



NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

Case Number: A11070051

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We received an allegation that a reviewer¹ posted links to 22 confidential NSF proposals, all from the same panel,² on a website. Our investigation determined that the reviewer had another person place the proposals on a personal page within a website, which he believed was private. The page was not private and the proposals became temporarily available for public view via search engine. At least one confidential proposal was found via Internet search by a third party who then emailed its PI.

We sent a report to the agency, recommending actions to protect the federal interest. The agency determined that the relevant Division Director should send the reviewer a warning letter and he did.

This memo, the attached Report of Investigation, and the attached warning letter constitute the case closeout. Accordingly, this case is closed.

[REDACTED]



National Science Foundation • Office of Inspector General
4201 Wilson Boulevard, Suite II-705, Arlington, Virginia 22230

AUG 08 2012

To: Cora B. Marrett
Deputy Director

From: Allison C. Lerner
Inspector General

A handwritten signature in black ink, appearing to read "Allison C. Lerner", is written over the printed name and title.

Subject: Breach of Confidentiality Investigation Report A11070051

Attached is our confidential investigation report concerning an allegation of breach of reviewer confidentiality against Dr. [REDACTED], an employee of [REDACTED]. On the basis of our investigation, we concluded that Dr. [REDACTED] posted 22 confidential NSF proposals on the Internet.

We recommend that NSF ban Dr. [REDACTED] from serving as a reviewer, advisor, or consultant for NSF for a period of 2 years, which we believe will adequately protect NSF's interests. The reasons for our recommended actions are described in detail in the report. In response to our draft report, Dr. [REDACTED] reiterated his previous statements from responses to our inquiry letter. We reviewed the response and determined that it did not warrant a revision of the report.

If you have any questions about the investigation report or our recommended findings and disposition, I would be happy to discuss them with you. My staff point of contact for this matter is [REDACTED] at 703 [REDACTED].

Attachment

cc: Lawrence Rudolph, General Counsel
Kathryn Sullivan, Office of the Director's Liaison to OIG

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Executive Summary

Allegation: We received an allegation that a reviewer (the Subject) posted links to 22 NSF proposals, all from the same panel, on a website.

OIG Investigation: Our investigation determined that the Subject provided confidential proposals to his wife for the purpose of posting the proposals on a private webspace allocated to him by his company. The webspace was not as private as the Subject claimed to have thought, and the proposals were available for public view through an Internet search engine. At least one confidential proposal was found by a third party via Google search. The third party subsequently discussed the proposal with its PI.

OIG Recommendation: Prohibit the Subject from participating as a reviewer, advisor, or consultant for NSF for a period of 2 years.

[R]espect the confidentiality of all principal investigators and of other reviewers. Do not disclose their identities, the relative assessments or rankings of proposals by a peer review panel, or other details about the peer review of proposals. Unauthorized disclosure of any confidential information could subject your [sic] to sanctions.

We confirmed that the Subject signed the 1230P form for the review at issue.¹⁰

OIG Investigation

We reviewed the materials accompanying the allegation, including the screenshot through which we verified, as of [REDACTED], 2:01PM: 1) the NSF proposals were discoverable on the Internet via Google search,¹¹ and 2) Google had cached copies of the confidential NSF material.¹² Although the panel ended in May, the Subject failed to promptly delete the proposals, which remained on his webspace where they were discovered by a third party.¹³

Results of Communication with the Subject

We wrote to the Subject¹⁴ seeking his response to the allegation and to related questions. When he failed to respond by the due date, we contacted him via email. He explained that he had lost our correspondence and asked us to forward an electronic copy of the materials, which we supplied.

Based on the Subject's cursory, initial response, he did not appear to understand the gravity of the allegations.¹⁵ We contacted him by phone to obtain a more detailed response. During the call, he told us he had made a mistake; he said he put the proposals on what he thought was a secure web site, but it was evidently publicly available on the World Wide Web. We asked him to consider providing a more detailed written response to our questions; he agreed.

