost for Research Office in consultation with the Office of the University Counsel. If you receive any such request for research data, you should notify the Executive Vice Provost for Research immediately. You will receive guidance as to the University's obligation to supply the data. Our goal is to protect the integrity of our research data and to comply with Federal law.

If you have any questions, please contact me at 5-2946 or by E-mail to jwl3@cornell.edu. I will be happy to discuss this matter with you.

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

- (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 are to be used 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 researching 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 publication of their results in a peer-reviewed journal, or information which may be copyrighted or patented; and (B) personnel and medical files and similar files 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 to the research findings in support of a regulation.
 - (iii) Used by the Federal Government in developing a regulation is defined as when an agency publicly and officially cites to the research findings in support of a regulation (for which notice and comment is required under 5 U.S.C. 553).