



NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

Case Number: A02020007

Page 1 of 1

The subject¹ submitted a proposal² that was alleged to have plagiarized material that had been taken from an NSF grant³ and a published paper.⁴ Our Report of Investigation was provided to NSF's Deputy Director, who made a finding of research misconduct. The subject appealed the Deputy Director's decision to NSF's Director. The Director upheld the finding. Our Report of Investigation, the NSF Deputy Director's letter, and the NSF Director's letter reflecting their decisions constitute the closeout for this case. Accordingly, this case is closed.

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NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF THE
DIRECTOR

December 30, 2004

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Re: Decision on Appeal of Misconduct in Science Determination -- Dr.

Dear Ms.

On November 3, 2004, your client, _____ filed an appeal of the decision issued by Dr. Joseph Bordogna, the National Science Foundation's ("NSF") Deputy Director, dated August 24, 2004. In your appeal, you argue that Dr. Bordogna's decision should be reversed because: (1) _____ did not copy the amount of text that NSF found him to have copied; (2) the amount of text copied by _____ did not warrant a finding of scientific misconduct; (3) the University's investigation did not permit _____ to respond to specific allegations; (4) _____ conduct was not a serious deviation from accepted practices of his research community; and (5) _____ actions were the result of an honest error. For the reasons detailed below, your appeal is denied.

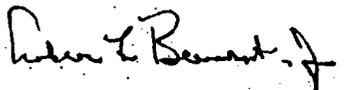
_____ submitted a proposal to NSF that copied the ideas and words of another individual without adequate attribution and, by doing so, he misrepresented someone else's work as his own. Although _____ argues that he did not plagiarize as many lines of text that NSF has found him to have copied, he concedes that, indeed, he did plagiarize at least 15 lines of text. After a review of the record, I affirm NSF's previous finding with regard to the amount of text copied. However, even if I were to accept _____ argument in this regard, I would still conclude that such conduct warrants a finding of scientific misconduct because it was reckless, as well as a serious deviation and a significant departure from the accepted practices of his research community. Moreover, _____ misconduct was exacerbated by the fact that _____ copied text from a confidential proposal -- a blatant violation of NSF's merit review process.

I further find that NSF provided _____ all the procedural protections to which he was entitled in accordance with NSF regulations. Specifically, NSF sent _____ a copy of the draft investigative report and gave him an opportunity to submit comments and argument in connection with the report, which _____ did. Dr. Bordogna considered these comments before making his decision. In addition, _____ was given a full and fair opportunity to appeal the decision, and submit additional comments in connection with the appeal. Thus, your contention

that _____ was not provided with an adequate opportunity to rebut the allegations against him is specious.

This is NSF's final administrative action in this case. There is no further right of appeal. If you have any questions about the foregoing, please call Lawrence Rudolph, General Counsel, at (703) 292-8060.

Sincerely,



Arden L. Bement, Jr.
Director

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF THE
DEPUTY DIRECTOR

AUG 24 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re: Notice of Misconduct in Science Determination - [REDACTED]

Dear

On October 31, 2001, your client, [REDACTED] submitted a proposal to the National Science Foundation entitled

As documented in the attached Investigative Report prepared by NSF's Office of Inspector General (OIG), [REDACTED] proposal contained plagiarized text.

Scientific Misconduct and Proposed Sanctions

Under the NSF's regulations that were in place at the time of the proposal submission, "misconduct" was defined to include "plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from activities funded by NSF." 45 CFR. §689.1(a). Current NSF regulations expressly exclude "honest error" and define research misconduct to mean "fabrication, falsification, or plagiarism in proposing or performing research funded by NSF. ... Plagiarism means the appropriation of another person's ideas, processes, results or words without giving appropriate credit..." 45 CFR. §689.1(a).

Today's regulations also set forth NSF's policies and responsibilities in pursuing research misconduct cases:

A finding of research misconduct requires that -

- (1) There be a significant departure from accepted practices of the relevant research community; and
- (2) The research misconduct be committed intentionally, or knowingly, or recklessly; and
- (3) The allegation be proven by a preponderance of evidence.

