



NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

Case Number: A12020007

Page 1 of 1

We received an allegation that a PI altered (falsified) letters of collaboration in an NSF proposal he submitted from his company. We confirmed three letters in that proposal and an additional two letters in an earlier proposal had been altered in a way that met NSF's definition of falsification. The PI had not sought permission from the authors of the letters to alter their letters and submit them with proposals for which they were not originally intended, nor had he subsequently informed them he did so.

We referred the case to NSF for adjudication, with recommendations to make a finding of research misconduct and take additional actions. NSF concurred with our recommendations and took several actions in response. Accordingly, this case is closed with no further action taken. Our Report of Investigation, NSF's adjudication, and this Closeout Memorandum constitute the documents for the case closeout.

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF THE
DEPUTY DIRECTOR

NOV 18 2013

CERTIFIED MAIL --RETURN RECEIPT REQUESTED

[REDACTED]

Re: Notice of Research Misconduct Determination

Dear Dr. [REDACTED]

In 2011 and 2012, you served as a Principal Investigator ("PI") on two proposals submitted for funding to the National Science Foundation ("NSF") both entitled, [REDACTED] [REDACTED] (proposals [REDACTED] and [REDACTED] As documented in the attached investigative report prepared by NSF's Office of Inspector General ("OIG"), these proposals contained falsified material.

Research Misconduct and Proposed Sanctions

Under NSF's regulations, "research misconduct" is defined as "fabrication, falsification, or plagiarism in proposing or performing research funded by NSF ..." 45 CFR § 689.1(a). 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).

Your proposals included altered letters of collaboration originally submitted by you for an SBIR proposal. I therefore conclude that your actions meet the definition of "research misconduct" set forth in NSF's regulations.

Pursuant to NSF 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, NSF has determined that, based on a preponderance of the evidence, your actions were committed intentionally and constituted a significant departure from accepted practices of the relevant research community. I am, therefore, issuing a finding of research misconduct against you.

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 committed intentionally, and the fact that it was part of a pattern of misconduct. I have also considered the fact that your actions had a minimal impact on the research record. 45 CFR § 689.3(b).

After assessing the relevant facts and circumstances of this case, I am taking the following actions against you:

- (1) Until October 31, 2014, you must provide certifications to the OIG that any proposal or report you submit to NSF as a PI or co-PI does not contain plagiarized, falsified, or fabricated material;
- (2) By October 31, 2014, you must complete a comprehensive responsible conduct of research training course, and provide documentation of the program's content to the OIG. The instruction should be in an interactive format (e.g., an instructor-led course) and should specifically include a discussion on falsification; and
- (3) Until October 31, 2014, you are prohibited from serving as a reviewer, advisor, or consultant for NSF.

The certifications and training documentation should be submitted in writing to NSF's OIG, Associate Inspector General for Investigations, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Procedures Governing Appeals

Under NSF's regulations, you have 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. If we do not receive your appeal within the 30-day period, this decision will become final.

For your information, we are attaching a copy of the applicable regulations. If you have any questions about the foregoing, please call [REDACTED], Assistant General Counsel, at (703) 292-8060.

Sincerely,



Fae Korsmo
Senior Advisor

Enclosures

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

National Science Foundation Office of Inspector General



Report of Investigation Case Number A12020007

March 29, 2013

**This Report of Investigation is provided to you
FOR OFFICIAL USE ONLY.**

It contains protected personal information, the unauthorized disclosure of which may result in personal criminal liability under the Privacy Act, 5 U.S.C. § 552a. This report may be further disclosed within NSF *only* to individuals who *must* have knowledge of its contents to facilitate NSF's assessment and resolution of this matter. This report may be disclosed outside NSF *only* under the Freedom of Information and Privacy Acts, 5 U.S.C. §§ 552 & 552a. Please take appropriate precautions handling this report of investigation.

Executive Summary

Allegation: Falsification.

OIG Investigation: OIG confirmed the Subject falsified (altered) letters of collaboration provided to him for an SBIR project and submitted them with his two NRI proposals.

The Act: The Subject falsified letters of collaboration in two proposals.

