LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

April 25, 2013

Dr. Cora B. Marrett
Acting Director
National Science Foundation
4201 Wilson Blvd
Arlington, VA 22230

Dear Dr. Marrett,

Last week, the House Science, Space, and Technology Committee held a hearing to review the President's budget request for science agencies for fiscal year 2014, which you attended. Testifying at the hearing was Dr. John Holdren, Director of the Office of Science and Technology Policy. During the course of the hearing, I asked Dr. Holdren about taxpayer funding for social, behavioral and political science studies at the National Science Foundation (NSF), and how we can better prioritize research spending. During that discussion, Dr. Holdren said that there is "room for improvement" in how NSF prioritizes research initiatives based on the potential value to the national interest.

Based on my review of NSF-funded studies, I have concerns regarding some grants approved by the Foundation and how closely they adhere to NSF's "intellectual merit" guideline. To better understand how NSF makes decisions to approve and fund grants, it would be helpful to obtain detailed information on specific research projects awarded NSF grants.

According to NSF procurement guidelines, the Foundation first conducts a scientific/technical review of each grant proposal and then the NSF Program Officer writes an evaluation about whether or not to fund a given proposal. Members of the Committee would benefit from access to the scientific/technical reviews and the Program Officers Review Analysis for the following research projects that have been awarded NSF funding:

1. Award Abstract #1247824: "*Picturing Animals in National Geographic, 1888-2008*," March 15, 2013, ($227,437);

2. Award Abstract #1230911: "*Comparative Histories of Scientific Conservation: Nature, Science, and Society in Patagonian and Amazonian South America,*" September 1, 2012 ($195,761);

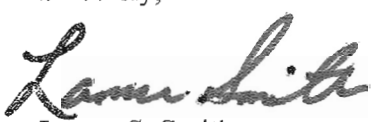
3. Award Abstract #1230365: "*The International Criminal Court and the Pursuit of Justice*," August 15, 2012 ($260,001);

4. Award Abstract #1226483, "*Comparative Network Analysis: Mapping Global Social Interactions*," August 15, 2012, ($435,000); and

5. Award Abstract #1157551: "*Regulating Accountability and Transparency in China's Dairy Industry,*" June 1, 2012 ($152,464).

These are a few examples of recent NSF-funded studies of interest to Members of the Committee. I would appreciate it if you could provide the information I seek within two weeks of receipt of this letter. If you have any questions, please feel free to have your staff contact Raj Bharwani or Richard Yamada at (202) 225-6371.

Sincerely,



Lamar S. Smith
Chairman
Committee on Science, Space,
and Technology

cc:

Rep. Eddie Bernice Johnson
Ranking Member
Committee on Science, Space,
and Technology

LAMAR S. SMITH, Texas
CHAIRMAN

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April 26, 2013

Hon. Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
2321 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman,

Your letter of April 25 to the Acting Director of the National Science Foundation (NSF), Dr. Cora Marrett, has provoked me to write to you.

At our hearing on April 17, both Dr. Marrett and the Chairman of the National Science Board (NSB), Dr. Dan Arvizu, offered to engage with the Committee in a meaningful discussion of the mission of NSF and how the agency's merit review process can best be constructed to support that mission. Rather than entering into that dialogue, your letter marks the beginning of an investigative effort, the implications of which are profound. This is the first step on a path that would destroy the merit-based review process at NSF and intrudes political pressure into what is widely viewed as the most effective and creative process for awarding research funds in the world. It is this process that has supported the growth of the American research university system and it is this process that has established the American research enterprise as the most innovative of our age.

No system constructed of, for, and by humans is infallible. But for decades the world has held the NSF's peer review process as the gold standard for how scientific proposals should be judged and funded. This applies equally to all fields of science, including the social and behavioral sciences. In this context, the term "peer" is not simply a fellow citizen as we encounter on a courtroom jury. It means very specifically another scientist with expertise in at least some aspect of the science being proposed. Politicians, even a distinguished Chairman of the Committee on Science, Space, and Technology, cannot be "peers" in any meaningful sense.

In your letter, you say that "based on my review of NSF-funded studies, I have concerns regarding some grants approved by the Foundation." Based on your personal assessment you then ask NSF to provide to the Committee the technical reviews and program officer evaluations for five specific grants, all of them in the social and behavioral sciences. In

the history of this Committee, no Chairman has ever put themselves forward as an expert in the science that underlies specific grant proposals funded by NSF. In the more than two decades of Committee leadership that I have worked with—Chairmen Brown, Walker, Sensenbrenner, Boehlert, Gordon, and Hall—I have never seen a Chairman decide to go after specific grants simply because the Chairman does not believe them to be of high value.