45 CFR § 689.2(c).

proposal contains verbatim and paraphrased text from a published paper and from an NSF proposal that his spouse reviewed, and to which he enjoyed inappropriate access.¹ By submitting a proposal to NSF that copies the ideas or words of another without adequate attribution, as described in the OIG Investigative Report, he misrepresented someone else's work as his own. Under the NSF regulations that were in place at the time, this constitutes plagiarism as well as a serious deviation from accepted practices within the scientific community. Moreover, actions – appropriating of another person's words without giving appropriate credit – also constitute plagiarism, and therefore research misconduct, under current NSF regulations. I therefore conclude that actions meet both definitions of misconduct in science.

Under current regulations, the Foundation must also determine whether to make a *finding* of misconduct based on a preponderance of the evidence. 45 CFR § 689.2(c). After reviewing the Investigative Report and the University Committee Report, the NSF has determined that based on a preponderance of the evidence, plagiarism was reckless and constituted a significant departure from accepted practices of his research community.

NSF's regulations establish three categories of actions (Group I, II, and III) that can be taken in response to a finding of misconduct. 45 CFR §689.3(a). Group I actions include issuing a letter of reprimand conditioning awards on prior approval of particular activities from NSF; requiring that an institution or individual obtain special prior approval of particular activities from NSF; and requiring that an institutional representative certify as to the accuracy of reports or certifications of compliance with particular requirements. 45 CFR §689.3(a)(1). Group II actions include award suspension or restrictions on designated activities or expenditures; requiring special reviews of requests for funding; and requiring correction to the research record. 45 CFR §689.3(a)(2). Group III actions include suspension or termination of awards; prohibitions on participation as NSF reviewers, advisors or consultants; and debarment or suspension from participation in NSF programs. 45 CFR § 689.3(a)(3).

In determining the severity of the sanction to impose for research misconduct, I have considered the seriousness of the misconduct; our determination that it was *reckless* rather than *knowing* or *intentional*; the determination that it was an isolated event and not part of a pattern, and the insignificant impact on the research record, research subjects, other researchers, institutions, and the public welfare. I have also considered other relevant circumstances. 45 CFR § 689.3 (b).

I find plagiarism to be serious because when he copied text from the proposal, he violated the NSF merit review process. The NSF has a vested interest in protecting its merit review process, and your client violated the confidentiality of merit review in conjunction with his plagiarism. This breach exacerbates plagiarism.

There are, however, several mitigating factors. First, relatively small portions of the proposal and the paper were plagiarized, and all of the copied text was in the background section of the

¹ NSF sent spouse proposal

proposal rather than in the description of the proposed research. Second, I found that your client's plagiarism was *reckless*, rather than *knowing* or *intentional*. Third, his actions had an insignificant impact on the research record, and the University Committee found that actions were not egregious. Fourth, the Committee investigated and expressly found that Dr. [redacted] actions were an isolated event and not part of a pattern. Fifth, in your March 6, 2003 letter to the NSF Office of the Inspector General you pointed to unusual family and professional stresses, the fact that English is a second language for your client, and that he bears responsibility for his sloppiness. Finally, I have taken into account the measures the University has already implemented and the fact that the letter of reprimand currently in your client's personnel file will expire in approximately 7 months.

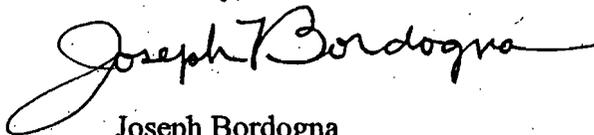
I, therefore, take the following actions:

- If [redacted] submits any proposals to NSF from the date of this letter until February 26, 2005, he must simultaneously submit a copy of the proposal along with a separate written certification to the Office of Inspector General, 4201 Wilson Boulevard, Arlington, Virginia 22230. The certification shall state that he has reviewed NSF's Misconduct in Science Regulation (45 C.F.R. Part 689) and that the proposal contains no plagiarized material.
- For the same time period, if [redacted] submits a proposal to NSF, he must ensure that his Department chairperson or the equivalent simultaneously submits a certification to Office of Inspector General that, to the best of that person's knowledge, the proposal does not contain any plagiarized material.