Intent: We concluded the Subject acted purposely (intentionally).

Significant Departure: The Subject's falsification represents a significant departure from accepted practices.

Standard of Proof: A preponderance of the evidence standard supports our conclusion that the Subject committed research misconduct.

Pattern: The subject's falsification of five letters submitted in two proposals represents evidence of a pattern of misrepresenting his collaborators' intended contributions.

OIG Recommendations:

- Send a letter of reprimand to the Subject informing him that NSF has made a finding of research misconduct.
- Complete a responsible conduct of research training program and provide documentation of content within 1 year. The instruction should be in an interactive format (e.g., an instructor-led course) and specifically include falsification.

For a period of 1 year:

- Require for each document (proposal, report, *etc.*) to which the Subject contributes for submission to NSF (directly or indirectly),
 - The Subject to submit a contemporaneous certification that the document does not contain plagiarism, falsification, or fabrication.
- Prohibit the Subject from serving as a reviewer, advisor, or consultant for NSF.

OIG Investigation

We were notified that the letters of collaboration in the Subject's¹ NRI proposal² (P1) appeared to have been altered (falsified). We reviewed the letters of collaboration for P1 and confirmed several inconsistencies that supported the allegation, including the existence of unusual blank spacing where it appears text was removed and an inconsistency in the dates of the letters. P1 contained five letters of collaboration, three of which, designated L1-L3,³ had these inconsistencies. L1-L3 were all dated in early June 2011. In contrast, the other two (apparently unaltered) letters were dated October and November of 2011 and were provided by the two co-PIs. P1 was received by NSF Feb 10, 2012, so only the two co-PIs' letters appeared to be recent with respect to the submission.

Upon checking the Subject's proposal history, we learned P1 was a resubmission of P2,⁴ which was received by NSF on Nov 10, 2011.⁵ P2 contained nine letters of collaboration, including L1-L3 and two additional letters that appeared altered (L4-L5).^{6, 7} We considered L4-L5 potentially falsified because the dates of L4 and L5 are consistent with L1-L3 (Jun 2011) and L4-L5 also contained some blank spaces where it appeared text was removed, similar to L1-L3. The Subject previously submitted a proposal (P3) to NSF's SBIR program,⁸ which was received by NSF on Jun 10, 2011. P3 contained six letters of collaboration, including unaltered versions of L1 & L3-L5.^{9, 10}

We contacted the authors of letters L1-L5 to confirm the authenticity of their original letters and to ascertain if the Subject requested their permission, or informed them of his intention, to reuse altered versions of their letters to indicate their collaboration for his NRI project. All five authors confirmed they had offered to participate on the Subject's SBIR project (P3) and had submitted letters to him indicating their willingness to work with him on that project. Of the five authors, only two (authors of L1 and L4) recalled the Subject mentioning other research projects, and none recall being specifically asked by the Subject if he could use their

¹ Dr. [REDACTED]

² [REDACTED]

[REDACTED] This proposal was submitted by [REDACTED] and lists the subject as PI, with [REDACTED] and [REDACTED] as co-PIs.

³ L1 is from [REDACTED] and dated Jun 2, 2011; L2 is from [REDACTED] and dated Jun 10, 2011; L3 is from [REDACTED] and is dated Jun 2, 2011.

⁴ [REDACTED]

⁵ P2 was returned without review because it was submitted after the NRI program's deadline.

⁶ L4 is from [REDACTED] and is dated Jun 9, 2011; L5 is from [REDACTED] and dated Jun 8, 2011.

⁷ The altered versions of L1-L5 are in Tab 1.

⁸ [REDACTED]

[REDACTED] This proposal was submitted by [REDACTED] and lists [REDACTED] as the PI.

⁹ The original versions of L1-L5 are in Tab 2. The highlighted text indicates text that was removed from the letters and subsequently submitted with proposals P2 and P1.

