

CLOSEOUT FOR M94070026

This case came to OIG on July 7, 1994, when Dr. [REDACTED] formerly program director for the [REDACTED] in the Division of [REDACTED] (the program director), informed us of a conversation he had had with [REDACTED] (complainant #1). The complainant subsequently sent an August 14, 1994, letter detailing her complaints to the program director and to Dr. [REDACTED] of the [REDACTED] at the [REDACTED] (the other agency). Complainant #1, a research associate at [REDACTED] (the Institute), alleged that Dr. [REDACTED] (the subject), director of the [REDACTED] (the facility) and a faculty member at the Institute, had engaged in discrimination on the basis of gender, attempted to destroy data belonging to scientists other than himself, unfairly deprived the complainant of telescope time, and retaliated against a technician who testified as to the subject's discriminatory activities. At the time of his alleged wrongdoing, the subject's work at the facility was supported by [REDACTED].¹

The program director also received a letter from [REDACTED] (complainant #2), a graduate student at the [REDACTED] who had visiting student status at the Institute. Complainant #2's letter was addressed to [REDACTED] of the Department of Education Office of Civil Rights (OCR). In it, she explained that she was dissatisfied with OCR's handling of the sex discrimination case and with the internal grievance procedures at the Institute. Complainant #2 also informed OIG of an incident involving Dr. [REDACTED] (complainant #3), formerly a graduate student at the Institute. In an interview with OIG, complainant #3 alleged that the subject had destroyed data analyses that complainant #3 had prepared.

Before contacting NSF, complainants #1 and #2 had approached OCR with their allegations. OCR dismissed certain allegations as scientific disputes, but concluded that the remaining complaints raised issues of gender discrimination that fell within its jurisdiction. Included among the allegations OCR addressed as gender discrimination were allegations that the subject had

¹This award was entitled "[REDACTED]
[REDACTED]." The subject was the sole PI.

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discriminated in allocating access to research equipment and had destroyed data belonging to another scientist. OCR initiated an investigation into the allegations, whereupon the Institute offered to settle the matter. OCR and the Institute agreed on a settlement stipulating that the Institute would improve its procedures for handling complaints of gender discrimination, remove the subject from his position as director of the facility for three months, take steps to protect the interests of women whom the subject had allegedly harmed, and promise that neither the Institute nor its employees would retaliate against the people who raised complaints to OCR. The outlines of the settlement were reported in the science press. Dissatisfied with the settlement, complainant #1 wrote to NSF and the other agency to amplify on the press reports of the matter and to ask if either agency could do anything to protect women like themselves from future discriminatory and retaliatory actions by the subject.

OIG considered whether we should initiate a misconduct in science inquiry into allegations whose factual basis had already been treated and settled by OCR as a matter of alleged gender discrimination. We concluded that we should not. OIG decided that in this case, where OCR, another agency of the federal government, has taken action against a subject in response to an incident of inappropriate behavior, it would be inequitable for NSF to take action against the subject on the basis of the same incident unless OCR's resolution left NSF with a significant unresolved interest at stake or the earlier action, however adequate to the alleged gender discrimination, appeared to be grossly inadequate to the seriousness of the alleged misconduct in science. In this case, where the subject suffered a brief suspension from his position and the stigma of a public sanction, we concluded that the results of OCR's action could not be considered grossly inadequate and did not leave a compelling NSF interest in jeopardy.

The incident involving complainant #3 occurred after the OCR settlement and was not covered by it. Complainant #3 told OIG that she had been using the facility's mainframe computer to analyze a large body of data collected elsewhere. She temporarily stored a copy of the analyzed data on a disk drive in the facility's computer. The subject allegedly sought to work on the computer on a weekend, found the disks full, sent an electronic mail message to users saying that he needed disk space, and then, when space remained unavailable some hours later, deleted the complainant's analyzed data. Complainant #3 stated that she had a backup tape with the unanalyzed data and was able to recreate the analyses by doing less than a week of work.

Complainant #3 said that she lacked documentary evidence

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relevant to this incident. She possessed neither a copy of the subject's electronic mail message nor evidence indicating how much time elapsed between the transmission of the message and the destruction of her analyses. Complainant #3 noted that the subject's electronic mail message would ordinarily have come to her attention shortly after being sent (enabling her to store her analyses elsewhere) and that she knew that she could use the disk space only temporarily. Complainant #3 characterized the subject's action as "rude and inconsiderate," but said that neither she nor colleagues at the facility whom she consulted considered it a serious violation of professional standards.

There was not sufficient evidence to substantiate the allegation and warrant an investigation, and OIG saw no reason to expect that additional inquiry would yield such evidence. OIG decided that a combination of circumstances-- the missing information concerning the subject's alleged actions, the evidence that the subject had warned others that he might destroy materials left on the disk, and complainant #3's testimony that, in the research environment at the facility, the subject's actions were not perceived to be a serious deviation from accepted practice--warranted this conclusion.

Complainant #1 reported another incident that occurred after the OCR settlement and was not covered by it. The subject refused complainant #1's request to borrow data from the facility unless she returned other data belonging to the facility that was in her possession.² Complainant #1 considered this action to be retaliation against her for her complaints against the subject. OIG determined that, whatever the subject's motivation in making the request, the request itself represented a legitimate effort by the subject, acting as head of the facility, to ensure orderly access to the facility's data. We therefore concluded that the subject's action could not be misconduct.

OIG, with the consent of complainant #1, notified the program director that complainant #1 was concerned about possible future restrictions on her access to data at the Institute that would adversely affect her ability to perform her work under her NSF awards. OIG informed the program director that he was free to take appropriate actions that, in his judgment, would help complainant #1 get appropriate access to the facility's data and facilitate

²Complainant #1 was PI on [REDACTED], entitled [REDACTED]. Her work under this award required extensive use of data in the facility's archive. She was also PI on [REDACTED], entitled "[REDACTED]"

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achievement of the goals of NSF's award. OIG also reminded the program director that he should refer any allegations of misconduct in science arising out of this situation to OIG.

 This inquiry is closed and no further action will be taken on this case.

cc: Deputy Assistant Inspector General, Oversight; Assistant Inspector General, Oversight; IG