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## **Confidentiality Issues Related to Responding to Allegations of Research Misconduct**

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# Introduction

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## Background

In December 2000, the [Office of Science and Technology](#) (OSTP) issued a [Final Policy](#) on handling allegations of research misconduct in federally supported research. The Policy provides a uniform definition of research misconduct, spells out the responsibilities of federal agencies and research institutions, and discusses necessary safeguards for the rights and protections of those who bring forward allegations (complainants) and those accused of committing research misconduct (respondents).

The OSTP Final Policy indicates that research misconduct is defined as “...fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.” On the matter of confidentiality, the OSTP Policy states that:

“To the extent possible consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know. Records maintained by the agency during the course of responding to an allegation of research misconduct are exempt from disclosure under the Freedom of Information Act to the extent permitted by law and regulation.”

Under the OSTP Final Policy, all federal agencies that engage in research or support research were required to implement agency-specific policies and these vary somewhat in their confidentiality provisions. For example:

[Public Health Service Policy \(24 CFR §93.108\)](#) “Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible to those who need to know, consistent with a thorough, competent, objective, and fair research misconduct proceeding, and as allowed by law...” Additionally [24 CFR §93.304](#) requires that an institution seeking an approved assurance must have written policies and procedures that “...include... Consistent with [Sec. 93.108](#), protection of the confidentiality of respondents, complainants, and research subjects identifiable from research records or evidence.”

[Department of Energy Policy \(10 CFR §600.31\(f\)\(4\)](#) “To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.”

[Department of Transportation Policy \(Implementation Guidance for Executive Office of the President Office of Science and Technology Policy, “Federal Policy on Research](#)

[Misconduct’ February 2002, Section V](#)) “Ensure confidentiality during the inquiry, investigation, and decision-making processes, including confidentiality of all records and the identities of respondents and complainants.”

[National Science Foundation Policy \(45 CFR§689.4 \(\(a\) \(4\)\)](#) “Provide appropriate safeguards for subjects of allegations, as well as informants.”

## **Problem Statement**

Institutions have encountered a number of situations where it is unclear when it is appropriate to disclose information about a misconduct investigation to parties outside of the institution. For example, should institutions notify current employers of respondents when respondents leave the institution during the research misconduct review process? If so, when should the notification take place - only after institutional findings? Can institutions share investigation reports with journals to ensure the scientific record is corrected? Who needs to know what and when? These determinations can be very subjective and must be evaluated taking into account the various influencing factors, as confidentiality issues arise throughout the research misconduct proceedings and even after institutional processes are complete, such as when the scientific record needs to be corrected. Determining what should be kept confidential, and for how long, or whether federal regulations and policies apply only while an institution is responding to allegations of research misconduct or continue to apply after a case is closed are just some of the myriad decisions institutions face when handling research misconduct matters.

Based on the OSTP Final Policy and on agency-specific policies, it is clear that institutions are generally expected to protect the identity of complainants and respondents (and in some cases research subjects and records). However, determining when disclosure is necessary and appropriate is a complex challenge, and one which these scenarios begin to address.

## **Purpose and Intended Audience**

Interpreting and applying confidentiality standards for research misconduct regulations is complicated. Differences between public and private institutions, varying state public records laws, as well as varying levels of risk tolerance at institutions influence how these standards are applied. This document grew out of informal discussions among academic institutional representatives charged with handling research misconduct processes and was created as an educational tool. It sets forth a framework of institutional considerations regarding when and how research misconduct matters can or should be disclosed. However, it is not a set of instructions for how specific issues must be handled. The scenarios are intended to identify core confidentiality challenges and to provide guidance on potential strategies to be considered on a case-specific basis,

within the context of institutional policies, procedures, applicable regulations and state laws, and in concert with guidance from institutional counsel and leadership.

Research misconduct cases are full of sensitive issues, which must be properly evaluated and addressed. What works at one institution may not work at another and flexibility is key. Accordingly, institutions should ensure their policies are nimble enough to permit them to protect research integrity and do not prohibit the institution from taking necessary action. Additionally, institutions should develop procedures that address internal notification of those determined to have a “need to know” and how and to whom such notifications should be made. Striking a balance between flexible policy provisions and prescriptive procedures ensures that institutions are well poised to handle these taxing and complex situations.

