WISCONSIN ALUMNI RESEARCH FOUNDATION

August 15, 1980

Mr. Milton Goldberg
Assistant Executive Director
Council on Government Relations
Eleven Dupont Circle, Suite 480
Washington, D.C. 20036

Dear Milt:

      (1)   Re FOIA Treatment of Data and Contract Proposals,
             July 14, 1980, Federal Register Notice

      (2)   Re DOE Proposed Rules on Patent Licensing Regulations,
             July 22, 1980, Federal Register Notice

With regard to subject (1) above I may appear to be getting a bit paranoid but I read the proposed rules changes as flowing from the recent Chrysler FOIA suit and perhaps as responsive to an increasing use of a restricted legend on material sent to DHSS. (The latter thought occurs because of the earlier suggestion to universities through COGR to use restrictive legends.)

Since the restrictive legend as applied to a research protocol or hypothesis submitted for funding is important because sufficient basis for intellectual property protection may not be available at the time such a proposal is submitted or funded, sole discretion in the agency to ignore the legend without prior notification to the proposer would appear to be a real dis-advantage. At the very least the proposer should be timely notified of any determination to ignore a restrictive legend so that he can pursue his options to maintain secrecy.

In summary, I read the proposed FOIA rule change as a means of getting the agency "off the hook" in the event the information is released, including the avoidance of the potential criminal penalties now in existence. This kind of action by an agency emphasizes the need for legislative changes in the FOIA.

With regard to subject (2) above it appears that the proposed rules apply to only those patents in which title has vested in the government and that COGR would have little basis for comment.

Very truly yours,

Howard W. Bremer
Patent Counsel

HWB:rw

cc--COGR Patent Subcommittee