

# NIH GUIDE

# for GRANTS and CONTRACTS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Vol. 5, No. 7, June 10, 1976

FREEDOM OF INFORMATION ACT OF  
1974 (P.L. 93-502)

**NOTICE**

In light of the decision of the United States Court of Appeals for the District of Columbia in the case of Washington Research Project, Inc. v. DHEW, 504, F.2d 238 (1974), Dr. Theodore Cooper, Assistant Secretary for Health, DHEW, has issued the following statement with respect to requests for access to funded grant applications and continuation, renewal, and supplemental applications (whether funded or not):



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20201

May 10, 1976

## TO PRINCIPAL INVESTIGATORS AND OFFICIALS OF GRANTEE INSTITUTIONS

As you may be aware, the United States Court of Appeals for the District of Columbia has held that the Public Health Service must make available upon request copies of research and research training grant applications and progress reports for projects which have received funding from the Public Health Service. Washington Research Project, Inc. v. DHEW, 504 F.2d 238 (1974). However, the Office of the General Counsel, DHEW, has interpreted the court's decision to permit withholding, as confidential financial or commercial information, any portions of applications and reports which reveal inventions as well as other similar valuable materials (e.g., copyrights) where such disclosures would have adverse effects upon future rights. This interpretation is embodied in an amendment to the Department's Public Information Regulation which was published in the Federal Register on May 1, 1975 (40 F.R.18997).

*The GUIDE is published at irregular intervals to provide policy and administrative information to individuals and organizations who need to be kept informed of requirements and changes in grants and contracts activities administered by the National Institutes of Health.*

*Supplements, printed on yellow paper, are published by the respective awarding units concerning new projects, solicitations of sources, and requests for proposals.*

Since the Washington Research Project decision we have received requests for several hundred grant applications and reports. In each instance we have made careful effort to ascertain if the requested documents contained inventive or copyrightable material, the rights to which might be adversely affected by disclosure. Unfortunately, our procedures for such determinations have resulted in occasional excessive delays in responding, particularly in instances when a single request involved a number of applications.

The Freedom of Information Act amendments of 1974 (P.L.93-502) have imposed very tight time limits on government agencies in their response to requests for documents and records. If an agency does not make a definitive determination as to a request and communicate it to the requestor within ten (10) working days after the request is received, the requestor can deem this non-action as a denial and bring suit.

It is obvious that we must protect your future rights and at the same time comply with the Freedom of Information Act. To accomplish these ends we need your active cooperation.

Henceforth, when the Public Health Service receives a request for access to a funded grant application or progress reports on a funded project, a PHS Agency official whose office administers

the grant will immediately contact the principal investigator and the responsible official at the grantee institution by telephone or telegram. These will be asked to advise the Agency whether any material contained in the requested application or report reveals any material, the disclosure of which might adversely affect future rights. In doing so it will be necessary for the grantee to identify precisely what portions of the application or report disclose the matter in question.

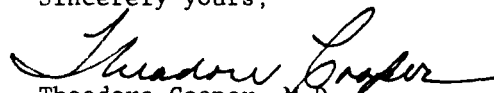
In instances where we are informed that patentable material is present, the records will be reviewed by the HEW Patent Counsel and, if the Department determines that portions of the records sought are exempt because disclosure thereof would adversely affect future patent rights, we shall, as in the past, excise such material from the records before they are provided to the requestor.

If there is a reasonable expectation that certain portions may be copyrighted, this in itself will not preclude release; rather, we shall release the material with an appropriate notice to the requestor. (For example: "While the National Institutes of Health is providing you with this copy, the originator of the material has retained his or her copyright, and you should obtain permission from the originator before making further duplication.")

In the event we are advised by the grantee institution that no invention subject to possible future patent or material on which a copyright is sought is contained in the application or report or if no response is received by the PHS Agency official within 72 hours (excepting weekends and holidays) after notifying the grantee institution of the request, it will be assumed that no patentable or other excludable material is contained in the requested records, and they will be released subject only to such deletions (e.g., detailed budgets showing individual salaries) as may otherwise be authorized under the Act.

We regret that we must impose such a stringent time limit on your response to such inquiries. In view of the tight time limits which Congress has imposed upon government agencies, we see no feasible alternative in protecting your rights and answering requests in a timely manner.

Sincerely yours,

  
Theodore Cooper, M.D.  
Assistant Secretary for Health