



National Science Foundation • 4201 Wilson Boulevard • Arlington, Virginia 22230

Office of the Inspector General

January 22, 2010

Confidential

via Federal Express

Dr. Henry C. Foley
Vice President for Research, Dean of the Graduate School
304 Old Main
University Park, PA 16802-1504

Dear Dr. Foley:

The Office of Inspector General (OIG) is responsible for conducting inquiries and investigations into allegations of research misconduct that involve National Science Foundation (NSF) proposals and awards. In our recent telephone conversation, you informed me that you have been conducting an inquiry regarding an allegation of research misconduct against Dr. Michael Mann. You requested that NSF OIG delay its inquiry until Pennsylvania State University (PSU) can complete its own inquiry.

We would like to emphasize that we do not—and whoever conducts your inquiry should not—presume that Dr. Mann committed misconduct. Rather, your confidential inquiry should determine if there is substance to the allegations such that investigation is warranted.

NSF's misconduct regulation places primary responsibility on the research community for the conduct of inquiry, investigation, and adjudication of alleged misconduct (see 45 C.F.R. § 689.4(a)). Because PSU plans to conduct its own inquiry, we will not conduct an inquiry at this time. Based on our conversation, we understand that PSU's inquiry process will likely be completed at the end of January.

I have enclosed a copy of the NSF Research Misconduct regulation (45 C.F.R. part 689) to explain our procedures. I have also enclosed our Dear Colleague letter, and we invite you to review selected excerpts from our Semiannual Reports to the Congress.¹ These materials may be helpful as you plan and conduct your inquiry.

¹ <http://www.nsf.gov/oig/compiledsemiannual.pdf>.

Guidance for Conducting PSU's Inquiry

The official(s) who conduct this inquiry, and any technical expert(s) you rely on to assess the evidence, should not have a previous or current personal or professional relationship with Dr. Mann that could be considered a conflict of interests.

In the course of your inquiry, you should:

- Review sufficient relevant documents and interview a sufficient number of knowledgeable individuals who may provide credible information about the allegations to enable you to determine whether the allegations have substance.
- Assess any new allegations of research misconduct you uncover during your inquiry.
- Conclude your inquiry when you determine that there is sufficient credible evidence that at least one of the allegations has substance or that none of the allegations has substance.
- Treat any information you acquire during your inquiry, including any information we may provide to you, as strictly confidential.²

As explained in NSF's regulation,

An "inquiry" consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An "investigation" is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action. (45 C.F.R. § 689.2(b)).

Because this is an inquiry, your report does not have to be extensive or detailed—it can take the form of a letter, describing the inquiry process briefly and explaining the evidentiary basis for the conclusion that any allegation(s) have substance. Regardless of the conclusion of the inquiry, the inquiry report should be accompanied by copies of the relevant evidence.

Outcome of PSU's Inquiry

If you determine that there is sufficient substance to an allegation to warrant an investigation, please contact us immediately to discuss a referral of investigation (see 45 C.F.R. § 689.4(b)(2)). There is no need for you to go through any specific formal process to conclude the inquiry and begin an investigation, other than to inform us that you have done so (and provide the inquiry report as discussed above).

Although your institution has considerable flexibility in deciding how to proceed, your inquiry should be concluded within 90 days of inception (see 45 C.F.R. § 689.4(b)(1)). If, at any time during your inquiry, you find evidence supporting new allegations of research misconduct

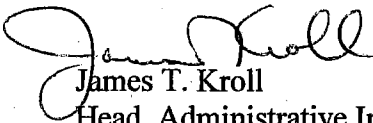
² 45 C.F.R. § 689.4(a)(3)-(4).

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or civil or criminal wrongdoing, please contact me immediately so that we may determine the best course of action.

In closing, I would encourage you to discuss with me, at any time, any concerns or issues that may arise during the course of your inquiry. Please do not hesitate to call me at 703-292-[REDACTED] or send me email at [REDACTED]nsf.gov. I will be happy to provide additional advice or to help in any way possible.

Sincerely,



James T. Kroll

Head, Administrative Investigations

Enclosures:

1. NSF Research Misconduct regulation (45 C.F.R. part 689)
2. Dear Colleague Letter, 26 November 2002

cc: Dr. Michael Mann