Procedures Governing Appeals

Under NSF's regulations, your client has 30 days after receipt of this letter to submit an appeal of this decision, in writing, to the Director of the Foundation. 45 CFR §689.10(a). Any appeal should be addressed to the Director at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. For your information we are attaching a copy of the applicable regulations. If you have any questions about the foregoing, please call Lawrence Rudolph, General Counsel, at (703) 292-8060.

Sincerely,

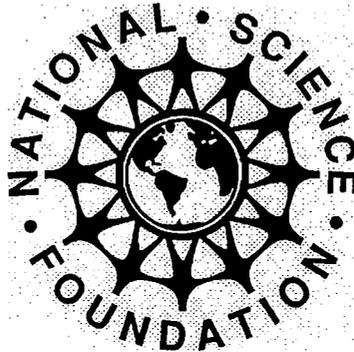


Joseph Bordogna
Deputy Director

Enclosures

- Investigative Report
- 45 C.F.R. 689

National Science Foundation Office of Inspector General



Confidential
Investigation Report
Case Number A02020007
6 February 2004 —

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Privacy Acts, 5 U.S.C. §§ 552, 552a.

Summary

The Office of Inspector General (OIG) has concluded the subject plagiarized text from a confidential NSF proposal and a published paper into his proposal. As a result of its investigation, the subject's university found the subject committed research misconduct under its policy. It reprimanded him and required him to attend a research ethics conference and participate in the University's research ethics course for its graduate students. We recommend the National Science Foundation (NSF) send a letter of reprimand to the subject informing him he has been found to have committed research misconduct and require him to provide certifications for 2 years.

OIG's Inquiry

We received an allegation that an NSF proposal, submitted by the subjects (the PI (subject1) and four co-PIs (subjects2-5)),¹ contained ideas, text, references, and a figure taken from a confidential proposal submitted to NSF.² During our inquiry, we identified approximately 21 lines of verbatim text, one figure, and 5 references in the subjects' proposal's "Overview" and "Proposed Work" sections that appeared copied from the source proposal. Additionally, we found approximately five lines of text copied verbatim from a published paper.³ Our examination of NSF's database showed the source proposal was reviewed by subject2, who, accordingly, was also alleged to have violated the confidentiality of NSF's merit review.

We wrote letters to all five subjects asking for their input.⁴ From their responses to our letters, we learned subjects2-5 did not contribute any of the questioned text; those sections were prepared by subject1.

In her response, subject2 stated she sought subject1's opinion on the expertise and research of the PI who submitted the source proposal. She did this to assist with her review of the source proposal. In response to subject1's request for a copy of the source proposal, subject2 admitted she provided an electronic (pdf) copy of the source proposal to subject1 for his evaluation. She said she did not seek permission from NSF before doing so because she assumed subject1 would keep the proposal confidential and did not have a conflict of interests. Likewise, subject1 said he received the source proposal from subject2 when he asked for it after she asked him for his opinion of the PI's research.

¹ (redacted) The proposal is included as Appendix (A).

² (redacted). We refer to this proposal as the source proposal and include it as Appendix (B).

³ (redacted). We refer to this publication as the paper and include the relevant pages as Appendix (C).

⁴ We include our letter to subject1, which is similar to the letters sent to subjects3-5. The letter to subject2 is slightly different because it also contains a question about the alleged violation of confidentiality of NSF's merit review. These letters, together with subject1's and subject2's responses, are Appendix (D).

Subject1 said that although he had a copy of the source proposal and paper, he did not make use of any ideas from either.⁵ He said his research was unrelated to the research proposed in the source proposal. Regarding the copied text itself, he said it was mostly in the background section and described results so commonly known in the field they did not necessarily require a citation. Subjects1-2 provided examples of papers with similar, but not identical, text to illustrate the commonality of the ideas.