Interventions in grant awards by political figures with agendas, biases, and no expertise is the antithesis of the peer review processes. By making this request, you are sending a chilling message to the entire scientific community that peer review may always be trumped by political review. You also threaten to compromise the anonymity that is crucial to the frank and open exchange of comments and critiques during the review process, and in doing so, further compromise the integrity of the merit review process. How can future participants in the peer review process have confidence that their work will remain confidential when the Chairman of the Science, Space, and Technology Committee has shown that probing specific awards absent any allegation of wrong-doing may become the way business is done?

Like you, I recognize that NSF grants come from taxpayer dollars, and as such, that recipients of those grants have a responsibility back to the taxpayers. But I also believe that: 1) the progress of science itself – across all fields, including the social and behavioral sciences – is in the interest of the taxpayer; and 2) that NSF's Broader Impact criterion is the right way to hold the *individual grantee* accountable. As part of the *COMPETES Reauthorization Act of 2010*, out of concern that some NSF-funded scientists did not take this responsibility seriously enough, this Committee enacted a requirement for NSF to clarify and strengthen the Broader Impacts criterion. In response, NSB took up a review of both the intellectual and broader impacts criteria and after extensive community input and debate, updated their guidance to the Director of NSF.

In turn, the Director implemented new policy guidance to the grantee community and merit-review panels only this past January. I encourage you to let this new policy take hold and then return to this area in a year or two with an appropriate oversight effort. Instead, through your document request, coupled with your "High Quality Research Act" proposal, you are taking steps that could erode NSF's 60-year old peer review process at the same time that your legislative proposal would undermine NSF's core mission as a basic research agency. I am sure this is not your intention, but intentions do not always predict outcomes and the path you are leading the Committee onto is very dangerous.

In 1950, Congress established the National Science Foundation "to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense…" The intent, however, was never that every single grant funded by NSF would meet all of these criteria, but that in the aggregate, the taxpayers' investments in NSF over time would achieve all of them. And they have, in spades.

The moment you compromise both the merit review process and the basic research mission of NSF is the moment you undo everything that has enabled NSF to contribute so profoundly to our national health, prosperity, and welfare. An unavoidable consequence

would also be a fundamental attack on our universities as bastions of inquiry and discovery.

I cannot stand by silently as you continue this political intrusion into one of our Nation's and indeed, one of the world's most important scientific organizations. I ask that you withdraw your letter to Dr. Marrett. I stand ready to work with you to identify a less destructive, but more effective, effort to hold NSF accountable to the requirements laid out in law.

Sincerely,

Eddie Bernice Johnson

EDDIE BERNICE JOHNSON
Ranking Member
Committee on Science, Space, & Technology

Cc: Dr. Cora Marrett
Acting Director, National Science Foundation

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
DIRECTOR

May 9, 2013

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith:

Thank you very much for your letter dated April 25, 2013, regarding the National Science Foundation's merit review process.

The National Science Board (NSB) has requested an opportunity to consider this matter, given the strong interest of the Members in the Foundation's merit review process. As indicated in the enclosed letter to me from NSB Chairman Dan Arvizu, the Board plans to discuss your request during its meeting this week. Given the important role the NSB has in the Foundation's activities, I have decided to honor their request, which would necessitate a delay in our response to you.

Following the NSB's discussion, we plan to respond formally to your letter by May 16.

Thank you for your understanding. I would be happy to discuss this further with you if you have any questions.

Sincerely,

Cora B. Marrett

Cora B. Marrett
Acting Director

Enclosure

National Science Board

May 7, 2013

Dr. Cora Marrett
Acting Director
National Science Foundation
4201 Wilson Boulevard Suite 1205
Arlington, VA 22230

Dear Cora,

Thank you for sharing Chairman Smith's letter with me. As you know, the Board has a long standing interest in maintaining a robust NSF merit review system and in ensuring that all of the grants NSF awards are of the highest quality. As the governing body for the Foundation, I believe it is important that the Board have an opportunity to discuss this letter at our May meeting, which is scheduled for May 9th and 10th. I understand that Congress has requested a response by May 9, 2013, but the Board has devoted time for this discussion on Friday, May 10. It is my hope that you could delay your formal response to the Committee until after the Board has been able to discuss this important topic.