In his second written response, the Subject explained that he had previously believed that the server space on which he placed the proposals "was private and not discoverable"¹⁶ and that he did not disclose the URL to anyone else. He did state, however, that he gave the proposal files to his wife, so that she could assist him with File Transfer Protocol (FTP) software to upload the proposals¹⁷ to the server/webspace. He indicated that "she did not read or share the proposals

¹⁰ See Tab 3.

¹¹ The proposals were located on web space within the company's Internet domain. Specifically, they were at: [REDACTED] See also Tab 1 for one of the screenshots provided to our office.

¹² See Tab 1.

¹³ We also determined that the PI of one of the proposals had been contacted by a third party, who had found the PI's proposal via Google search. The PI was understandably concerned that the non-public intellectual property contained in the proposal was readily available via Internet search, and that someone unaffiliated with NSF had read the proposal.

¹⁴ See Tab 4.

¹⁵ See Tab 5.

¹⁶ Tab 6, page 1.

¹⁷ The primary use of FTP software is to enable placing documents onto a web server that, as the name implies, serves documents externally to the web.

"server", which he believed was something wholly separate (and therefore undiscoverable) from the website.

Other documents in the Company webspace

While reviewing the Subject's webspace,²⁴ we determined that one of his webpages is protected from public viewing via a privacy mechanism, the website's robots.txt.²⁵ This appears to illustrate that the Subject took more care to protect a personal page on his webspace, a space he believed to be private,²⁶ than he did to protect confidential NSF proposals.²⁷

OIG Assessment

Our investigation revealed that the Subject had 22 confidential NSF proposals posted on his company's webspace which caused the proposals to be publically available via an Internet search engine. During our investigation, we also determined that the Subject gave access to the confidential proposals to his wife, contra to NSF rules.²⁸ Similarly, we note that although the panel was held on May [REDACTED], the proposals were still on the Subject's webspace on June 21, [REDACTED],²⁹ and thus available to the public through an Internet search. These actions constitute violations of NSF Policy.

Given the Subject's area of expertise and the use of a privacy mechanism to protect some of the information on his webspace, we are not convinced of the plausibility of the Subject's assertions that he believed his webspace was private.

The seriousness of making confidential NSF proposals available to the Subject's wife and ultimately the public is exacerbated by the fact that one of the Principal Investigators (PIs) became aware that his/her proposal was accessible online when contacted by a third party to discuss the proposed research. The PI expressed a great deal of concern about the intellectual work which was not supposed to have been public.

We conclude that he recklessly gave his wife access to the proposals and caused the proposals to be uploaded onto a server connected to the Internet which resulted in at least one confidential proposal to be viewed by an unrelated third party.

Recommendations

The full extent to which NSF PIs were harmed by the Subject's actions cannot be assessed. We do know that at least one person contacted an NSF PI with questions about the PI's confidential NSF proposal.

²⁴ The same webspace on which he had the NSF proposals placed.

²⁵ A "robots.txt", or Robots Exclusion Protocol, is an extremely common tool in the form of a text file. The file's instructions (to web crawlers) list specific pages that a website's manager does not want them to index. See Tab 8 for an example, the robots.txt that is utilized by the site at [REDACTED]

²⁶ See Tab 6, page 1.

²⁷ See Tab 8.

²⁸ Despite signing a conflict-of-interest form (1230P), a certification which explains NSF's confidentiality rules and despite viewing banners which stressed the importance of privacy, including the importance of destroying copies after conclusion of a panel.

²⁹ More than a month after the panel concluded.