# Disclaimer

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COGR and ARIO appreciate the contributions of all its members in raising challenges associated with research compliance and administration, and strategies for addressing these challenges, and bringing them to the attention of their colleagues across the country. We'd like to thank ARIO leadership<sup>1</sup>, members of the COGR Research Compliance & Administration (RCA) Committee, the COGR Board<sup>2</sup>, and volunteer experts in the research administration community, who all made important contributions to this document.

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<sup>1</sup> See <https://www.ariohq.org/page/BoardMembers>

<sup>2</sup> See <https://www.cogr.edu/board-and-committees>

# Notification to Collaborators, Coauthors, and Subrecipients, and Responding to Media Inquiries

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## Introduction

Given the confidentiality expected in research misconduct investigations, notifications regarding the allegations and the review process are generally restricted to those with a need to know. Collaborators and coauthors on the research in question, as well as subrecipients of the grant award, may be among those who need to be apprised of the allegations as they may need to participate in the review proceedings. Terms and conditions of grants, contracts, and other funding may require notification to the sponsor. NIH has published guidance for reporting to the NIH RIO ([NOT-19-020](#)). In addition, media inquiries may arise during the misconduct review process. In the following case study and discussion, several issues will be raised and discussed to highlight possible approaches to notification of collaborators, coauthors, and subrecipients, as well as approaches to respond to inquiries from the media.

### Key:

Professor Elm – Respondent

Larkspur University – Institution where research in question was conducted

Marigold State – Subrecipient

Professor Oak – Professor Elm’s former postdoc, now a faculty member at Tiger Lily University

## Scenario 1.A. Notification of Former Postdoc

A former post-doc, Professor Oak, in the laboratory of Professor Elm at Larkspur University completed his work in that laboratory and moved to Tiger Lily University as a new faculty member. A molecular biologist at another institution who read a recent publication authored by the Professor Oak and Professor Elm in Journal X believes that he has discovered an inconsistency in one of the figures, wherein it appears that a gel has been cut with repositioning of the channels in the figure. The research was supported by an NIH award. That molecular biologist reaches out to the RIO at Larkspur University expressing his concern about the published work. The RIO acknowledges the concern and requests that the concerned scientist respond to him in writing with the

exact concern he has with the figure. The concerned scientist does so, and the RIO at Larkspur identifies an internal scientist to conduct the inquiry phase of the research misconduct process.

During the inquiry review, the Larkspur Principal Investigator (PI), Professor Elm, acknowledges that the research was conducted and the figure prepared by his former post-doc, Professor Oak. Professor Oak is now at Tiger Lily University. Professor Elm asks the RIO what the notification process will be for notifying Professor Oak. Professor Elm indicates that data supporting the figure in question may be on Professor Oak's personal computer.

## Issues

1. Who should reach out to the former postdoc to explain the situation and prepare him for questions during the inquiry phase?
2. How can the former postdoc's computer be sequestered?

## Management Considerations

The RIO at Larkspur should consider reaching out to their counterpart at Tiger Lily to inform them that a complaint regarding research misconduct has been received at Larkspur and that a former post-doc, now faculty at Tiger Lily, is a named respondent in the review process. The Tiger Lily RIO should then determine how to engage the former post-doc. Communication between the RIOs in this type of situation is important. It may also be appropriate for the Larkspur RIO to solicit assistance from the Tiger Lily RIO in sequestering relevant research data that exists on the former post-doc's computer.

## Scenario 1.B. Notification of Collaborators and Subrecipients

In addition to the facts described above, a collaborator and co-author on the article now works with the former postdoc at Tiger Lily University. There are also subrecipients listed on the grant that funded the research.

## Issues

1. Who should notify the collaborator at Tiger Lily University? When should this notification take place?
2. Should the subrecipients be notified?