¹⁰ We note the subject requested L2 for the SBIR proposal (P3), but did not include it with that submission. Instead, he altered it and submitted it with the NRI proposals P1 and P2.

letters for another project, although one was unsure (author of L1). The remaining three authors (of L2-L3, L5) stated their letter was intended exclusively for the SBIR project and not for any other project. No author said the subject asked them if he could alter their letters for reuse in another proposal.¹¹

Subject's response

We contacted the subject, who stated¹² the letters he submitted with the SBIR proposal (P3) were all original. He did not ask the authors' permission to use their letters in another proposal, nor did he ask for permission to alter their letters. He did not separately request letters of collaboration for his NRI proposals (P2 and its re-submission P1), but, due to time constraints, reused the letters he had from them. He did not directly answer our questions about his apparent alteration of the letters. He explained that he intended to take out the SBIR-specific portions of the letters and replace them with NRI-specific information. Likewise, he intended to solicit updates from the authors and replace the altered 'draft letters' when the updated letters were received. The first NRI submission (P2) was made with the 'draft letters' and, in the resubmission (P1), he said he intended to remove the 'draft letters,' but said he removed the wrong letters [the unaltered ones] in his haste to meet NSF's deadline.

OIG's Assessment

Regarding letters of collaboration, NSF's GPG Chapter II.C.2.d.(iv)) states:

Any substantial collaboration with individuals not included in the budget should be described and documented with a letter from each collaborator, which should be provided in the supplementary documentation section of the FastLane Proposal Preparation Module. Collaborative activities that are identified in the budget should follow the instructions in GPG Chapter II.D.4.

With respect to letters of support, NSF states in the GPG Chapter II.C.2.j:

Letters of support submitted in response to a program solicitation requirement must be unique to the specific proposal submitted and cannot be altered without the author's explicit prior approval.

¹¹ Only one of the five authors (L4) said if he would have been asked, he would have agreed to let the Subject alter and reuse his letter on another project.

¹² Tab 3; note our letter to the subject is included as an attachment in the subject's response (█ response). Since we did not receive a response from the subject, we contacted him and learned his office had moved. Thus, the subject's address on our letter is incorrect, and we corresponded with the subject via email afterward. In the course of that email correspondence (Re letter and Tabs 1-3), the subject provided some explanation of the different versions of letters.

There is nothing in NSF's regulations to suggest that letters of collaboration should not be held to the same uniqueness standard as letters of support. The PI falsified and submitted five letters of collaboration in two NRI proposals that were not specific to that proposal, but instead, were intended by their authors to be used for his earlier SBIR proposal. None of those authors were asked, nor gave permission, for their letters to be altered and submitted with another project, and most authors confirmed they would not have collaborated with the Subject on his NRI proposals. The content alterations were slight to moderate in size, but had the effect of making the letters appear broader than intended—the removed text was specifically relevant to the SBIR project. As noted above, the dates of the original letters are consistent with the time-frame in which P3 was submitted, but not P1 or P2, which contain additional (unaltered) letters consistent with those submission dates.

We note the letters of collaboration are part of the PI's total research effort, they are partially representative of the PI's ability to ensure the research is carried out. The Preamble for Research Misconduct Policy issued by the Executive Office of the President states "misrepresentation of a research's qualifications or ability to perform the research in grant applications or similar submissions may constitute falsification or fabrication in proposing research."¹³ Thus, we consider the Subject's alterations of the letters of support an act of falsification of information pertinent to his ability to conduct the research, and therefore meet NSF's definition of falsification.

The subject did not accept total responsibility for the alteration (falsification) of the letters, going so far as to state he only intended to alter them, when, in fact, the evidence shows he actually did alter them. He admitted he did not seek permission to reuse or alter any of the letters originally submitted for P3. His defense is that he did not get authentic letters from the authors because of time deadlines.¹⁴ However, the subject had sufficient time to substantially edit the proposal (our software identified approximately 49% similarity between the P3 and P2 proposals), so he could have contacted his authors, asked if they would support him in a similar effort in another NSF program, and asked for expedited letters via email, fax, or express delivery of mail. Likewise, he had sufficient time to ask for permission to edit and reuse their SBIR letters. He did neither—he falsified and reused the authors' letters without informing them or seeking their permission. Furthermore, he had one year¹⁵ to prepare his resubmission (P1), so he had plenty of time to ask the authors for revised, original letters of collaboration, but did not do so and again submitted falsified letters of collaboration.