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Attachments

1. Screenshot of Website containing proposals.
2. Screenshots from NSF FastLane (From the Demonstration Site)
3. Form 1230P
4. Letter to the Subject
5. Subject's Response 1
6. Subject's Response 2
7. Biographies of the Subject from the Company's website
8. Error message and the Company's Robots.txt
9. The Subject's Response to the Draft ROI

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

[REDACTED]

December 18, 2012

[REDACTED]

[REDACTED]

It has come to my attention that 22 proposals you reviewed for the National Science Foundation's (NSF) [REDACTED] in May 20[REDACTED] were posted on the [REDACTED] website. While this posting may have been unintentional, I am writing to ensure that you are aware of NSF's policies and requirements for your services as a panelist. In addition, I want to remind you of your obligation to maintain the confidentiality of proposals and applicants (in addition to the identities of reviewers and the review process).

The Foundation receives proposals in confidence and protects the confidentiality of their contents. Prior to your May 20[REDACTED] panel service you certified that you understood NSF policies and that you would not divulge or use confidential information.

NSF requires specific protections for sensitive information related to the work we perform, particularly the peer review process and the confidential proposals we receive for review. Safeguarding proposals and preventing the disclosure of this information is essential to ensure we retain the scientific community's and the public's trust.

We take the protection of the NSF peer review process very seriously and continue to work to protect and secure NSF information. If you have any questions, please contact me.

Sincerely,

[REDACTED]

Division Director

Enclosed copy of [REDACTED] signed 1230P

National Science Foundation
Arlington, VA 22230

Conflict-of-Interests and Confidentiality Statement for NSF Panelists

Includes members of proposal review panels; site visitors; and committee of visitors.

1. Your Potential Conflicts of Interests

Your designation as an NSF panelist requires that you be aware of potential conflict situations that may arise. Read the examples of potentially biasing affiliations or relationships listed on the second page or back of this form. As an NSF panelist, you will be asked to review applicant grant proposals. You might have a conflict with one or more. Should any conflict arise during your term, you must bring the matter to the attention of the NSF program officer who asked you to serve as a panelist. This official will determine how the matter should be handled and will tell you what further steps, if any, to take.

2. No Use of Insider Information

If your designation gives you access to information not generally available to the public, you must not use that information for your personal benefit or make it available for the personal benefit of any other individual or organization. This is to be distinguished from the entirely appropriate general benefit of learning more about the Foundation, learning from other panel members, or becoming better acquainted with the state of a given discipline.

3. Your Obligation to Maintain the Confidentiality of Proposals and Applicants

The Foundation receives proposals in confidence and protects the confidentiality of their contents. For this reason, you must not copy, quote, or otherwise use or disclose to anyone, including your graduate students or post-doctoral or research associates, any material from any proposal you are asked to review. If you believe a colleague can make a substantial contribution to the review, please obtain permission from the NSF program officer *before* disclosing either the contents of the proposal or the name of any applicant or principal investigator.

4. Confidentiality of the Review Process and Reviewer Names

NSF keeps reviews and your identity as a reviewer of specific proposals confidential to the maximum extent possible, except that we routinely send to principal investigators (PI's) reviews of their own proposals without your name, affiliation, or other identifying information. Please respect the confidentiality of all principal investigators and of other reviewers. Do not disclose their identities, the relative assessments or rankings of proposals by a peer review panel, or other details about the peer review of proposals.

Unauthorized disclosure of any confidential information could subject you to sanctions.

YOUR CERTIFICATION

Your Potential Conflicts

I have read the list of affiliations and relationships (on the back of this form) that could prevent my participation in matters involving such individuals or institutions. To the best of my knowledge, I have no affiliation or relationship that would prevent me from performing my panel duties. I understand that I must contact the NSF program officer if a conflict exists or arises during my service. I further understand that I **must sign and return this Conflict Statement to the program officer before I may serve.**

Maintaining the Confidentiality of Others

I will not divulge or use any confidential information, described above, that I may become aware of during my service.

Your Identity as a Reviewer will be Kept Confidential (Does not apply to Committee of Visitors)

I understand my identity as a reviewer of specific proposals will be kept confidential to the maximum extent possible, except that copies of written reviews that I submit will be sent to the principal investigator(s) without my name and affiliation.

Member's Name (Please Print) _____

DATE _____

Name of Panel _____

Directorate/Division: _____