

CLOSEOUT FOR M93060032

This case was brought to OIG on June 3, 1993, when we received a telephone call from Dr. [REDACTED] of [REDACTED] (the complainant). The complainant subsequently supplied various written materials to document his allegations. The subjects of the allegations were Dr. [REDACTED] (Subject #1) and Mr. [REDACTED] (Subject #2) of the [REDACTED] (the institute). Subject #1's laboratory was supported by NSF award # [REDACTED], entitled [REDACTED], and Subject #2 did research in the laboratory under Subject #1's direction. The complainant, while a visitor in Subject #1's laboratory, made allegations to the institute that the subjects tampered with the complainant's experiments in order to simulate results consistent with the subjects' hypotheses. He also alleged that one or both subjects retaliated against him for blowing the whistle, destroyed evidence relevant to the forthcoming misconduct inquiry, made misleading statements in a publication, knowingly published incompetently done research, and breached the confidentiality of a whistleblower. In his complaint to OIG, the complainant further claimed that the institute mishandled its inquiry into these matters.

The complainant inferred that someone had tampered with his experiments on the basis of a pattern of scientifically unexplained results from his work. OIG determined that there is no possibility of developing additional evidence that the experiments had been tampered with. A distinguished consultant who assisted the institution's inquiry reached a similar conclusion. OIG also learned that experiments with the organisms that the complainant studies sometimes yield anomalous results. OIG also determined that the only connections between the subjects and the alleged tampering were their presumed motive for tampering with the complainant's experiments and their knowledge of how to interfere with the complainant's experiments in order to create systematically misleading data. The evidence in the inquiry report, confirmed by the complainant's own testimony, indicates that neither subject acting alone could have performed the alleged tampering. But the complainant supplied no direct evidence of a conspiracy between the subjects. In light of these facts, OIG concluded that it would not be possible to meet the burden of proof regarding this allegation.

The complainant alleged that he was a victim of retaliation in that Subject #1 (1) prevented him from working in his laboratory after the complainant made misconduct allegations against Subject #2 and (2) retaliated against the complainant by causing the institute to terminate the complainant's guest investigator status after the inquiry ended. With regard to the first allegation of retaliation, the complainant admits that he agreed to limit his research in Subject #1's laboratory and to accept closer supervision from Subject #1. Subject #1 gave plausible reasons, consistent with his responsibilities as a mentor and laboratory director, for requiring the complainant to accept this additional supervision. OIG determined that this allegation lacked substance. With regard to the second allegation, Subject #1 informed OIG that the complainant had been verbally abusive to both subjects in ways that significantly and adversely affected the orderly functioning of the laboratory, and the complainant confirmed Subject #1's account of the complainant's behavior. OIG concluded that the complainant's disruptive behavior provided a reason for his dismissal and that the evidence did not indicate that the complainant was dismissed in retaliation for making allegations of misconduct.

The complainant also alleged that Subject #1 "disposed of frozen samples and of bacterial stocks" that "were relevant to the inquiry into scientific fraud and were meant to be checked by outside investigators." OIG learned that these materials were not clearly designated as evidence for the misconduct inquiry and were discarded in the course of routine cleaning after the complainant's association with Subject #1's laboratory had ended. OIG concluded that there was no substance to this allegation.

The complainant's allegation that Subject #1 made misleading statements in a publication¹ was examined in a separate inquiry at the institute. OIG determined that Subject #1 did not misrepresent himself as having performed analytic tasks in his own laboratory that had in fact been performed elsewhere. The inquiry determined that Subject #1's failure to acknowledge analytical services rendered for a fee was not a serious deviation from accepted practice and that the allegation therefore lacked substance. OIG accepted this conclusion.

¹The publication in question is [REDACTED]

[REDACTED] " by [REDACTED]
[REDACTED] It appeared in [REDACTED]
[REDACTED] of the [REDACTED]

The complainant also alleged that the subjects knowingly used an inappropriate analytic technique in a publication.² OIG determined that this publication was not supported by NSF and that misconduct allegations regarding it therefore fell outside our jurisdiction. We advised the complainant that he could contact the funding agency to pursue a misconduct allegation. We also pointed out that he could contact the journal to raise scientific objections to the analysis in the publication.

The complainant alleged that the institute did not follow its own procedures in the course of its inquiry and that the procedures themselves were flawed. OIG does not consider departures from or flaws in institutional procedures as such to be evidence of misconduct. If OIG determines that these alleged departures and flaws would not compromise the fundamental fairness of the institution's inquiry, then OIG does not consider these allegations to raise concerns about misconduct. In this case, the alleged departures and flaws were minor and did not affect the inquiry's fairness.

The complainant further alleged that Subject #1 discussed the complainant's allegation with a dean at the institute and, in so doing, inappropriately breached the confidentiality to which a whistleblower is entitled. OIG believes that a laboratory director confronted with an allegation of misconduct is entitled to seek guidance from institutional officials on how it should be handled and that Subject #1 cannot be considered to have committed misconduct when he did so.

The allegations in this case do not have sufficient substance to warrant a formal investigation. This inquiry is closed and no further action will be taken on this case.

²The article is entitled [REDACTED]

[REDACTED] It was published in the [REDACTED]
[REDACTED] in [REDACTED]. The authors were the
two subjects.