Based on our analysis of their responses, we found no evidence of substantive intellectual theft in the subjects' NSF proposal. However, we did not accept subject1's or subject2's arguments that subject1 had appropriately referenced the copied material or that referencing the material was unnecessary. Therefore, we formally referred the allegations to the subjects' university for investigation for its opinion of community standards regarding subject1's and subject2's actions.⁶

The University's Actions

The University appointed an Investigatory Committee (IC) to conduct the investigation. The IC had five members and interviewed the co-PIs not directly involved in the plagiarism (subjects3-5), subjects1-2, two science ethicists, two area experts, and the complainant. It treated the allegations against subject1 and subject2 individually, issuing a separate report on each subject. We will discuss them separately as well.

Investigation of Subject1

The IC investigated⁷ whether subject1 "plagiari[zed] by failing to attribute material (ideas and text) in a proposal he submitted to NSF . . . to the original authors of that material – a source proposal given to him by his spouse,^[8] [subject2], and a source paper."⁹ Regarding how subject1 obtained the source proposal, the IC confirmed subject1's and subject2's previous explanation. After soliciting and receiving the source proposal from subject2 for the purpose of providing an opinion for subject2's review, subject1 did not delete the file from his computer; two weeks after soliciting and receiving the source proposal from subject2, he submitted his proposal to NSF.

⁵ See subject1's letter in Appendix (D).

⁶ From our Inquiry, we concluded subjects3-5 were not responsible for the alleged plagiarism. Accordingly, we did not refer them to the University as subjects, but asked the University to reach an independent conclusion about their roles. Our referral letter is Appendix (E). The University concluded subjects3-5 were not responsible for any of the plagiarized text and took no action against them. We subsequently notified subjects3-5 that they were no longer considered subjects in this case.

⁷ The IC report for subject1 is Appendix (F).

⁸ We were not aware subject1 and subject2 were married until the University told us during its Investigation.

⁹ Appendix (F), p. 1 of the University Report.

The IC broke the allegation into three actions: copying text from the source proposal, copying the figure from the source proposal, and copying text from the paper. It found there were 22 lines with approximately 135 words of identical text taken from the source proposal. Additionally, although the IC recognized “the figure represents a very well known structure for which a reference is probably unnecessary,”¹⁰ it also concluded Figure 3 was copied from the source proposal because a font distortion of a letter in the source proposal’s figure was reproduced in subject1’s proposal. The IC found 6 lines with approximately 70 words of identical text were taken from the paper. With regard to text copied from the paper, the IC and one of the area experts found this use of identical text to describe previous research was not “substantially misleading to the reader or of great significance.”¹¹ The IC concluded “[Subject1] was responsible for writing all text that is in question in the . . . proposal.”¹² The IC evaluated another of subject1’s proposals for evidence of a pattern of plagiarism and found no plagiarism.

Although the IC did not consider the amount of copied text egregious, it concluded it was worse to copy from a confidential proposal “because it could be more difficult to prove the original source and therefore easier for someone to own authorship . . . as there is no historical record open to the public.”¹³ In assessing intent, the IC concluded subject1’s intent in copying the figure was knowing, while his intent in copying the text was reckless. It reached this conclusion because of the way in which subject1 prepared his proposal.¹⁴ The IC concluded subject1 engaged in research misconduct and recommended the University take three actions as a consequence (described in the next section below).¹⁵

University action against subject1

The IC recommended (1) the University write a letter of reprimand to subject1 and place a copy in his file for 2 years¹⁶; (2) subject1 participate as an organizer and presenter of a workshop on research ethics for graduate students; and (3) subject1 attend a conference on ethics in science. The Dean of College of Science implemented the actions recommended by the IC.¹⁷

¹⁰ Appendix (F), p. 5 of the University Report.

¹¹ *Id.*

¹² *Ibid.*, p. 3.

¹³ *Ibid.*, p. 5.

¹⁴ Subject1 told the IC he collected text and bibliographic information from relevant work and cuts and pastes from the source to a *latex* file. He said he didn’t have a systematic method of marking others’ text for later referencing.

¹⁵ Appendix (F), p. 7.

¹⁶ If, after 2 years, no other indications of plagiarism are found, the letter will be removed.

¹⁷ Appendix (F), p. 1.