NSF's Research Misconduct Regulation states that a finding of misconduct requires: (1) there be a significant departure from accepted practices of the relevant

¹³ 65 FR 76260, Other Comments section, p. 4; effective Dec 6, 2000.

¹⁴ The time between the declination of P3 and the submission of P2 was 8 days.

¹⁵ Program Solicitation NSF-11-553.

research community; (2) the research misconduct be committed intentionally, or knowingly, or recklessly; and (3) the allegation be proven by a preponderance of the evidence.¹⁶

The Act

The Subject received five letters of collaboration, written by their authors explicitly for P3 and falsified them and submitted them to NSF in two proposals (P2 and P1). Comparison of the falsified letters with the original letters shows them to be copies except for the blank spaces that correspond with text removed to make the letters more general (the original letters' SBIR-specific text was removed). All authors confirmed they provided their letters to the Subject for P3 and were not asked or informed about changes to the letters to use for other research projects. Thus, we conclude by a preponderance of evidence standard that the Subject falsified five letters of collaboration submitted in two proposals.

Intent

The Subject received the letters of collaboration for his SBIR proposal and used those letters (with the exception of L2) as evidence of his collaborators' support for P3. The Subject subsequently falsified those letters and included them in his two NRI proposals. However, because the original letters were specific to the SBIR proposal, in order to better facilitate the letters applicability to the NRI proposals, the Subject removed specific references to the SBIR project. This action demonstrates a specific, planned purpose for the falsification. Given the Subject's acknowledgement that he intended to use the 'draft', *i.e.*, falsified, letters as place holders, we conclude the Subject acted purposefully.

Significant Departure

Using the preponderance of evidence standard, we conclude the Subject purposefully falsified five letters of collaboration and submitted them in two proposals to NSF. In doing so, the Subject significantly departed from the accepted practices of his research community and NSF. Indeed, the majority of the authors of the letters said they would not have endorsed the Subject using their letters for other projects. As noted above, NSF expects letters of support to be specific to the proposal in which they are submitted. Accordingly, we conclude that the Subject purposefully falsified and, hence, committed research misconduct.

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

¹⁶ 45 C.F.R. § 689.2(c).

the misconduct was; degree of intent; whether it was an isolated event or part of a pattern; its impact on the research record; and other relevant circumstances.¹⁷

Seriousness

As we noted above, we concluded the preponderance of evidence standard supports the conclusion that the Subject acted purposefully when he submitted falsified letters with his proposals. NSF's reviewers and program managers need accurate information from PIs to fully assess the merits of a proposal, and the letters of collaboration are important for that assessment. The Program Director commented on the seriousness and how it affected his work:

I view this as a serious breach and the proposer has to be made aware that this is totally unacceptable behavior, if confirmed. The NRI program has strict limitations on PIs and co-PIs and it is conceivable that inclusion in a proposal without the knowledge of the investigator could jeopardize other, properly-submitted proposals.¹⁸

Therefore, we conclude the falsification of five letters of collaboration is sufficiently serious to warrant a finding of research misconduct.

Pattern

The Subject falsified five letters and included them in two proposals to NSF. The Subject has submitted only the three proposals discussed in this report, so there is no additional pattern outside of what is discussed herein.

Impact on the Research Record

The effect on the research record as a result of the Subject's actions was minimal as the proposals were declined.

The Subject's Response to OIG's Draft Report of Investigation

The Subject acknowledged he altered the letters, but said he never intended to submit them to NSF.¹⁹ He said the letters were intended as examples for the authors, but due to a series of mistakes, they were submitted to NSF. He said he meant to only submit the recent letters (Appendix A²⁰). He provided a "Time Line"

¹⁷ 45 C.F.R. § 689.3(b).

¹⁸ Because the Subject included letters of collaboration from the co-PIs, as well as his other collaborators, the Program Director is referring to the possibility of those co-PIs being included on proposals of which they were unaware through falsified letters and thus be ineligible for another, legitimate NRI proposal on which they were associated. As noted on p. 3 of this report, we concluded the letters from the Subject's co-PIs were not falsified. Our investigation had not begun when the Program Director had to make those programmatic determinations, so he had to take those extra steps to ensure the integrity of the NRI program.

¹⁹ Tab 4 is the subject's response. His Appendices (A-F) are attached to the letter.

²⁰ The subject's Appendix A has two letters, from [REDACTED] and [REDACTED]. It is noteworthy that Appendix A only lists these two letters that were submitted only with P2 (the

and “Turn of Events”, neither of which included dates. He does not indicate when he falsified the letters, but the first entry in the time line is the packaging of the altered letters together (his Appendix B). It is noteworthy that the subject’s Appendix B lists only L1, L2, and L3; it does not include L4 or L5. He said he mistakenly submitted the altered letters with P1, but he did not realize it. After the hasty submission of P2, he realized the altered letters were included, so he tried to remove them. He then resubmitted P2 with the correct ones, but “the wrong (“altered”) support letters (Appendix B) stayed online and the correct ones (Appendix A) we got specifically for the NRI grant [P1] ... were left out.”²¹

The Subject’s explanation has multiple flaws. One significant flaw is it does not explain how L4 and L5 were ever submitted to NSF. The resubmission (P2) contained nine total letters:

- the two from Appendix A, which he said “were left out”, but obviously were not;
- the three altered letters from Appendix B, also part of his explanation;
- the two letters from the co-PIs, which were not explained; and
- the two additional falsified letters (L4 and L5), which are completely unaccounted for in his explanation.

Additionally, the Subject does not explain how he had time between P3 and P1 to get a revised letter from one co-PI²² and a new letter from the other co-PI²³, but he did not have time to get revised letters from anyone else. Similarly, as noted above, he had time to significantly edit the text between P1 and P2, but not time to solicit revised letters from L1-L5.

The Subject’s explanation mainly consists of his statements that he was using letters only as placeholders until he received corrected letters from the authors. This fanciful explanation is inconsistent with the facts that the Subject *never* a) informed the authors he wanted to use their letters on other projects, b) asked them for revised letters; or c) informed them he edited their letters. Accordingly, we did not alter our draft report or recommendations.

Recommendations

Based on the evidence, we recommend NSF take the following actions as a final disposition in this case:

resubmission of P1), but not with P1; nor does Appendix A contain the two letters from his co-PIs (see first paragraph of p. 3).

²¹ Tab 4, p. 2.

²² [REDACTED]. The date of [REDACTED] letter for P3 was Jun 2, 2011 and the date on his revised letter for P1 and P2 is Oct 24, 2011.

²³ [REDACTED]. [REDACTED] did not provide a letter for P3, but the Subject secured a letter from him for P1 and P2 dated Nov 3, 2011.

- Send the Subject a letter of reprimand informing him that NSF has made a finding of research misconduct.²⁴
- Complete a responsible conduct of research training program and provide documentation of the program's content within 1 year of NSF's finding. The instruction should be in an interactive format (e.g., an instructor-led course) and specifically include falsification.²⁵

For a period of 1 year as of the date of NSF's finding:

- Require for each document (proposal, report, etc.) to which the Subject contributes for submission to NSF (directly or indirectly),
 - the Subject submit a contemporaneous certification that the document does not contain plagiarism, falsification, or fabrication.²⁶
- Bar the Subject from participating as a peer reviewer, advisor, or consultant for NSF.²⁷

The Subject's certification and proof of a RCR program completion should be sent to the Assistant Inspector General for Investigations (AIGI) for retention in OIG's confidential file on this matter.

²⁴ A Group I action 45 C.F.R. 689.3(a)(1)(i).

²⁵ This action is similar to Group I actions 45 C.F.R. 689.3(a)(1).

²⁶ This action is similar to Group I actions 45 C.F.R. 689.3(a)(1)(iii).

²⁷ A Group III action 45 C.F.R. 689.3(a)(3)(ii).