Managing Public Access to Results of Federally Funded Research Policy

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I. PURPOSE

Pursuant to the Office of Science and Technology Policy (OSTP) Memorandum for the Heads of Executive Departments and Agencies of February 22, 2013, *Increasing Access to the Results of Federally Funded Scientific Research*[1], Executive Order of May 9, 2013, *Making Open and Machine Readable the New Default for Government Information*[2], and the Office of Management and Budget (OMB) Memorandum for the Heads of Executive Departments and Agencies of May 9, 2013, *Open Data Policy – Managing Information as an Asset*[3], this directive establishes a governing policy for managing data and providing public access to results of federally funded research, i.e., scientific research results, including data and NIST's scholarly and technical publications, in all media.

II. SCOPE

This policy applies to[4]:

1. Research data[5]means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples).

   Research data also does not include:

[1] http://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf
[2] http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government
[3] http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf
[4] This policy applies to all NIST employees, including full- and part-time employees, temporary government employees, and special government employees, and to associates engaged in research activities at or for NIST, to the extent allowed by law and the terms of the Associate's agreement. A non-NIST organization that publishes scholarly and technical material, including data, through activities funded wholly or in part by NIST through a grant, cooperative agreement, contract, or other agreement, must manage public access to published scholarly and technical material, including data, as specified by NIST in the terms and conditions of the grant, cooperative agreement, contract, or other agreement between NIST and the non-NIST organization.
[5] For purposes of this policy, NIST is adopting the definition of "research data" provided in 2 C.F.R. §200.315 (e)(3). http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-315.pdf

Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.[6]

2. Published scholarly and technical material, which may include data.

III. LEGAL AUTHORITIES AND REFERENCES

1. Legal Authority. Executive Office of the President, Executive Order, *Making Open and Machine Readable the New Default for Government Information*, 9 May 2013.

2. References

a. 5 U.S.C. § 552, *Freedom of Information Act*

b. 15 U.S.C. 271 *et seq.*, *National Institute of Standards and Technology Act*

c. 17 U.S.C. 105, *Subject matter of copyright: United States Government works*

d. 15 U.S.C. §§ 290-290f, *Standard Reference Data Act*

e. 44 U.S.C. § 3501 *et seq.*, *Paperwork Reduction Act of 1995*

f. Public Law 107-347, *E-Government Act of 2002, § 207.*

g. Public Law 111-358, *America COMPETES Reauthorization Act of 2010, § 103.*

h. 5 CFR Part 1320, *Controlling Paperwork Burdens on the Public*

i. 15 CFR Part 4, Subpart A, *Freedom of Information Act*

j. Executive Office of the President, OMB, Memorandum for the Heads of Executive Departments and Agencies (MHEDA), *Open Data Policy – Managing Information as an Asset*, M-13-13, 9 May 2013.

k. Executive Office of the President, OSTP, MHEDA, *Increasing Access to the Results of Federally Funded Scientific Research*, 22 February 2013.

l. Executive Office of the President, OMB, MHEDA, *Open Government Directive*, M-10-06, 8 December 2009.

m. Executive Office of the President, MHEDA, *Transparency and Open Government*, 74 FR 4685, 21 January 2009.

[6] To the extent this information is used in research, for example, electronic health records, the policy applies, but such information may only be made publicly available consistent with applicable laws, regulations and policies. NIST employees must consult with the NIST Human Subjects Protections Office and the Office of the Chief Counsel for NIST before making such information public.

n. OMB, Circular A-130, *Management of Federal Information Resources*, 28 November 2000.

IV. POLICY

To the extent feasible and consistent with law, agency mission, resource constraints, and U.S. national, homeland, and economic security, NIST will promote the deposit of scientific data arising from unclassified research and programs, funded wholly or in part by NIST, except for Standard Reference Data, [7] free of charge in publicly accessible databases. Subject to the same conditions and constraints listed above, NIST also intends to make freely available to the public, in publicly accessible repositories, all peer-reviewed scholarly publications arising from unclassified research and programs funded wholly or in part by NIST.

The NIST Associate Director for Laboratory Programs is responsible for ensuring that requirements, processes, and procedures are developed, implemented, and maintained to ensure that NIST makes this information available to the public. The NIST Associate Director for Laboratory Programs may delegate this authority.

Willie E. May
NIST Director

6/26/15
Date

[7] NIST has explicit authority to license Standard Reference Data. *See* 15 U.S.C. §§ 290-290f, Standard Reference Data Act