

Congress of the United States
Committee on Government Operations
House of Representatives

February 2, 1981

Mr. Carl Wootten
Office of Patent Administration
Duke University
614 Chapel Drive Annex
Durham, North Carolina 27706

Dear Carl:

Enclosed you will find a copy of a revised draft of the research proposal confidentiality bill. I have incorporated some of your changes as well as a few additional ideas. None of the alterations is major.

I want to explain why I did not include your suggested change in section 4(a). You recommended that the subsection be limited to unfunded proposals. Under the design of the bill, section 4(a) establishes minimum disclosure rules for all proposals, funded or not. Section 4(b) provides additional rules for funded proposals. Section 4(b) does not establish a comprehensive scheme for funded proposals because it lacks the minimum disclosure provision, the emergency disclosure provision, and the consent exception.

At this stage, I am pleased to turn the bill over to you for whatever use you care to make of it. If you disagree with any of my substantive or stylistic judgments, please feel free to make further changes. I will be glad to continue to consult with you over the text of the bill or the strategy for congressional consideration.

I must emphasize again that this draft is not and cannot be represented as a subcommittee product. From this point on, it should be treated as your product exclusively.

Please keep me informed of further proceedings on this issue.

Cordially,

Bob

Robert Gellman
Associate Counsel
Subcommittee on Government Information
and Individual Rights

RG:cbs
Enclosure

*XC: { L. KNIGHT
MILT GOLBERG
COGR PATENT SUBCOMM. } w/ENCL.
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A BILL

To protect the confidentiality of scientific research proposals and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. This Act may be cited as the "Research Proposal Confidentiality Act".

DEFINITIONS

SEC. 2. For purposes of this Act:

(1) The term "agency" means a federal agency as defined for purposes of section 552 of title 5, United States Code.

(2) The term "research proposal" means --

(A) a protocol, design, description, outline, or plan of a scientific study, project, or experiment that has been submitted to an agency for

(I) financial support, whether or not the proposal has been approved for support, or

(II) approval, whether or not the proposal has been approved; or

(B) a portion of the research proposal.

(3) The term "funded research proposal" means a research proposal that has specifically approved by an agency for financial support, in whole or in part, with agency funds.

(4) The term "researcher" means any person (other than an agency employee) who has submitted a research proposal to an agency and who is seeking from that agency (A) a grant, contract, fellowship, award, or other financial support to carry out the proposal, or (B) approval for the proposal.

CONFIDENTIALITY

SEC. 3. (a) Each agency that receives research proposals shall promulgate regulations, pursuant to notice and receipt of public comments, specifying procedures by which a researcher may designate a research proposal as confidential at the time of submission of the proposal.

(b) A researcher who submits a research proposal to an agency may at the time of submission designate the proposal as confidential if --

(1) the information so designated is information described in section 552(b) (4) of title 5, United States Code; or

(2) the information would qualify under paragraph (1) but for the non-profit or non-commercial status of the researcher or the researcher's employer.

DISCLOSURE

SEC. 4. (a) Except as otherwise provided in subsection (b), a research proposal shall not be publicly disclosed by an agency unless--

(1) (A) the information disclosed is limited to--

(I) the name and affiliation of the researcher;

(II) a general description of the proposal;

(III) the amount of funding sought;

(IV) the program under which funding sought; and

(V) the duration of the research being proposed; and

(B) the disclosure is not otherwise prohibited by law;

(2) (A) the head of the agency has determined that the disclosure is necessary to protect the public health or safety against an unreasonable risk of injury, and

(B) the procedures of section 5 have been followed; or

(3) the researcher has consented to the disclosure.

(b) A funded research proposal shall be publicly disclosed by an agency upon request in accordance with applicable law unless--

(1) the disclosure is otherwise prohibited by law, or

(2) (A) the proposal was designated as confidential by the researcher at the time of submission to the agency;

(B) the head of the agency has determined that the proposal is confidential under the provisions of section 3(b) of this Act, and

(C) the procedures of section 5 have been followed.

(c) In making the disclosures under subsection (b), any reasonably segregable portion of a proposal shall be provided to any person requesting the proposal after deletion of the portions which are exempt from disclosure.

(d) Nothing in this section shall be construed to prohibit an agency from disclosing a research proposal to a person or other agency in connection with official agency business.

(e) Nothing in this Act shall be construed to authorize the withholding of research proposals from the Congress or from any Committee of the Congress of appropriate jurisdiction.

PROCEDURE

SEC. 5. (a) At least ten working days prior to making a final determination concerning the disclosure under section 4(a)(2) or (b)(2) of a research proposal, an agency shall notify the researcher that disclosure of the proposal is being considered and shall permit the researcher to submit to the agency written arguments regarding those portions of the proposal that may be exempt from disclosure.

(b) The requirement under subsection (a) for notice shall not apply if--

(1) the agency determines, prior to giving notice, that the request for disclosure should be denied;

(2) the disclosure is pursuant to a law that requires disclosure of the research proposal; or

(3) the information is already public.

(c) Immediately after making a final determination in accordance with section 4(a)(2) or (b)(2) to disclose a research proposal, an agency shall notify the researcher of the determination and shall not actually disclose the proposal for ten working days after notice of the determination has been received by the researcher.

(d) An agency that has determined to disclose a research proposal under section 4(a)(2) (relating to disclosures necessary to protect the public health or safety) may, notwithstanding the notice requirements of subsections (a) and (c), disclose the proposal without prior notice to the researcher if the head of the agency separately determines that any delay resulting from the notice would be detrimental to the public health or safety.

(e) If a disclosure is made under subsection(d), notice of the disclosure shall be communicated to the researcher as soon as practicable after the disclosure is made.

EFFECTIVE DATE

SEC. 6. This Act shall take effect on the first day of the first calendar quarter beginning more than one hundred and eighty days after the date of enactment of this Act.