## Management Considerations

If the path forward involves an investigation that is likely to involve the contributions of the collaborator, then the RIOs should consider notifying the collaborator (with a caution to the collaborator that the matter be kept under strict confidence). If they determine that notification is appropriate they would also need to determine the appropriate time for that to occur. Collaborators and colleagues working in the affected laboratories at Larkspur and Tiger Lily, but not involved in the work reported in the *Journal X* manuscript, should not be informed of the specifics of the complaint if they inquire, but they may be told that some of the work in the respective laboratories

is under review to validate scientific integrity. They also should be assured that unless they are questioned in the review process they should assume that their work is not a focus of the review. The same process should be followed with regard to subrecipients.

Coauthors, collaborators, and subrecipients will typically have concerns related to the scientific integrity of their work and the impact of a misconduct review process on their published manuscripts, submitted grants, and careers. Concerns about the appropriate time to notify these parties will arise and the RIO must play a significant role in guiding the approach to these communications. The RIO should consider when and how to remind all persons to whom disclosures are made about confidentiality obligations under applicable regulations and institutional policies, as well as potential sanctions for violating these obligations. Additionally, the RIO may want to employ tools such as non-disclosure and confidentiality agreements.

### **Scenario 1C – Responding to Media Inquiries**

In addition to the facts described above, a reporter has learned about the research misconduct allegation and called Larkspur University for comment.

#### **Issues**

1. Does Larkspur respond to the reporter’s questions?
2. If yes, who should respond and what should be said?

#### **Management Considerations**

Inquiries from the media sometimes arise during the course of the research misconduct review process, especially if the allegation involves a high-profile publication. In anticipating such inquiries, RIOs should consider conferring with legal counsel and alerting their media relations/communications department to develop a set of “talking points.” Ideally this discussion should occur at the beginning of the research misconduct review process, but it may arise or need to be revisited at various points during the review. RIOs may want to route all media inquiries to the communications team. In most instances Universities will want to issue a statement such as “We neither confirm nor deny the existence of a research misconduct investigation,” or “We do not comment on ongoing investigations.” Should there be a persistent press inquiry the RIO should work with legal counsel and the communications team to provide a response that is careful not to divulge specific information regarding the research misconduct allegation(s).

The Larkspur RIO also may reach out to the Tiger Lily University RIO so that the institutions have an opportunity to coordinate responses to press inquiries. Keep in mind that media inquiries may come to public institutions through requests made under state public records acts. Accordingly, it is extremely important to discuss with legal counsel not only the process for responding to such requests, but also the potential impact of public records laws on the compilation and drafting of inquiry and investigation reports.



# Communicating with Journals

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## Introduction

The underlying purpose of all research misconduct proceedings is to ensure that the “research record” [42 CFR §93.224](#), including any publication reporting research findings, accurately reflects the research results. Journals and research institutions both have a role in correcting the research record in cases of research misconduct, but confidentiality considerations can impact this relationship. Accordingly, it is extremely important to review institutional policies and consult with legal counsel.

The following scenarios highlight some potential issues and management considerations for institutions to consider when communicating with journals.

## Scenario 1.A. Communicating with Journals Prior to Investigation

### Key:

Authors: Professors Oak, Pine & Cedar

Respondent: Professor Pine

Complainant: Post-doctoral student

Institution: Daffodil University

Affected Journals: Journals X and W

Stage of Proceeding: Inquiry

Pending final revisions, *Journal X* will publish a manuscript submitted by Professors Oak, Pine and Cedar. All are on the faculty of Daffodil University. Professor Pine is the corresponding author. The research being reported was supported by NIH grants.

A post-doctoral student making final edits notes that the manuscript contains a figure that appeared in a prior publication (also supported by an NIH grant) in *Journal W* by the same three authors, but which was labeled differently. Specifically, although both figures appear to be identical, they are labeled as the results of different experiments. The post-doctoral student contacts the RIO for Daffodil University to relay the concerns.

In accordance with Daffodil University’s policy on research misconduct, the RIO conducts a preliminary assessment of the allegations and determines that they meet the federal definition of research misconduct (incorporated into the university’s policy), and are sufficiently substantive, specific, and credible to warrant an inquiry. The RIO identifies the corresponding author, Professor Pine, as the respondent.

## Issues

1. Should the RIO notify *Journal X* of the decision to conduct an inquiry? *Journal W*?
2. If so, what information should the RIO provide concerning the matter?

## Management Considerations

As the manuscript cites NIH grant support, the federal Office of Research Integrity (ORI) has jurisdiction over the case. The PHS regulations are clear that the identities of the parties, to the extent possible, be limited to persons with “a need to know.” [42 C.F.R. § 93.108]. These regulatory confidentiality obligations, however, may not extend to the fact that internal proceedings are underway or the stage of those proceedings (e.g., assessment of allegations, inquiry, or investigation).

In determining appropriate actions to take, the institution should consider the impact of the potential fabrication or falsification. For instance, if the manuscript published by *Journal X* may impact clinical treatment, drug or device approval, or serious public health issues, notification to *Journal X* of the inquiry (or minimally of an internal review) may be necessary to prevent public harm or harm to research participants. In all events, institutional policies must be considered as they may impose stricter confidentiality requirements, and the RIO should consult with campus leadership, including risk management and legal counsel prior to communicating with either journal.

Under 42 CFR 93.318, the institution must notify ORI immediately of special circumstances, including if it has reason to believe that the health and safety of the public is at risk, if HHS resources or interests are threatened, if research activities should be suspended, if there is a reasonable indication of possible violations of civil or criminal law, if federal action is required to protect the interests of those involved in the research misconduct proceeding, if the institution believes that the proceeding may be made public prematurely, or if the research community or public should be informed.

In cases in which a journal contacts an institution with allegations of research misconduct, the journal also has confidentiality considerations. For example, if *Journal X* contacted the RIO about the suspect figure, the RIO might ask the journal for the name of the reviewer who noted the figure to determine if he/she was willing to be named as a complainant in the matter. ORI recognizes that although journals typically protect reviewers’ identities, reviewers may be asked to voluntarily assist in research misconduct proceedings [Office of Research Integrity, *Managing Allegations of Scientific Misconduct: A Guidance Document for Editors*, p. 8, Jan. 2000 at [https://ori.hhs.gov/images/ddblock/masm\\_2000.pdf](https://ori.hhs.gov/images/ddblock/masm_2000.pdf)].

The RIO must also determine whether to provide the journals with any information above and beyond the existence of the proceeding. One factor the RIO must consider in making this determination is the need to disclose information necessary to obtain evidence for the inquiry. For

example, if the RIO believes that *Journal X* may have evidence that is relevant to the proceedings (e.g., manuscript drafts, correspondence related to the manuscript), the RIO may need to provide *Journal X* with information regarding the nature and scope of the allegations to enable the *Journal X* to identify and produce pertinent materials.

## Scenario 1.B Communicating with Journals Subsequent to the Investigation and Restoring Reputations

### Key:

Respondents: Professors Pine, Oak and Cedar

Respondent Determined to be Culpable: Professor Oak

Affected Journals: Journals X and W

Stage of Proceeding: Post-Investigation

The inquiry committee determines that an investigation is warranted in the above scenario. Based on the evidence identified during the inquiry, Professors Oak and Cedar are added as respondents. During the conduct of the investigation, Professor Oak leaves Daffodil University and her whereabouts are unknown. At the conclusion of the investigation, the investigation committee determines that the figure in the manuscript submitted to *Journal X* and in the manuscript published in *Journal W* are both falsified. The investigation committee determines that Professor Oak was solely responsible for both falsified figures and recommends that the manuscript submitted to *Journal X* for publication be corrected and the manuscript published in *Journal W* be retracted. Daffodil University notifies ORI of the investigation outcome. ORI accepts the investigation report and is evaluating whether it will initiate federal proceedings against the respondent.

### Issues

1. Who should notify the journals?
2. If Daffodil University notifies the journals, what information should they provide?

### Management Considerations

PHS policy requires that the investigation report identify the misconduct, the person(s) responsible, and any publications requiring correction or retraction 42 CFR §93.313. The institution is responsible for carrying out sanctions and actions specified by the investigation committee. Under most institutions' research misconduct policies, the RIO is responsible for taking actions to correct the research record, and generally these actions should take place soon after the conclusion of the institutional investigation. Institutional proceedings, however, are typically concluded long before any funding agencies have completed their oversight reviews of the matter, and this fact must be considered in determining what should be disclosed regarding the

nature of the proceedings and the respondent's identity. Additionally, communications with journals to implement corrections and retractions can vary depending on factors such as what the institution's research misconduct policy says about correcting the research record, and whether the institution is private or public, as public institutions must consider whether any state open records laws govern disclosure of the investigation report.

As noted, PHS regulations do not place a prohibition on the disclosure of parties' identities, and they pertain "only to the regulatory 'research misconduct' investigation and reporting requirements mandated by the PHS Act and Federal regulations." [See, ORI, *Handling Misconduct – Inquiry Issues*, Issue 10, at <https://ori.hhs.gov/ori-responses-issues#10>.] Accordingly, an institution may disclose information about the parties or the proceedings stemming from the institution's internal proceedings, provided that such disclosure is not otherwise prohibited, e.g., disclosure does not reveal "the PHS component of the Investigation." [Id.]. Nevertheless, institutions may be particularly concerned about possible legal action by respondents when ORI (or other sponsors) have not yet completed their review.

These considerations, along with the need to adhere to sponsor and institutional confidentiality requirements, may cause institutions pursuing retractions/corrections to consider whether or not to name the respondent and may elect to advise journals only that an internal review was conducted, rather than providing specific details of the proceeding.

RIOs also should be aware that sponsors differ in their approach to disclosure of a respondent's identity *after* they have concluded their administrative actions. For example, when ORI implements final administrative actions against a researcher found to have committed research misconduct, it will publish a summary of the case on its website and the respondent's name is provided. [See, e.g., Office of Research Integrity Case Summaries at [https://ori.hhs.gov/case\\_summary](https://ori.hhs.gov/case_summary).]

The National Science Foundation (NSF), on the other hand, does not include the name of the respondent in the close-out case summaries that it posts [see, e.g., NSF Office of Inspector General Closeout Memorandum, Case A01060018 at <https://www.nsf.gov/oig/case-closeout/A01060018.pdf>].

As a possible approach to reducing risk in this area, institutions may consider including a requirement for the respondent to submit a correction or retraction request to the affected journal(s) and copy this correspondence to the institution as part of the institutional sanctions. The respondent could be directed to state the reason for the correction or retraction and acknowledge his/her responsibility. Such a requirement would likely not be appropriate in this case, however, because the respondent, Professor Oak is not at Daffodil University and cannot be located.

In pursuing retractions or corrections, it is helpful for the RIO to review each journal's requirements regarding persons authorized to request these actions. For example, the International Committee of Medical Journal Editors (ICMJE) state that "ideally, the authors of the retraction

should be the same as those of the article, but if they are unwilling or unable, the editor may under certain circumstances accept retractions by other responsible persons, or the editor may be the sole author of the retraction or expression of concern.” [ICMJE, *Scientific Misconduct, Expressions of Concern and Retractions* at <http://www.icmje.org/recommendations/browse/publishing-and-editorial-issues/scientific-misconduct-expressions-of-concern-and-retraction.html>]. If the respondent is uncooperative, or as in the case of Professor Oak, unavailable, the journals involved may accept requests for correction or retraction signed by some, but not all of the original authors. Such circumstances, of course, likely will require that the available authors requesting the correction/retraction provide some explanation to the journals. Additionally, institutions also can directly request corrections or retractions and should consider providing redacted portions of the investigation report to support the need for the correction/retraction, in consultation with legal counsel.

The ultimate wording of the correction or retraction will likely be determined by the journal. ICMJE states that the wording of the retraction should include an explanation as to why the retraction is being made, but it offers no specific guidance as to the identification of responsible parties [ICMJE, *Scientific Misconduct, Expressions of Concern and Retractions* at <http://www.icmje.org/recommendations/browse/publishing-and-editorial-issues/scientific-misconduct-expressions-of-concern-and-retraction.html>].

In all cases, legal counsel should be consulted to ensure that any disclosure regarding the nature of the proceedings and/or respondent’s identity conforms to applicable laws and institutional policy and is necessary and advisable from the institution’s perspective.

## **Restoring Reputations**

An important related consideration is the wording of the retraction or correction with respect to the institution’s obligations to take “all reasonable and practical efforts, if requested, and as appropriate,” to restore the reputations of respondents who have been found not to have committed research misconduct [42 CFR §93.304(k)]. In this respect, the wording of the retraction may be extremely important to other co-authors, particularly if those co-authors, as in the case of Professors Pine and Cedar, were named as respondents and then were found not to have committed research misconduct.

If the respondent is cooperative, the institution can work with him/her, co-authors, and the journals to develop mutually agreeable wording. If the respondent is uncooperative or unavailable, the institution should involve legal counsel to develop appropriate wording that takes into consideration the co-authors’ requests to be acknowledged as not being at fault, while considering whether or not the respondent’s identity should remain confidential. As noted above, ICMJE offers no specific guidance as to the identification of responsible parties [ICMJE, *Scientific Misconduct, Expressions of Concern and Retractions* at <http://www.icmje.org/recommendations/browse/publishing-and-editorial-issues/scientific-misconduct-expressions-of-concern-and-retraction.html>].

[editorial-issues/scientific-misconduct-expressions-of-concern-and-retraction.html](https://publicationethics.org/files/retraction%20guidelines_0.pdf)]. Guidance from the Committee on Publication Ethics (COPE) states that “[i]f retraction is due to the actions of some, but not all authors of a publication, the notice of correction/retraction should mention this,” but goes on to note that many editors may frown on this approach because all authors are responsible for the integrity of an article [COPE Retraction Guidelines at [https://publicationethics.org/files/retraction%20guidelines\\_0.pdf](https://publicationethics.org/files/retraction%20guidelines_0.pdf)]. Most journals will consult with their legal counsel on retraction wording and will ultimately decide the published language in their efforts to ensure that the research record is corrected.

# When Respondents Leave the Institution

## Introduction

Responding to allegations of research misconduct takes time. It is not uncommon for respondents to take new positions at other academic institutions or industry, or even to leave science before the research misconduct review process has been completed. In many instances, research misconduct allegations do not even arise until after researchers have left the institution where the research in question was conducted.

With the understanding that confidentiality in research misconduct proceedings must be strictly observed and the sharing of information restricted to those who “need to know,” institutions are often faced with questions about whether or not a new employer should be advised about an institutional investigation or a finding of research misconduct. Institutions and RIOs have roles in protecting research integrity, and as such, they must carefully consider the consequences of notifying or not notifying a respondent’s current employer of pending allegations of research misconduct as well as of the actual findings.

The following scenarios highlight some issues and management considerations for institutions to consider when respondents leave before, during, or after the process has been completed.

## Scenario 1A – Notification of new employer during research misconduct proceedings

### Key:

Respondent: Professor Elm

Previous Institution: Larkspur University

New Institution: Marigold State University

Professor Elm is in the Department of Microbiology and Immunology at Larkspur University and has been named the respondent in a research misconduct investigation. He allegedly falsified data in several published papers in which federal research support was acknowledged. It is alleged that falsified data was also included in the proposal upon which a funded NIH grant was based, and he is PI of that grant.

While the investigation committee is deliberating and drafting its report, Professor Elm notifies Larkspur University that he has accepted a faculty position at Marigold State.

## Issues

1. Should Larkspur University notify anyone at Marigold State that Professor Elm has been accused of research misconduct?

## Management Considerations

Larkspur University should assess whether anyone at Marigold State needs to have knowledge of the ongoing investigation into Professor Elm's research. Multiple circumstances and facts can influence this assessment and determination, including the scope of the alleged misconduct and the type of research involved, for example, whether the allegations present a potential threat to ongoing human subject research. This assessment may need to be revisited while the investigation is still ongoing as the result of any significant changes or developments.

In light of its ongoing reporting requirements to HHS ORI, Larkspur University should notify ORI when Professor Elm moves to Marigold State if the process moves to a full investigation, but can consult with ORI earlier, if needed. ORI may contact the NIH extramural RIO directly and/or the new institution with this information. Based on guidance provided in NIH Notice Number: NOT-OD-19-020 "Responsibilities of Recipient Institutions in Communicating Research Misconduct to the NIH" (<https://grants.nih.gov/grants/guide/notice-files/NOT-OD-19-020.html>) and the FAQs on Research Integrity that were issued on July 23, 2019 (see <https://grants.nih.gov/grants/faq-research-integrity.htm>), Larkspur University should determine if contacting the NIH extramural RIO directly is also appropriate.

RIOs should review their institutional research misconduct policies and, as applicable, their faculty codes of conduct and confer with legal counsel when determining whether it is appropriate to contact another institution to convey information about an ongoing investigation.

## Scenario 1B – Transfer of Grant

In addition to the facts described in Scenario 1A, Dr. Elm wants to transfer the ongoing NIH grant, which is the subject of research misconduct allegations, to Marigold State.

## Issues

1. If Larkspur University relinquishes the grant, is there an obligation to notify anyone at Marigold State that the grant is the subject of an ongoing research misconduct investigation?

## Management Considerations

In most institutions the fact that the PI has been accused of research misconduct and the existence of an ongoing investigation would not be known to those in the sponsored projects office who are typically involved in grants administration. The RIO should consider whether grants can be



relinquished without compromising the identity of the respondent or the integrity of the ongoing research misconduct process if the respondent leaves the institution before the process has been concluded. If the grant is relinquished, Larkspur University should consider notifying Marigold and NIH directly that the transferred award is currently the subject of an ongoing research misconduct investigation. Additionally, Larkspur should evaluate all of Professor Elm’s pending proposals and awards to determine if they relate to the research misconduct allegations and if they should be relinquished to Marigold State.

## **Scenario 1C - Notification of new employer after a finding of research misconduct**

As follow up to scenario 1A, Larkspur University makes a finding of research misconduct against Dr. Elm after he has transferred to Marigold State.

### **Issues**

1. Should Larkspur University notify Marigold State that Professor Elm has been found to have committed research misconduct?

### **Management Considerations**

Once Larkspur University has reached an institutional finding of research misconduct, it should consider notifying Professor Elm’s current employer as a potential institutional sanction related to the finding. If there is an institutional decision to notify Marigold State, Larkspur should consult with legal counsel to determine who is most appropriate to make the notification.

## **Scenario 2**

### **Key:**

Dr. John Willow – Respondent

Amaryllis University – Institution where research in question was conducted by Dr. Willow

Petunia University – Dr. Willow’s new institution

John Willow, Ph.D. was a postdoctoral fellow in the Chemistry lab of Professor Maple at Amaryllis University. He was supported by Professor Maple’s NIH awards. Following his transfer to the Chemistry department at Petunia University, where he has accepted a second postdoctoral position, allegations arise that he falsified data in two published papers, data that also made its way into one of Professor Maple’s NIH grant proposals. Additionally, Professor Maple claims that Dr. Willow has taken with him original research records that relate to the figures that were allegedly falsified in the published papers. Dr. Willow refuses to cooperate with the research misconduct process or return the research records.

## Issues

1. Should Amaryllis University notify anyone at Petunia University that Dr. Willow has been accused of research misconduct?
2. Should Amaryllis University request assistance from Petunia University to get Dr. Willow's cooperation with the research misconduct proceedings or the return of research records?

## Management Considerations

When a respondent has left and does not cooperate with the institutional research misconduct process, RIOs should consider contacting their counterpart at the respondent's new institution to obtain assistance. The RIO at Petunia University could potentially provide assistance in identifying the correct individuals at the institution to encourage Dr. Willow to cooperate with the process at Amaryllis University. For example, the school dean or Dr. Willow's department chair could identify any relevant Petunia policies that may provide support for Dr. Willow's cooperation, including the production of the records in question. The Petunia RIO should share the information only on a need-to-know basis to help preserve the confidentiality of the respondent and the process.

RIOs should review their institutional research misconduct policies and, as applicable, their faculty codes of conduct and confer with legal counsel when determining whether it is appropriate to contact another institution's RIO to convey information about an ongoing investigation or to request assistance.