Sincerely,

Dan E. Arvizu
Chairman
National Science Board

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
DIRECTOR

May 15, 2013

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith:

Thank you very much for your letter dated April 25, 2013, requesting information on several National Science Foundation (NSF) awards. We truly appreciate the Committee's interest in furthering its understanding of NSF's grant making process.

By way of background, all NSF proposals are evaluated against two criteria: Intellectual Merit (the potential to advance knowledge); and Broader Impacts (the potential to benefit society and contribute to the achievement of specific, desired societal outcomes). These criteria are reviewed periodically, with the latest review by the National Science Board (NSB) released in January 2012. The NSB is NSF's policy setting body and is comprised of some of the Nation's leading scientists and engineers from academia and industry. After a year-long study, the NSB concluded that the two criteria underlying NSF's merit review process have served the Foundation well and should be retained. In its review, the NSB did recommend greater clarity for the Broader Impacts criterion, which is addressed in the October 2012 update of NSF's Proposal and Award Policies and Procedures Guide.

All proposals submitted to the Foundation are assigned to a specific program (and thus Program Officer) to manage the review. NSF's policies on merit review dictate that decisions to recommend funding for each award are informed by substantial input from a number of reviewers who are external subject matter experts. In addition to external ad hoc reviews, proposals may be reviewed by at least one panel of external experts.

Once the external review process is complete, the cognizant NSF Program Officers – who are themselves experts in the fields under their purview – synthesize all of the input from the reviewers and the panels. They use this input to develop funding recommendations based on both the external reviews and the Program Officer's assessment of the proposal against NSF's merit review criteria, as well as consideration of the larger context of the existing award portfolio. Program Officers then prepare a Review Analysis containing their summary of the reviews and panel assessments of the key strengths and weaknesses of each proposal with respect to the two review criteria, which form the basis of their final recommendation. The Program Officers'

recommendations are reviewed by their Division Directors, both to ensure that the review process adhered to NSF policy and to ensure that the Program Officers' recommendations were sound and appropriately justified.

NSF expressly followed this process in its review of the five proposals referenced in your letter.

Key to the success of this merit review process in regard to these and indeed all of our proposals is NSF's policy requiring the strictest confidentiality. NSF protects the identity of its reviewers in connection with a specific proposal. In addition, the Privacy Act protects the review analysis concerning the Principal Investigator and his or her proposal. The scientific and engineering community appreciates, relies on and is expressly promised this level of confidentiality as it enables candid reviews, thus ensuring the quality and integrity of the process.

Mr. Chairman, given the overarching confidentiality and privacy concerns associated with your request, and the potentially harmful effects such a disclosure may have on our reviewer community and our merit review system, I hope that there might be another way to help the Committee understand how NSF makes decisions to approve and fund grants short of the approach outlined in your letter. For example, I would be pleased to arrange a briefing for the Committee on the robust nature of our processes and accountability of the merit review system and provide general information on the grants in question, in order to assist this effort.

In closing, NSF, in strong partnership with the legislative branch and the nation's scientific community, has created arguably the world's most successful merit-based model for allocating funding for fundamental research. The results of this research have expanded the frontiers of knowledge and yielded significant returns to the U.S. economy and society. I look forward to continuing to work with you to help keep America at the forefront of science and engineering.

Sincerely,

Cora B. Marrett

Cora B. Marrett
Acting Director

cc: The Honorable Eddie Bernice Johnson, Ranking Member

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

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February 4, 2014

Dr. Dan Arvizu
Chairman
The National Science Board
4201 Wilson Boulevard
Arlington, Virginia 22230, USA

Dear Dan,

With the National Science Board scheduled to meet at the end of this month, I thought it would be useful to review issues we discussed at the Board's November meeting. In particular, I want to convey my growing concerns about the slow pace and dilution of the National Science Foundation's (NSF) commitment to greater transparency and public accountability.

When Dr. Marrett, Congressman Bucshon, you and I met in my office on September 30, 2013, Dr. Marrett presented a plan to bring about greater transparency and accountability. Accompanying the charts that depicted new procedures and new lines of organizational responsibility was a written commitment:

> *"NSF will strengthen its alignment of individual investment decisions with the national interest at all levels of the Foundation through new management reviews, clarified roles and responsibilities, training, and improved communications. NSF will begin developing plans for these actions immediately..."*

The plan presented at our September meeting outlined that NSF program officers and their supervisors would be responsible for explaining, in writing, how each newly approved grant was intellectually and scientifically meritorious, and how each would further the national interest. I believe strongly in the importance of a national interest standard for NSF funds. National interest was cited in NSF's original mission statement and I feel the focus on national interest must be renewed.

