



OFFICE OF THE PRESIDENT

1700 Van Hise Hall
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May 30, 1975

THIS LETTER WAS SENT TO THE WISCONSIN CONGRESSIONAL DELEGATION; ALSO TO SENATOR EDWARD M. KENNEDY, AND CONGRESSMEN JOHN E. MOSS (CAL.), DON FUQUA, (FLA.), AND PAUL G. ROGERS (FLA.)

The Freedom of Information Act (5 U.S.C. 552), as interpreted in the Washington Research Project, Inc. v. Department of Health, Education and Welfare Case, requires that research proposals forwarded by university researchers to government agencies be made available to the public. The Court ruled that exemption number four, U.S.C. 552 (b) (4), does not exempt research proposals and interim progress reports received from non-commercial scientists from public disclosure.

H.E.W.'s current regulations, exempting unfunded research proposals and other proposals and interim progress reports containing "patent or other valuable commercial rights" from public disclosure, are currently being tested in the courts. Thus, it is possible, depending upon the Court's decision, that no exemptions under the Freedom of Information Act would be available to non-commercial scientists.

We believe openness generally serves the public interest. (However, other matters of great importance must also be considered in the question of what information in the hands of the Government should be made available to the public.)

1. Research proposals may purposefully or inadvertently include disclosures of inventions which are patentable. If such proposals are available to the public, then most foreign patent rights are barred upon submission of the proposal, and domestic rights are lost unless a patent application is filed within one year. The invention will most often be an idea or hypothesis requiring experimental work for proof. Thus, even though the desirability of patenting is unknown, the time period in which patenting is possible begins upon disclosing the invention to the public. It is unthinkable that the Freedom of Information Act should be used to seriously jeopardize the university community's involvement in the patent system. The Act must be amended or interpreted to fulfill its basic purpose without interfering with the incentives to inventiveness and the development of inventions inherent in our patent system.
2. At the present time, most federal support of research comes to colleges and universities as a result of the peer review system. This system relies on the principle that the research plans, contained in a proposal for research support, will be used only for the purpose of evaluating the proposal to see if it is worthy of

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funding. The same confidentiality applies to any untested hypothesis and ideas described in the proposals. If the courts remove all exemptions currently available to non-commercial scientists under the Freedom of Information Act, the peer review system, as we know it today, will be discontinued. We believe the peer review system is working well, is generally acceptable to the research community, and assures that limited resources will be used to support sound and innovative research projects.

3. A third and more remote problem accompanies unrestricted disclosure of research proposals, that is, the expansion of the possibility that research ideas will be stolen by researchers not bound by the peer review system. The thought of this possibility is repugnant. A research scientist's primary "stock in trade" is research ideas and the ability to carry out the research. It is not far fetched to liken such research ideas to personal property which is protected under our Constitution. To the extent the ideas are patentable inventions, they are judged to be personal property with rights spelled out in our patent laws. Our zeal to assure openness in governmental undertakings and protect the rights of human subjects used in research programs must not blind us to the need to continue our traditional concern for personal property rights.
4. At the present time, the United States receives substantial royalty income from foreign countries. A policy of full disclosure to the public of research ideas would make much of this country's research product available to foreign countries without compensation. Thus, our national interests are also involved in this complex matter.

I respectfully urge you to take whatever steps are necessary to address the problems which I have attempted to define. Because of the several possible approaches which may be taken to solve this problem, I am reluctant to recommend one over the others. Of course I will provide additional information as necessary and be available to further support our position as you may request.

Sincerely,

JOHN C. WEAVER
President