

Stroud Water Research Center (SWRC) Policy:

Violations of Research Misconduct, Procedures for Reporting Violations, and Whistle-Blower Protection

Handling Misconduct: Background

Responding to an allegation of research misconduct tends to be a unique rather than a routine event at most institutions. To date, the SWRC has not had any violations. There is potential, however, for a research misconduct allegation to have a high impact both on the individuals involved and on the SWRC.

Factors such as the scope of the misconduct, the length of time the misconduct went undetected, the prestige of the individuals or institutions involved, the possible impact on research findings and/or institutional integrity, retaliation against the complainant or other mishandling of the allegation, as well as the extent of media coverage can all play a role in the impact that a particular case may have on individual researchers and their institutions.

Fortunately, the US Department of Health and Human Services is prepared, through its Office of Research Integrity (ORI), to provide technical assistance to any institution (including SWRC) that is responding to an allegation of research misconduct through its [Rapid Response Technical Assistance \(RRTA\) Program](#). In addition, ORI has also developed an orientation video, [The Role of the RIO](#), for institutional research integrity officers (RIOs) established at the SWRC. The support of ORI began in 2007 with intensive, interactive three-day boot camps for RIOs. See <http://ori.hhs.gov/misconduct/> for more information.

Handling Misconduct - Complainant

The complainant (whistleblower) is an essential element in the effort to protect the integrity of publicly supported research because researchers do not call attention to their own misconduct. Prior to making an allegation of research misconduct a complainant should carefully study this policy statement established by the SWRC for responding to such allegations to:

- determine what information should be included in the allegation,
- to whom the allegation should be reported,
- what protections are provided for the complainant,
- and what role the complainant will play in the ensuing proceedings.

Research misconduct allegations should be made to D. Arscott, Assistant Director at SWRC (SWRC's institutional RIO) unless the RIO is the focus of the allegation, in which case the allegation should be submitted to the SWRC's Director (B.W. Sweeney). Allegations may also be made directly to ORI.

Because of the likelihood of retaliation against the complainant, Policies on Research Misconduct [such as the Public Health Services (PHS) 42 C.F.R. 93.300] obligates institutions to "provide confidentiality to the extent required by § 93.108 to all respondents, complainants, and research subjects identifiable from research records or evidence" and "take all reasonable and practical steps to protect the positions and reputations of good faith complainants, witnesses and committee members and protect them from retaliation by respondents and other institutional members." A good faith allegation is made with the honest belief that research misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation. The SWRC takes seriously its obligation both to investigate alleged misconduct and to protect whistleblowers.

On the role of the complainant in misconduct proceedings, ORI policy states, "It is the responsibility of the investigative body and ORI, not the complainant, to ensure that the allegation is thoroughly and competently investigated to resolution. Therefore, once the allegation is made, the complainant assumes the role of a possible witness in any subsequent inquiry, investigation, or hearing. For purposes of the research misconduct proceedings, the complainant is not the equivalent of a 'party' in a private dispute between an 'accuser' and 'accused'."

Handling Misconduct - Respondents

Most allegations of research misconduct are not substantiated. Nevertheless, respondents should take such allegations seriously because they can have a negative effect on their research career. When accused of research misconduct, a respondent should:

- review the Policies on Research Misconduct (e.g., PHS policy 42 C.F.R. 93; attached)
- review the SWRC's policies on responding to research misconduct (herein),
- gather documentation and identify witnesses,
- consider whether an advisor, expert, or counsel is needed,
- avoid actions which are, or could be perceived as, retaliatory against the whistleblower,
- and maintain the confidentiality of the proceedings.

In responding to an allegation, the SWRC must and will provide:

- notification of receipt of an allegation
- confidential treatment to the maximum extent possible,
- an opportunity to comment on allegations and findings,
- a copy of the inquiry report for comment,
- notification whether an investigation will be initiated,
- a prompt, fair, objective, thorough and competent investigation,
- a copy of the investigation report for comment,

- access to the evidence on which the report is based,
- and a diligent effort, as appropriate, to restore the reputation of the respondent if the allegation is not confirmed.

After reviewing the investigative report submitted by the SWRC, ORI may make a PHS research misconduct finding and recommend the imposition of PHS administrative actions. The respondent may appeal the PHS finding and administrative actions to the Human Health Services (HHS) Departmental Appeals Board where the appeal will be heard by an Administrative Law Judge or some other board which is mutually acceptable to both the National Science Foundation, SWRC, and the defendant.

Handling Misconduct - Allegations

As stated previously, allegations of research misconduct should be made to SWRC's RIO (D. Arscott, Assistant Director at SWRC) unless the RIO is the focus of the allegation, in which case the allegation should be submitted to the SWRC's Director (B.W. Sweeney). Since the SWRC receives public funding, it must have a policy for responding to allegations of research misconduct (herein). This policy specifies that the allegation must be in written form and can be either confidential or anonymous. The choice between confidential or anonymous whistleblowing is that of the whistleblower alone. The written allegation should contain the following:

- Name of respondent(s)
- Name of whistleblower(s) (if they choose)
- Names of witnesses
- Description of misconduct
- When misconduct occurred
- Where misconduct occurred
- Supporting documentation
- Grant number or title
- Funding source

A whistleblower may also make an allegation of research misconduct directly to ORI or another public funding agency. Many allegations received by ORI do not involve public funding or research misconduct. Allegations of research misconduct that do not involve publicly supported research are forwarded to the appropriate federal research agency. Allegations concerning the protection of human or animal subjects, conflicts of interest, financial mismanagement, the use of hazardous materials, or regulated research are referred to the PHS offices that deal with these abuses of the research process.

What is confidential whistle blowing?

A whistleblower may *choose to reveal his or her identity* when a report or disclosure is made. Should this be the case, the SWRC will respect and protect the *confidentiality* of the whistleblower, and give the *assurance that it will not reveal the identity of the whistleblower to any third party*. The only exception to this assurance relates to an *overriding legal obligation* to breach confidentiality. Thus, the SWRC is obligated to reveal confidential information relating to a whistle blowing report if ordered to do so by a court of law. An advantage for the SWRC of a confidential (as opposed to anonymous) report is that it is better placed to investigate the report. Importantly, the SWRC assurance of confidentiality can only be completely effective if the whistleblower likewise maintains confidentiality.

What is anonymous whistle blowing?

Alternative to confidential reporting, a whistleblower may choose not to reveal his or her identity. With the reporter's *anonymity* thus assured, the *identity of the reporter cannot be ascertained by anyone*. This advantage to the reporter is counter-balanced by a disadvantage to the SWRC, namely, that it compromises further investigation of the facts. The anonymous whistleblower should be careful not to reveal his or her identity to a third party. By setting up the necessary systems safeguarding confidentiality and offering anonymity, the interests of the whistleblower are protected from possible harm through retribution by those who stand to benefit from the reported misconduct.

Whistleblower protection

Both confidential and anonymous whistle-blowing options are aimed at *safe* reporting. Safety is a concern because those who benefit from misconduct may attempt to *retaliate* against or *victimize* a whistleblower for loss, or potential loss, of that ill-gotten benefit. Such adverse consequences can only materialize if the identity of the whistleblower is known through a breach of confidentiality. An anonymous whistleblower cannot be victimized, provided that the whistleblower also protects the anonymity of his or her identity.

Where an individual makes a report under this policy in good faith, reasonably believed to be true, there will be no retaliation against the reporter should the disclosure turn out to be *misguided* or *false*. Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual reports conduct described elsewhere in this Policy. When established, retaliation is by itself misconduct which may be pursued under the appropriate mechanisms — for example, through disciplinary action initiated through mechanisms of the RIO or more broadly and as appropriate through other mechanisms of the SWRC in the case of retaliation by Administrative staff, and through Board governance processes if retaliation by other actors in SWRC governance mechanisms.

Reporting under this policy, however, in no way immunizes or shields a whistleblower against action following from his or her intentional misconduct, which includes willfully making allegations through the whistle blowing mechanism that the individual knows to be false or makes with an intent to misinform. In short, *blowing the whistle is no escape hatch for complicity in misconduct*.

Handling Misconduct - Preliminary Assessment

Each allegation of research misconduct must meet the following criteria to fall within public jurisdiction:

1. The research in which the alleged misconduct took place must be supported by, or involve an application for, public funds.
2. The alleged misconduct must meet the definition of research misconduct set forth in Policies on Research Misconduct (e.g., PHS policy [42 C.F.R. Part 93](#)).
3. The allegation contains sufficient information to proceed with an inquiry.

Handling Misconduct - Inquiries

Following the preliminary assessment, if the SWRC RIO determines that the allegation provides sufficient information to allow specific follow-up, involves public support, and falls under the PHS or its own definition of research misconduct, the RIO will immediately initiate the inquiry process. In initiating the inquiry, the RIO will identify clearly the original allegation and any related issues that should be evaluated. The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry should be set forth in an inquiry report to the institution's deciding official (SWRC Director or the Assistant Director and the SWRC Board if the Director is the focus of the allegation). The deciding official will then either initiate an Investigation or dismiss the allegations.

Handling Misconduct - Investigations

The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy or clinical or public health practice. The investigation will be conducted by a 3 member committee consisting of the RIO and two SWRC staff that are independent of the allegations. The findings of the SWRC investigation committee will be set forth in an investigation report that is submitted to ORI for oversight review.

Handling Misconduct - Institutional Decisions

Based on a preponderance of the evidence, the institution's deciding official (SWRC Director or the Assistant Director and the SWRC Board if the Director is the focus of the allegation) will

make the final determination whether to accept the investigation report and its findings, and will recommend institutional actions. If this determination varies from that of the investigation committee, the deciding official needs to explain in detail the basis for rendering a decision different from that of the investigation committee in the institution's letter transmitting the report to ORI. The explanation should be consistent with the public definition of research misconduct, the institution's policies and procedures, and the evidence reviewed and analyzed by the investigation committee. The deciding official may also return the report to the investigation committee with a request for further fact-finding or analysis. The deciding official's determination, together with the investigation committee's report, constitutes the final investigation report for purposes of ORI review.

When a final decision on the case has been reached, the institution needs to notify both the respondent and the whistleblower (unless anonymous) in writing. In addition, the deciding official will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The institution is also responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.