At the end of our September meeting, I pointed out it would be critical for NSF to move forward with all due speed and with particular attention to clear, consistent communications with its internal and external stakeholders, including Congress. Unfortunately, this has not been the case.

I shared some general and specific concerns with you and the Board this past November. When I spoke to the presidents and chancellors of our major research universities, it was surprising that none of

them knew about an NSF plan to increase transparency and accountability. The lack of NSF communication with key stakeholders has continued to be problematic.

To my knowledge, NSF has issued three official communications so far: an initial internal memo (dated November 19, 2013), and an external memo (dated December 11, 2013) and a subsequent internal memo (dated January 14, 2014). My committee staff and the minority committee staff have each been briefed once (recently) by NSF staff, and neither majority nor minority committee staff in the Senate has been informed. This isn't clear and consistent communication.

Also worrisome is that the January 14, 2014, NSF memorandum alluded to above suggests that individual NSF directorates will be permitted to decide what level of transparency and accountability is appropriate in the future. I don't need to point out to you that that directorate-by-directorate transparency and accountability policies would create even more confusion and diminish confidence about NSF actions.

At the recent briefing they received from NSF staff, my committee staff heard two points: (1) NSF staff will continue to deliberate – slowly -- about increasing transparency and accountability, with a goal of developing recommendations and reaching internal consensus within six months; and (2) NSF remains opposed to legislation that would require increased transparency and public accountability.

I don't think this is what we discussed in my office at the end of last September, and this also doesn't seem to reflect the direction that we talked about at the Board's November meeting. The Science Committee will be moving forward with NSF reauthorizing legislation in coming weeks. But we would reach our goals faster and more completely if our Committee, the Board, and the Foundation leadership would work together on the goal.

I want to thank you and the Board again for the opportunity to exchange views at your November meeting. There seemed to be general agreement about the importance of increased NSF transparency and accountability for its grant-making procedures and decisions. With the Board's support, I still believe we can get back on track and implement a national interest standard.

Sincerely,

Lamar

Lamar Smith
Chairman

National Science Board

March 9, 2014

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
House of Representatives
Washington, DC 20515

Dear Chairman Smith:

Thank you for your letter of February 4th detailing your concerns with the pace of the National Science Foundation's transparency and accountability improvements. This was a topic of vigorous discussion at our recently concluded Board meeting.

The Board and Director strongly agree with you that the agency's accountability and transparency processes deserve regular review for improvement. Over the past several months, the Director has been working to strengthen the alignment of individual research investment decisions to the national interest at all stages of the merit review process. This includes clarifying the roles and responsibilities of program officers and division directors, adding responsibilities for the heads of Directorates, and deploying a position within the Office of the Director to oversee and ensure continued focus on these activities. In addition, the Board recognizes its responsibility to help ensure the success of this effort.

The Director has taken significant measures to explain NSF's transparency and accountability improvement program to the scientific community through written notice and in-person outreach, making clear that the intent is improved alignment with the Foundation's role in advancing the national interest. As the next step, the Board will soon receive a draft plan from the Director that clearly articulates intended goals, timelines for outcomes, interim deliverables and other measures of progress on the initiative. We also understand this plan will be shared with all NSF staff in the coming weeks. Progress and outcomes will be reported publicly at future Board meetings.

NSF's historical record shows that, by combining the best ideas of the scientific community and rigorous merit review in pursuit of its mission to "*promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes,*" the Foundation has achieved great outcomes envied around the world. That said, the Board and Director also agree that enhanced transparency and accountability for our grant-making procedures and decisions will improve the agency's ability to deliver scientific research results that serve the national interest.

Mr. Chairman, we truly appreciate your interest and support for the Foundation's mission. Your time and effort demonstrate that you share our goal of making NSF the best possible steward of both basic research and taxpayer dollars. My colleagues and I look forward to reviewing NSF reauthorization legislation when it becomes available, and would welcome an opportunity to meet with you to discuss it or provide additional information.

Sincerely,

Dan E. Arvizu

Dan E. Arvizu
Chairman

cc: The Honorable John P. Holdren
Director, Office of Science and Technology Policy

National Science Foundation

4201 Wilson Boulevard • Arlington, Virginia 22230 • (703) 292-7000 • www.nsf.gov/nsb • email: nationalsciencebrd@nsf.gov

NATIONAL SCIENCE FOUNDATION
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OFFICE OF THE
DIRECTOR

March 27, 2014

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith:

Over the course of the past year, we have had a number of productive discussions on the topics of NSF grant transparency and the importance to this nation of responsible stewardship of taxpayer dollars. I have appreciated the opportunity to work alongside you exploring ways to improve how NSF supports research and education.

From the hearing held by your Committee earlier this week, I learned from your opening statement that you believe "NSF refused to provide a response" to a request you made last year for the scientific review and analysis supporting five grants. I was surprised to hear this, since I believed NSF had in good faith offered to arrange a briefing for the Committee. Specifically, my May 15, 2013 letter stated:

> "Mr. Chairman, given the overarching confidentiality and privacy concerns associated with your request, and the potentially harmful effects such a disclosure may have on our reviewer community and our merit review system, I am hopeful that there might be another way to better help the Committee understand how NSF makes decisions to approve and fund grants short of the approach outlined in your letter. For example, I would be pleased to arrange a briefing for the Committee on the robust nature of our processes and accountability of the merit review system and provide general information on the grants in question, in order to assist this effort."

Through this offer, NSF was willing to provide you the basic information you requested without violating reviewer confidentiality or sacrificing the credibility of our merit review process. Furthermore, in subsequent conversations between us, I understood that you were no longer interested in pursuing the information you had previously requested regarding those grants.

If you are indeed still interested in this information, my offer still stands. Can we find a mutually agreeable way to provide the information that you are looking for while also protecting reviewer confidentiality?

I sincerely hope we can meet to discuss how best to resolve this issue, and that I can continue to demonstrate to you the ways that NSF is a dynamic organization constantly seeking to improve its transparency and accountability to the public.

Sincerely,

Cora B. Marrett

Cora B. Marrett
Acting Director

cc:
Ranking Member Eddie Bernice Johnson
Dr. Dan Arvizu
Dr. John Holdren

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

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April 7, 2014

The Honorable France Cordova
Director, National Science Foundation
4201 Wilson Blvd
Arlington, VA 22230

Dear Dr. Cordova,

Congress' authority to obtain information from federal agencies is broad. The Supreme Court has established that such broad power is necessary for the legislative function, including oversight and investigations. In *McGrain v. Dougherty*, the Supreme Court described the power of inquiry, with the accompanying process to enforce it, as "an essential and appropriate auxiliary to the legislative process." In *Eastland v. United States Serviceman's Fund*, the Court stated that the "scope of its power of inquiry … is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."

I am requesting paper copies of the following public records: every e-mail, letter, memorandum, record, note, text message, all peer reviews considered for selection and recommendations made by the research panel to the National Science Foundation (NSF), or document of any kind that pertains to the NSF's consideration and approval of the grants listed below, including any approved amendments to the grants:

- 3/4/13 Award #1010974, The Great Immensity, Awarded Amount $697,177. NSF Program: Division of Research on Learning in Formal and Informal Settings

- 8/25/2010 Award #1247824, Picturing Animals in National Geographic, 1888-2008. Awarded Amount $227,437. NSF Program: Division of Social and Economic Science

- 11/22/14 Award #1154738, Culture, Change and Chronic Stress in Lowland Bolivia, Awarded Amount $19,684. NSF Program: Division of Behavioral and Cognitive Science

- 8/16/2009 Award # 0917732, Collaborative Research: the Kalavasos and Maroni Built Environments Project. Investigating Social Transformation in Late Bronze Age Cyprus, Awarded Amount $107,570. NSF Program: Archeology

- 10/1/2010 Award # 1011801, CNH: Does Community-Based Rangeland Ecosystem Management Increase the Resilience of Coupled Systems to Climate Change in Mongolia? Awarded Amount $1,499,718. NSF Program: DYN Coupled Natural-Human, Collaborative Research

- 3/15/2011 Award # 1060807, The Reciprocal Dynamics of Family Transformation Through International Marriage Migration, Awarded Amount $147,460. NSF Program: Cultural Anthropology

- 6/21/11 Award # 1115361, The Prehistory of Chiapas, Mexico, Awarded Amount $276,586. NSF Program: Archeology

- 9/21/2012 Award # 1024413, Ecosystem Resilience to Human Impacts: Ecological Consequences of Early Human-Set Fires in New Zealand, Awarded Amount $339,958. NSF Program: Geology and Spatial Science, Collaborative Research

- 7/10/2013 Award # 1313688, An Analysis of Disturbance Interactions and Ecosystem Resilience in the Northern Forest of New England, Awarded Amount $235,494. NSF Program: DYN Coupled Natural-Human

- 8/13/2013 Award #1026143, