



Smithsonian
Institution

SMITHSONIAN DIRECTIVE 604

September 8, 2006

MISCONDUCT IN RESEARCH

Purpose	1
Applicability	2
Background	2
Policy	3
Definitions	3
Responsibilities	5
Inquiry Procedures	7
Investigation Procedures	9
Findings and Dispositions	11
Appeal and Final Decision	13
Record Maintenance and Confidentiality	
During Inquiry, Investigation, and	
Decision-making Process	14
Additional Guidelines	14

Purpose

The Smithsonian Institution fosters a research environment that promotes the responsible conduct of research, discourages research misconduct, and responds promptly to allegations or evidence of possible research misconduct. This directive establishes policy to ensure that the Smithsonian Institution upholds the integrity of its research activities in a conscientious and responsible manner and to encourage scholarly inquiry while ensuring compliance with applicable laws and regulations.

Advances in all fields of research depend on the reliability of the research record, as do the benefits associated with them. This policy reflects the Smithsonian's commitment to the accuracy and reliability of the research record and the process involved in its development. It sets forth the responsibility of the Institution for handling and reporting alleged or suspected misconduct in its scholarly endeavors, and ensures the rights and interests of research subjects and the public.

Applicability

This Smithsonian directive applies to all research, research training, applications for support of research or research training, and related scholarly activities. This includes research carried out solely with Smithsonian resources or with the assistance of outside funding, whether the research is conducted at the Smithsonian, on site, in the field, or at another institution as a consequence of subgranting or subcontracting of an activity supported by the Smithsonian.

This directive applies to all research funded by the Smithsonian, including funding from federal appropriations, trust funds, endowments, or through funds raised from private external sources such as gifts, grants, or contracts. As defined in the *Federal Policy on Research Misconduct*, the term “research” as used in this directive includes all basic, applied, and demonstration research.

Background

The U.S. Congress, federal funding agencies, and the scholarly community have an active interest in establishing professional best practices and ethical standards of research, and in preventing research fraud and wrongdoing. Agencies such as the Public Health Service (PHS) and National Science Foundation (NSF) have set regulations detailing minimum requirements for reviewing and investigating allegations of misconduct in research and, in the case of the NSF, in other activities that it supports. (See PHS Regulations, codified at 42 *Code of Federal Regulations* [CFR], Part 93; NSF Regulations, 45 CFR [1993], §§ 689.1–689.10, and Part 689.)

In addition, the *Federal Policy on Research Misconduct*, issued by the Office of Science and Technology Policy, and published in the December 6, 2000 *Federal Register*, 65 F.R.76260–64, applies to funding received from all federal agencies.

The Smithsonian Institution is issuing this directive to set forth the Institution’s responsibilities for handling and reporting alleged or suspected misconduct.

Policy

The Smithsonian Institution shall adhere to the standards and procedures set forth in this directive in investigating allegations of misconduct, regardless of source of funding, in order to comply with federal regulations. This policy does not supersede and is not intended to offer an alternative to the United States Equal Employment Opportunity Commission (EEOC) policies or other Smithsonian policies, such as resolution of fiscal improprieties, animal use and care regulations, or criminal matters.

Definitions

Research Misconduct: Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or in reporting research results. Research misconduct does not include honest error or differences of opinion. More specifically, it involves:

- **Fabrication:** Making up data or results and recording or reporting them
- **Falsification:** Manipulating research materials, equipment, or processes, or changing or omitting data or results so that the research is not accurately represented in the research record
- **Research record:** The record of data or results that embody the facts resulting from scientific inquiry. This includes but is not limited to research proposals, physical and electronic laboratory records, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles
- **Plagiarism:** The appropriation of another person's ideas, processes, results, or words without giving appropriate credit

Allegation: Notice to the Institution or a responsible official, either in writing or orally, that wrongdoing is suspected or is known to have occurred.

Complainant: The individual who in good faith makes the allegation of research misconduct.

Respondent: The individual against whom the allegation is brought.

Definitions
(continued)

Inquiry: The assessment of whether the allegation has substance and if an investigation is warranted.

Investigation: The formal development of a factual record, and the examination of that record leading to dismissal of the case or to a recommendation for a finding of research misconduct or other appropriate remedies.

The Investigative Body: The body that is appointed by the appropriate Under Secretary, which conducts the investigation, reports findings, and determines whether misconduct occurred in a specific case.

The Ad Hoc Inquiry Committee (AHIC): The body that conducts initial inquiries of allegations or complaints involving possible misconduct in research.

Adjudication: The review of recommendations and the determination of appropriate corrective actions.

Fields of Research: Research covered by this policy includes but is not limited to all basic, applied, and demonstration research in all fields of scholarly study. This includes all fields of science, art history, economics, education, history, linguistics, medicine, psychology, social sciences, and statistics. This policy also covers research involving human subjects or animals.

Finding of Research Misconduct: A finding of research misconduct requires that all three of the following elements are present:

- There is a significant departure from accepted practices of the relevant research community (i.e., the humanities, social sciences, or scientific research community);
- The misconduct is committed intentionally, or knowingly, or recklessly; and
- The allegation is proven by a preponderance of evidence.

Responsibilities

The shared responsibilities for inquiry, investigation, and adjudication of allegations of research misconduct are outlined below:

- **The Institution** bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. The Institution will maintain and effectively communicate to staff appropriate policies and procedures regarding research misconduct. The Institution will take action necessary to ensure the integrity of the research, as well as the rights and interests of research subjects and the public.
- **Smithsonian supervisors** are responsible for educating staff and ensuring that staff, contractors, interns, and fellows comply with this directive.
- **The Office of Sponsored Projects (OSP)** is responsible for preparing and submitting the *Annual Report of Misconduct in Research* to the Office of Research Integrity (ORI). The PHS regulation (42 CFR Part 93) requires that all institutions renew their research misconduct assurance by annually submitting a report to ORI on the allegations, inquiries, and investigations they handled in the previous year and other matters related to the regulation. OSP is also responsible for informing the Deputy Secretary or appropriate Under Secretary of changes to federal misconduct regulations, and for revising Smithsonian misconduct policies as needed. In addition, OSP reminds staff in charge of sponsored projects of the need to comply with all policies regarding misconduct in research.
- **Individual staff** working for or with the Institution on federally or privately funded research, research training, publication projects, or related activities are responsible for reporting instances of suspected or actual misconduct to the applicable museum, research center, or office director (i.e., the “unit director”).

Responsibilities
(continued)

- **Unit directors** are responsible for securing necessary expertise to carry out a thorough and authoritative evaluation of relevant evidence in an inquiry or investigation, while taking precautions against actual or apparent conflicts of interest on the part of those involved. Unit directors are further responsible for educating staff and ensuring that staff, contractors, interns, and fellows comply with this directive. Unit directors will also inform the respondent and the complainant in writing before the investigation begins.
- **The AHIC** conducts initial inquiries of allegations or complaints involving possible misconduct.
- **The Investigative Body** appointed by the appropriate Under Secretary conducts the investigation, reports findings, and determines if misconduct occurred in a specific case.
- **The Smithsonian Under Secretary for Science** is responsible for Institution-wide oversight of the Misconduct in Research policy. Specific duties include certifying the accuracy of the annual report, coordinating with other senior leadership in matters related to misconduct in research, appointing investigative bodies as needed, and overseeing investigations of research misconduct.
- **The Deputy Secretary and Under Secretaries** adjudicate research misconduct inquiry and investigation procedures for the units falling within their purview, and appoint an investigative body to review cases and determine if misconduct occurred.
- **The Secretary** approves extensions for investigations and receives written appeals to overturn findings. If the Secretary does not make a final determination regarding an appeal within 120 days of filing, the Secretary will request extensions from the appropriate federal agency or private organization that provides the grant or contract funding. The Secretary will then make a final determination regarding appeals.

Inquiry Procedures

The purpose of the inquiry is to determine whether an allegation warrants an investigation. Whenever an allegation or complaint involving possible misconduct comes to the attention of a unit director, he or she will respond to allegations and appoint an AHIC to carry out an initial inquiry.

The AHIC should be composed of three or more individuals with appropriate expertise and technical competence in the appropriate area. The purpose of the AHIC will be to gather and assess information in order to determine whether an allegation or apparent instance of misconduct warrants an investigation. The unit director will choose as chair and members of the AHIC individuals who have no real or apparent conflicts of interest.

On initiating the inquiry, the unit director will immediately alert the Deputy Secretary or appropriate Under Secretary that the inquiry is under way, but will reveal none of its details. The unit director will promptly take all necessary steps to obtain custody of and sequester in a secure manner all of the research records and evidence needed to conduct the research misconduct proceeding. The unit director also will notify the respondent in writing before beginning the inquiry. All parties will be expected to cooperate fully with the AHIC by answering questions and providing material necessary to conduct the inquiry.

The AHIC will distribute information to appropriate individuals. Copies of all correspondence and documents in the case will be kept in a confidential file by the chair of the AHIC.

Within 60 calendar days of the initiation of the inquiry, the AHIC will submit a signed written report to the unit director that states the evidence reviewed, summarizes relevant interviews, and outlines the findings of the inquiry. If the inquiry takes longer than 60 days to complete, the record of the inquiry must document the reasons and the circumstances that require a longer period. The AHIC will then submit a signed, written

Inquiry Procedures
(continued)

report to the unit director regarding extra documentation of post 60-day actions.

The respondent will receive a copy of the Institution's research misconduct policies, referencing the funding agency's regulations, if applicable, and a copy of the inquiry report. This copy of the inquiry report, to the extent permitted by due process, law, and regulation, will not contain the identities of the complainants or AHIC members who wish to remain anonymous. Any comments made by the respondent will be incorporated into the record of the case.

At the completion of the inquiry, the AHIC chair will provide all documentation to the unit director. The unit director will notify the Deputy Secretary, appropriate Under Secretary, Secretary, Office of the Inspector General (OIG), and, if the source of funds is from a grant or contract, the OSP, of the AHIC findings.

During the investigation, the AHIC will maintain sufficiently detailed documentation to permit later assessment of reasons for determining whether an investigation was warranted.

Based on the minimum requirements outlined in PHS regulations, codified at 42 CFR, Part 93, and NSF regulations at 45 CFR (1993), §§ 689.1–689.10 (Part 689), for reviewing and investigating allegations of misconduct in research, at anytime during an inquiry or investigation that involves funding from a grant or contract, the Deputy Secretary or appropriate Under Secretary, in coordination with the Director, OSP, will immediately notify the sponsor if:

- public health or safety is at risk;
- a federal agency's reputation, resources, or interests are threatened and need protection;
- research activities should be suspended;
- there is a reasonable indication of possible violations of civil or criminal law;
- federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected;

Inquiry Procedures
(continued)

- the scientific community or the public should be informed; or
- the Smithsonian's inquiry into the allegation determines that there is sufficient evidence to proceed with an investigation

If an allegation submitted in good faith is found to be unsupported by the inquiry, the unit director will inform all parties and discontinue any further action. The Institution will take reasonable steps to minimize damage to reputations that may result from inaccurate allegations. Retaliation against the complainant, witness, or committee members participating in good faith in the inquiry will be subject to disciplinary action. Allegations not made in good faith or without reasonable basis may lead to disciplinary action against the complainant.

An investigation will be initiated if the AHIC finds reasonable grounds for believing that misconduct has occurred. The unit director will inform the respondent and the complainant, in writing, before the investigation begins. Allegations that require investigation will be forwarded promptly to the Deputy Secretary or appropriate Under Secretary, who will appoint an investigative body. The Deputy Secretary or appropriate Under Secretary will initiate an investigation when the AHIC issues a finding that an investigation is warranted.

If the source of funding is from a federal grant or contract, the Smithsonian will forward, through the OSP, the written findings and a copy of the inquiry report to the funding agency within 30 days of the findings.

Investigation Procedures

The Deputy Secretary or appropriate Under Secretary will appoint an investigative body to review and determine if misconduct occurred in the specific case. The investigative body should consist of at least three members. Members may be Smithsonian staff or individuals external to the Institution. To ensure a

**Investigation
Procedures**
(continued)

sound knowledge base, the Deputy Secretary or appropriate Under Secretary will choose members for the investigative body who have appropriate scholarly expertise in the area of the given case. No person who served on the AHIC will be eligible to serve on the investigative body in the same case.

In order to avoid conflicts of interests, the Deputy Secretary or appropriate Under Secretary will examine the business, professional, and social relationships of parties when selecting the members of the investigative body. Those relationships must be fully disclosed to the Deputy Secretary or appropriate Under Secretary. An individual who has the appearance of, potential for, or an actual conflict of interest may not be chosen to serve on the investigative body.

The Deputy Secretary or appropriate Under Secretary will initiate an investigation within 30 days of completion of the inquiry if its findings provide a sufficient basis. The Deputy Secretary or appropriate Under Secretary will notify the complainant and respondent that an investigation has been initiated and, on appointment, the names of the members of the investigative body.

All parties will be expected to cooperate with the investigative body by providing information relating to the case. The investigative body will provide all relevant information to the respondent in a timely manner. The respondent will have the right to provide comments and rebuttal, address the charges in writing, and present evidence.

The investigation will include examination of all documentation. Documentation will include but is not limited to relevant research data and proposals, publications, correspondence, email, and memoranda.

The investigative body will make every effort to interview all complainants and respondents, as well as others who may have information regarding key aspects of the allegations. Complete summaries of these interviews will be prepared, given to the

**Investigation
Procedures**
(continued)

interviewed parties for comment or revision, and included as part of the investigation file. The investigative body will ensure that each component of the investigation is carefully documented.

The Institution will complete all aspects of the investigation within 120 days of its initiation. This includes conducting the investigation, preparing a report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the federal agency or private organization that provided the grant or contract funding. If the investigative body is unable to complete the investigation within 120 days, it will submit to the Deputy Secretary or appropriate Under Secretary a written request for an extension, an explanation of the delay, an interim report of progress to date, and an estimated date of completion. The Deputy Secretary or appropriate Under Secretary will request an extension from the Secretary or appropriate federal agency or private organization.

The investigative body may, at its discretion, elect to hold a hearing with all concerned parties. The investigative body may recommend interim administrative actions to the Deputy Secretary or appropriate Under Secretary, to protect federal and trust funds, and to ensure that the purposes of the federal financial assistance or private granting organizations are carried out.

**Findings and
Dispositions**

On conclusion of the investigation, and after a majority vote to adopt its findings, the investigative body will submit its written findings to the Deputy Secretary or appropriate Under Secretary. The findings may include but are not limited to:

- a finding of misconduct
- a finding that no culpable conduct was committed, but serious errors were discovered
- a finding that no misconduct or serious error was committed

**Findings and
Dispositions**
(continued)

The report should contain a recitation of the material facts and an explanation of the basis for the findings.

The respondent and the complainant will be permitted to read the full report of the investigation. The respondent will be given the opportunity to comment on the report.

If the source of the funding is from a grant or contract, the Deputy Secretary or appropriate Under Secretary will forward through the OSP to the funding agency a copy of the evidentiary record, the investigative report, recommendations made to the Institution's adjudicating official, and the respondent's written response to the recommendation.

All persons and entities initially informed of the investigation will be notified promptly by the Deputy Secretary or appropriate Under Secretary. In addition, the Deputy Secretary or appropriate Under Secretary will retain the findings of the investigation in a secure, confidential file.

If the investigation determines that misconduct occurred, the respondent may receive one or several disciplinary actions, including:

- a letter of reprimand
- removal from a particular project
- correction of the research record
- special monitoring of future work
- suspension without pay
- reduction in rank
- adjustment of salary
- termination of employment

The same disciplinary actions may be taken against a complainant found to have made allegations of misconduct in bad faith. The decision on disposition resides with the Deputy Secretary or appropriate Under Secretary, pending the appeals process, and will be coordinated with other disciplinary actions and policies of the Institution. If the investigative body determines

Findings and Dispositions
(continued)

that the allegations are unfounded and no misconduct occurred, the Deputy Secretary or appropriate Under Secretary will close the matter and notify the respondent and the complainant. The Institution will make diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct, and to protect the positions and reputations of persons who, in good faith, made the allegations.

No disciplinary measures will be taken against the complainant unless the allegation was made in bad faith. Every effort will be made to prevent retaliatory action against the complainant if the allegations, however incorrect, are found to have been made in good faith and witnesses and committee members acted in good faith. If no misconduct was found but serious error was revealed, the Deputy Secretary or appropriate Under Secretary will recommend the means for mitigating or avoiding the consequences of such error.

Appeal and Final Decision

Within 15 days of receipt of a decision by the Deputy Secretary or appropriate Under Secretary, any person potentially aggrieved by such a decision may file a written appeal with the Secretary. Grounds for appeal are limited to:

- failure to follow appropriate procedures in the investigation; or
- capricious decision making

No new evidence may be presented at the appeal stage unless such facts were unknown at the time of the investigation.

The Smithsonian must complete the appeal within 120 days of its filing. If unable to complete the appeal within that time period, the Secretary, in coordination with the OSP, will request an extension from the appropriate federal agency or private organization that provides the grant or contract funding.

Appeal and Final Decision (continued)

The Secretary may accept, reject, or modify the decision. The decision of the Secretary is final.

If the source of funding is a federal grant or contract, the OSP will forward the adjudicating official's decision and notify the funding agency of any corrective actions taken or planned. The ultimate oversight authority rests with the appropriate federal agency for all activity supported by federal grant or contract funds.

Record Maintenance and Confidentiality During Inquiry, Investigation, and Decision-making Process

Relevant research records and evidence, final inquiry reports, final investigation reports, and records of appeals will be secured for a period of at least seven years after termination of the inquiry, and will be provided to regulatory agencies on request.

To the extent permitted by due process, law, and regulation, the identity of complainants who wish to remain anonymous will be kept confidential. Appropriate safeguards to complainants and respondents will be provided during the process. In cases that depend on specific observations or statements by the complainant, the complainant's identity may be disclosed.

To the maximum extent possible, the Institution will afford the respondent confidential treatment, a prompt and thorough investigation, and an opportunity to comment on allegations and findings of the inquiry of investigation.

Records maintained by the Smithsonian during the course of responding to allegations of research misconduct may be disclosed consistent with the Freedom of Information Act (5 *United States Code* [U.S.C.] 552) and the Privacy Act (5 U.S.C. 552a) to the extent permitted by law and regulation.

Additional Guidelines

Additional guidelines include the following resources:

- SD 605, *Animal Care and Use* (available on PRISM)
- PHS Regulations, codified at 42 CFR Part 93

**Additional
Guidelines**
(continued)

- NSF Regulations, 45 CFR (1993), §§ 689.1–689.10, and Part 689
 - *Federal Policy on Research Misconduct*, Office of Science and Technology Policy
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CANCELLATION:

SD 604, April 16, 2004

INQUIRIES:

Office of Sponsored Projects (OSP)

RETENTION:

Indefinite. Subject to review for currency 24 months from date of issue