NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

Case Number: A13040057

We investigated an NSF panelist[1] who allegedly shared six NSF proposals with his subordinates at his home institution, breaching his confidentiality obligations. In our investigation report (attached), we concluded that the reviewer knowingly and purposefully breached his obligation for confidentiality to NSF by not obtaining prior permission from NSF to share the proposals. Although he asserted that this was an exception to his normal practice, the evidence demonstrated that he engaged in similar activities with respect to proposals he reviewed for NIH.

We recommended NSF prohibit the panelist from service to NSF in an advisory capacity, including as a panelist or an *ad hoc* reviewer, for an appropriate time. Separately, we recommended that NSF: 1) take additional steps to remind reviewers more affirmatively of the obligation for confidentiality when accessing a proposal; and 2) mark proposals with a digital watermark alerting anyone other than the reviewer receiving a proposal to the confidential nature of its contents.

NSF concurred with our report and banned the panelist from serving NSF as a reviewer, advisor, or consultant for three years. NSF also agreed to add a digital mark to proposals provided to reviewers to further emphasize the confidential nature of the review process.

Accordingly, this case is ***closed***.

[1] [redacted]

National Science Foundation
Office of Inspector General

Report of Investigation
Case Number A-13040057

December 30, 2013

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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

An NSF panelist (the Subject)[1] is alleged to have breached reviewer confidentiality by sharing six NSF proposals assigned to him with his subordinates at his home institution. Our investigation concludes that the preponderance of evidence supports finding that the Subject knowingly breached reviewer confidentiality in violation of his obligations as a panelist. We recommend NSF take appropriate action, including prohibiting the Subject from serving NSF in an advisory capacity for an appropriate period of time.

Background

Prior to participation on a panel, NSF panelists read and sign an NSF Form 1230P[2] certification and receive a briefing on conflict of interests (COI) and confidentiality obligations. Specifically, Form 1230P addresses confidentiality with respect to the review process specifically states:

> The Foundation receives proposals In [*sic*] 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. [emphasis added]

This same language is displayed in FastLane to a panelist when he accesses a proposal to write a review.[3] Form 1230P also includes a warning that "Unauthorized disclosure of any confidential information could subject you to sanctions."[4] Each panelist certifies to statements including "I will not divulge or use any confidential information . . .."[5]

OIG Investigation

We conducted an investigation to assess whether the Subject breached the confidentiality of the merit review process by assigning staff members at his home institution[6] to review the proposals for him.

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1 [redacted]

2 Tab 1, NSF Form 1230P.

3 Tab 2, FastLane Confidentiality Warning.

4 Tab 1.

5 Tab 1.

6 [redacted]

As part of the initial allegation, we received an electronic copy of a spreadsheet listing six NSF proposals by proposal number, PI last name, submitting institution, and proposal title.[7] All six proposals corresponded with NSF panel [redacted] which included the Subject as a panelist.[8] On the spreadsheet each proposal indicated the Subject's respective role on the panel: 2 designated "L" for lead, and 4 designated "R" for reviewer.[9] The roles on the spreadsheet corresponded with the Subject's role on the panel for each of the proposals.[10] The final two columns on the spreadsheet identified "Reviewer 1" and "Reviewer 2" by name; however none of those named were members of the NSF panel.[11] We correlated these reviewers' names with staff biographies posted on the Subject's home institution's web site.[12]

We also obtained additional documentation related to NIH proposals that alleged the Subject distributed NIH proposals to his staff for review in a similar manner.[13] We contacted NIH's Research Integrity Officer (RIO) for Extramural Research[14] and confirmed that NIH had also received the allegations. NIH informed us that it had contacted the Subject's supervisor about the alleged breach of reviewer confidentiality and subsequently received a letter from the Subject withdrawing himself from further consideration as an NIH reviewer.

We contacted the Subject and asked for his perspective on the evidence that he had improperly disclosed the contents of the NSF proposals for which he provided written reviews.[15] He responded admitting that he created the spreadsheet[16] and that he:

> consulted with some of the post doctorate scientists in my department without first obtaining prior approval to share confidential research proposals with them. Not all of the post doctorate scientists reflected on the spreadsheet . . . were actually consulted or provided with all or part of the research proposals . . .. I took what I believed were some specific steps to limit access to the research proposals and to assure confidentiality within my department, but realize I failed to fully adhere to the confidentiality requirements with respect to these proposals and accept responsibility for this breach.[17]

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7 Tab 3.

8 Tab 4.

9 Tab 3.

10 Tab 4.

11 Tab 4.

12 Tab 5.

13 Tab 6.

14 [redacted]

15 Tab 6.

16 Tab 8, page 2.

17 Tab 8, page 2.

The Subject explained that his handling of these proposals deviated from his normal practice of signing the confidentiality agreement, reviewing the proposals himself, writing and submitting the reviews himself, and attending the panel.[18] He attributed the current breach to time pressure for a "quick turnaround . . . (less than a month)" and the size and nature of the proposals involved.[19] He also admitted that he did not have permission from the NSF program officer to share the proposals with others.[20]

He wrote that he did not share his FastLane password with anyone and that he downloaded the proposals to a secure server for which he alone controlled access. Thus, the Subject was the one who accessed the proposals and the FastLane confidentiality statement. In his letter, he noted specifically that he received the proposals between [redacted] 2012.[21] The document properties for the spreadsheet indicated that the Subject created the spreadsheet late on the night of [redacted] 2012 (almost 6-10 days later).[22] The Subject's signature on his Form 1230P is dated [redacted] 2012.[23] The Panel met [redacted] 2012. The Subject's only previous NSF panel participation occurred in [redacted] 2007 for which he signed a Form 1230P with the same confidentiality requirements.[24]

We obtained a copy of an email chain from [redacted] that contrasts the Subject's asserted scenario.[25] The email distribution list includes all of the postdocs on the spreadsheet and not a subset as suggested by the Subject's response. The second email in the sequence is a directive to the administrative assistant to print the attached proposals and review criteria for the postdocs to review. When printed, the Subject effectively lost his ability to control access to the proposals by others. Because the attachments are not included in the email chain we received, there is no indication whether the Subject attached complete or partial proposals.[26] His response, *supra*, suggests that he only shared portions of proposals with his staff. However, it is unlikely that he truncated the project descriptions, including details of the proposed centers' management plans. These elements would have been necessary to produce reviews consistent with the NSF program review criteria[27] that he specifically directed his staff use in the third email.[28]

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[18] Tab 8, page 3.

[19] Tab 8, page 3.

[20] Tab 8, page 3.

[21] Tab 8, page 3, footnote 1.

[22] Tab 9.

[23] Tab 1.

[24] Tab 10.

[25] Tab 11.

[26] Tab 11.

[27] Tab 12. eJacket does not contain an uploaded copy of the template email to the Subject as it does for the each of the other panelists. Although we cannot confirm that he received this email, it is this email that communicated the review criteria to the panelists.

[28] Tab 11.

The materials relating to the NIH review process further contrast the Subject's assertion that this is an isolated incident demonstrating a pattern of conduct. These include emails showing that he used the same practice of distributing proposals to his staff to review NIH proposals.[29]

Furthermore, the NIH materials also demonstrate that he knew that the NIH proposals contained information that should not be shared but did so anyway. The Subject included in his response to us his letter resigning from reviewing NIH proposals.[30]

Conclusion

The Subject's response to our letter and the emails obtained independently demonstrate that the Subject knowingly and purposefully violated the confidentiality requirements of his service to NSF as a panelist by providing copies of six proposals to his postdocs. This was not an isolated event but part of a broader pattern of conduct including his review of NIH proposals.

Recommendation

We recommend that NSF ban the Subject from serving NSF in an advisory capacity, including as a panelist or *ad hoc* reviewer, for an appropriate period of time.

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[29] Tab 6.

[30] Tab 8, page 5.

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

May 19, 2014

[redacted]

Dear [redacted]:

You served on a National Science Foundation (NSF) panel in the Spring of 20[redacted]. As documented in the attached Investigative Report prepared by NSF's Office of Inspector General (OIG), you violated NSF's confidentiality rules by sharing your assigned proposals with colleagues in your department without seeking permission from the NSF program director.

Violation of NSF's Confidentiality Rules and Sanctions

Prior to participation on a panel, NSF panelists read and sign NSF Form 1230P and receive a briefing on conflict of interests (COI) and confidentiality obligations. Form 1230P addresses confidentiality with respect to the review process by specifying:

> 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.

You shared your proposals with colleagues in your department without seeking permission from the cognizant NSF program officer. I therefore conclude that you violated the NSF confidentiality rules. After assessing the relevant facts and circumstances of this case, I am imposing the following actions on you:

Until May 31, 2017, you are prohibited from serving as a reviewer, advisor, or consultant for NSF.

If you have any questions about the foregoing, please contact [redacted], Assistant General Counsel, at (703)292[redacted].

Sincerely,

Wanda E. Ward
Head, Office of International
and Integrative Activities

Enclosures:
Investigative Report