Investigation of subject2

The allegation considered against subject2^{18, 19} was “violating the confidentiality of NSF’s merit review process when she gave a copy of a confidential source proposal, sent to her for review by NSF, to her spouse, [subject1], without first seeking permission from NSF.”²⁰ The two area experts agreed that sharing an NSF proposal without NSF approval was a departure from accepted scholarly practices, although one expert said he had asked others and others had asked him to assess parts of a proposal without permission. While the experts agreed it was a departure from accepted practices, the IC concluded subject2’s action was a significant departure; it also concluded her action was committed with reckless disregard, and both these conclusions were supported by a preponderance of the evidence. However, the IC concluded her action was not research misconduct due to the extenuating circumstances and that the allegation does not seem to fall within NSF’s definition.²¹ The University took no action against subject2.

Subject1’s Response to the University’s Investigation Report

Subject1 responded²² through his attorney²³ that he does not believe the evidence supports a finding of research misconduct for plagiarism for the following reasons: (1) there was no intent to portray someone else’s work as his own; (2) the verbatim text was not substantive—it described commonly known results and appeared in the Background; and (3) the amount of copied text is *de minimus*.²⁴

Subject1 invoked the “honest error” exclusion in NSF’s definition of research misconduct, suggesting he was merely sloppy in his writing of the proposal. He argued his unusual family and professional stress and the fact that English is a second language for him should be considered mitigating factors to his sloppiness.²⁵ Subject1 argued most definitions of plagiarism require the intent to portray someone else’s work as one’s own, and he did not do so. With regard to NSF’s potential finding, subject1 said the IC concluded subject1’s intent in his copying of text was grossly negligent, and in only one other plagiarism case did NSF make a finding of misconduct based on gross negligence.²⁶ Subject1 said he did not know he submitted text without appropriate attribution. He concluded by stating intent is inferred from a pattern of conduct, and there was no pattern of plagiarism.

¹⁸ As the University conducted its Investigation, it learned subject1 was solely responsible for the copied text and narrowed the scope of its Investigation against subject2.

¹⁹ The IC report for subject2 is Appendix (G).

²⁰ Appendix (G), p. 1 of the University Report.

²¹ *Ibid.*, p. 5.

²² Subject1’s response is Appendix (H).

²³ Since subject1 responded through his attorney, (redacted), we attribute their correspondence to subject1.

²⁴ Appendix (H), p. 1.

²⁵ Appendix (H), p. 5.

²⁶ M93-03.

Subject1 discussed an NSF case he said contained the fewest number of copied lines (22) in which NSF made a finding of plagiarism.²⁷ He said in that case the copied text was substantive and the subject's university found it added a new analytical method to the subject's proposal. Subject1 disputed the number of lines copied from the source proposal, saying it was 15 "equivalent" lines instead of 22 lines, arguing the other lines were unrelated to the proposal. Subject1 also listed several other cases that were closed because the amount of copied text did not rise to the level of misconduct in science.²⁸

OIG's Assessment

We believe the IC's Investigations were accurate and complete in addressing the allegations, and the University followed reasonable procedures; therefore, we accept them in lieu of doing our own investigation.²⁹ A finding of misconduct requires that (1) there be a significant departure from accepted practices of the relevant research community, and (2) the research misconduct be committed intentionally, or knowingly, or recklessly, and (3) the allegation be proven by a preponderance of the evidence.^{30, 31}

Subject1

THE ACT

Subject1 copied 22 lines of text, 1 figure, and 5 references from the source proposal and 6 lines from the paper into a proposal he submitted to NSF.³² The IC concluded the figure was generic enough not to necessarily warrant a reference, and

²⁷ M98-10.

²⁸ These cases are M99-50, M98-25, M98-05, M97-46, and M97-23.

²⁹ Although we accept the IC's Investigation Reports, we do not concur with the IC's assessment of subject1's intent as discussed below in the Intent section.

³⁰ 45 CFR § 689(2)(c).

³¹ After we provisionally accepted the IC's conclusions and sent out our Report of Investigation (ROI) to subject1, he responded commenting both on our ROI and again on the University's Investigation Report. This second response is attached as Appendix (J) and we address these comments in the section of this ROI entitled "Subject's Response to Our Draft Report of Investigation and Our Additional Response." We note this second response prompted us to request that the University adjudicator clarify the initial finding of the IC with respect to how it defined subject 1's three actions (copying text from the proposal, copying the figure, and copying text from a published paper). The adjudicator found subject1's actions in each was a significant departure from scholarly standards. Our letter requesting clarification and the adjudicator's response is attached as Appendix (K).

³² We do not agree with subject1's suggestion that he copied only 15 lines as the other lines are unrelated to the proposal. Subject1 obviously copied verbatim text into his proposal for some reason related to the proposal. We need not examine the issue of relatedness or relevance to determine if the text was copied. There is a small difference between our count and the IC's count of the number of copied lines of text. This difference is most likely due to estimating counting partially copied lines.

we concur.³³ Subject1 suggested the copied text in the background section is not as significant and “when [he] was editing the Background sections, [he] did not pay much attention to avoiding identical or similar sentences to appear in [his] proposal.”³⁴ This is contrary to NSF’s clearly stated policy that “NSF expects strict adherence to the rules of proper scholarship and attribution. The responsibility for proper attribution and citation rests with authors of a proposal; *all parts of the proposal should be prepared with equal care for this concern*. Serious failure to adhere to such standards can result in findings of research misconduct.”³⁵

The IC considered the 22 lines of text copied from the source proposal to be a significant departure from accepted practices, especially because it was copied from a confidential proposal. We concur with the University that copying from a confidential proposal is very serious; it violates the confidentiality of NSF’s merit review process. Merit review will be most effective only if scientists trust their proposals will be handled in a confidential, fair manner.

Regarding subject1’s analysis, most of the cases he cited where OIG did not recommend a finding were not comparable in the quantity of copied text to this case. While there are partial parallels to numerous cases, each case is unique and judged on its own merits. In this case, we believe, as did the University’s adjudicator, a preponderance of evidence shows the subject’s act of copying material from two different sources (one of which was a confidential proposal) into his proposal represents a significant departure from accepted practices.

INTENT

As noted previously in this report, the IC concluded subject1’s copying of a figure was knowing, but his copying of verbatim text was deemed grossly negligent because of the way in which he prepared his proposal. While we agree with the IC’s finding of facts, we do not agree with its assessment of intent. The IC assessed the intent of the subject in *using* the already-copied text rather than his intent in *copying* it. When subject1 copied text from the source proposal, he knew he was copying the text. Subject1 knew he (i) opened the source file, (ii) found the text he was looking for, selected it, and copied it, and (iii) pasted it into his proposal. He did not insert the text randomly, but inserted it where it would make the most sense. The copying of the figure further supports this conclusion because subject1 sought out the figure from the source proposal, copied it from the *pdf* file, and edited it. We conclude subject1’s intent in copying the text from the proposal and the paper was knowing.

To summarize, we conclude a preponderance of the evidence shows subject1 committed research misconduct when he knowingly copied 22 lines of verbatim and

³³ We note in its clarification letter (Appendix (K)) the University’s adjudicator concluded the copying of the figure was a significant departure from accepted practices. We conclude subject1 should have referenced the figure, but his failure to do so was not, by itself, a significant departure.

³⁴ Subject1’s response, Appendix (D), p. 5.

³⁵ *Grant Proposal Guide*, section I. B, p. 9.(Emphasis added)

paraphrased text from the source proposal and 6 lines of verbatim and paraphrased text from the paper without appropriate attribution—a significant departure from community standards. We conclude subject1's plagiarism is serious because he violated the confidentiality of merit review by using material gathered from a confidential proposal subject2 was reviewing for NSF.³⁶

Subject2

Subject2 provided a copy of the source proposal to subject1 without obtaining prior NSF approval. We concur with the IC that in doing so, subject2 violated the confidentiality of NSF's merit review process. We also agree that subject2's act should not be characterized as research misconduct. Nonetheless, subject2's actions were deemed to be a significant departure from accepted practices, and we have reminded her of the importance in following NSF's procedures when serving as a reviewer.³⁷

OIG's Recommended Disposition

In deciding what actions are appropriate when making a finding of research misconduct, NSF must consider several factors. These factors include how serious the misconduct was; the degree to which the misconduct was knowing, intentional, or reckless; whether it was an isolated event or part of a pattern; whether it had significant impact on the research record; and other relevant circumstances.³⁸

In our view, which the University shared, plagiarism derived from violation of confidentiality of merit review is sufficiently serious to warrant significant action by NSF to bolster the community's confidence in NSF's merit review process. Despite subject1's claim he sloppily copied,³⁹ we conclude the subject acted knowingly when he copied text from the source proposal and a paper. The IC found no evidence of a pattern and we accept its analysis. As the committee noted, the impact on the research record from plagiarism is substantially increased when the plagiarism is from a confidential source because there is no publicly available record.⁴⁰

We conclude subject1's plagiarism warrants a finding of research misconduct. The University's action is appropriate, but does not completely protect the Federal government's interests. We recommend that NSF make a finding of research misconduct and send a letter of reprimand to the subject.⁴¹ Consistent with the University's time frame, we also recommend for 2 years after the resolution of this

³⁶ Although subject1 was not reviewing the source proposal, he has reviewed numerous proposals for NSF, both as a panelist (3 panels) and as a mail reviewer (2 reviews), and he is therefore aware of NSF's policy regarding the confidentiality of its merit review.

³⁷ Appendix (I).

³⁸ 45 CFR § 689.3(b).

³⁹ Appendix (H), p. 5.

⁴⁰ Appendix (F), University report for subject1, p. 5.

⁴¹ The letter represents a Group I action (45 CFR § 689.3(a)(1)(i)).

case, NSF require subject1 to provide to our office, in conjunction with any proposal submission to NSF,⁴² a certification that his work contains nothing that violates NSF's Research Misconduct regulation.⁴³ These recommendations are consistent with our recommendations in similar cases.

Subject's Response to Our Draft Report of Investigation and Our Additional Response

Subject1 responded to our draft ROI.⁴⁴ He raised many procedural points that we concluded were issues between him and his university. We concluded the University's procedures were reasonable for our purposes. We address subject1's relevant issues below.

Subject1 said we incorrectly applied NSF's definition.⁴⁵ He correctly noted his act occurred before 17 April 2002, so the previous definition of misconduct in science and engineering⁴⁶ should be used, but argued we inappropriately assessed his action as a significant departure rather than a serious deviation from accepted practices of the relevant research community. As we discussed with subject1, we used the previous definition, but we otherwise followed the new policy to determine if the alleged act warranted a finding.⁴⁷ What this means is we initially determined subject1's alleged act—copying material from a confidential NSF proposal and copying material from a published paper—was a serious deviation from accepted practices and, thus, met the previous definition of misconduct. We then followed the current procedure and concluded by a preponderance of the evidence subject1's action was a significant departure, committed with a culpable level of intent, and was, therefore, misconduct.

Subject1 said our plagiarism analysis was incomplete and inconsistent.⁴⁸ Several of the issues he raised here are with the University's Report and were adequately addressed in its clarification letter. He argued the University's and our conclusion is inconsistent with NSF's position that breach of merit review is not research misconduct. He further assumed a violation of the confidentiality of merit review is only relevant to the seriousness of a finding, and can not contribute to the finding. We disagree with both of those points. While NSF's current definition does

⁴² This includes proposals, progress reports, and final reports.

⁴³ This is similar to a Group II action (45 CFR § 689.3(a)(2)(ii)).

⁴⁴ Appendix (J).

⁴⁵ *Ibid.*, p. 1, A.

⁴⁶ Previously, the relevant part of 45 CFR § 689.1 stated misconduct meant "fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from activities funded by NSF."

⁴⁷ In particular, § 689.2(c)(1) requires the alleged act be a significant departure from accepted practices of the relevant research community. OIG's assessment is consistent with NSF's Office of General Counsel guidance on how to handle cases of research misconduct when the alleged act occurred before 17 April 2002.

⁴⁸ Appendix (J), p. 2, B.

not define a violation of the confidentiality of its merit review, by itself, to be research misconduct,⁴⁹ NSF has a vested interest in protecting its merit review and can consider such an act improper conduct and prohibit a subject from reviewing for NSF. However, more relevant and consistent with subject1's action in this case, NSF has previously made findings of misconduct in science when a subject has violated the confidentiality of merit review in conjunction with plagiarism.

Subject1 argued our intent analysis is flawed.⁵⁰ He argued he recognized the need for adequate citation and thought he provided it. He said the copied text, while possibly a deviation, did not materially mislead the reader and does not rise to a serious deviation.⁵¹ NSF's definition of plagiarism does not require the plagiarized text materially mislead the reader. Nonetheless, text copied without attribution to the original source can only give a reader the impression the author wrote those words, regardless of their intellectual content. The University's adjudicator concluded subject1 "using text and the figure without giving proper credit, he misrepresented himself to the scientific community."⁵² Subject1 discussed the intent in copying text, arguing scientists copy all the time, thus committing what he defines as intermediate misconduct; i.e., copying and pasting text is misconduct that is 'fixed' by adding quote marks and attribution. He said our conclusion that he knowingly did not cite the confidential proposal because he knew he could not is "belied by the university findings" that suggest his proposal preparation left him open to "unintentional plagiarism."⁵³ The argument that copying, or cutting and pasting,⁵⁴ text is 'intermediate misconduct' that is 'cured' by adding citations is specious. If the copied words are appropriately cited to their source, this is not a problem, *i.e.*, 'intermediate misconduct'; if the copied words are not properly cited to their source, particularly if they cannot be cited to their source because it is a confidential document the copier should not even possess, this indicates an intent to use the words as one's own and is indicative of research misconduct. We have not seen this concept of 'intermediate misconduct' discussed in the literature, and it is very likely most organizations would dismiss it as nonsense.

Subject1 suggested a finding of misconduct would be inconsistent with prior NSF cases.⁵⁵ His analysis of prior cases showed his conduct was a deviation, but not a serious one. We disagree and note in particular a prior, analogous case⁵⁶ in

⁴⁹ Violating the confidentiality of NSF's merit review, by itself, would not be considered research misconduct under the current definition since it is neither plagiarism, falsification, or fabrication.

⁵⁰ Appendix (J), p. 3, C.

⁵¹ *Ibid.*, p. 4.

⁵² Appendix (K), University response, p. 1.

⁵³ Appendix (J), p. 4.

⁵⁴ The technology used by the subject does not alter the intent of his action. Regardless of whether one copied text by pencil onto paper or by cut and pasted electronic documents, the intent is to use someone else's words for their purpose; technology just makes it easier to copy in the latter example.

⁵⁵ Appendix (J), p. 5, D.

⁵⁶ M98-10.

which NSF found the subject's copying of 22 lines of text from a confidential proposal was misconduct.

Subject1 argued the allegedly copied text was not identified by his university, which impaired his quantitative and qualitative analysis and deprived him of an opportunity to respond.⁵⁷ Since subject1 was informed by OIG and the University of the allegedly copied text, and he provided a quantitative and qualitative analysis to the University, we understand this comment to address the minor discrepancy in the word count between the University, OIG, and subject1 rather than implying subject1 is unaware of the evidence associated with the allegation. In our letter requesting clarification from the University, we asked it to identify the text its finding is based upon; the adjudicator confirmed the IC used the highlighted text provided by us to both the subject and the IC. With regard to subject1's opportunity to respond, we note subject1 has responded to the University's Investigation Report (Appendix (H)) as well as our draft Report of Investigation (Appendix (J)).

In concluding his letter, subject1 argued our recommendations "appear extraordinarily punitive" when compared with how NSF has handled similar cases. We disagree. Our recommendation for 2 years of certifications is consistent not only with previous, similar cases,⁵⁸ but with the University's time frame for keeping its letter of reprimand in subject1's personnel file.

⁵⁷ Appendix (J), p. 5, E.

⁵⁸ Again, we note M98-10 was similar in that the subject copied a similar amount of text from a confidential proposal, and in that case, NSF made a finding of misconduct in a letter of reprimand, required assurances, certifications, and barred the subject from serving as a reviewer for NSF for 2 years.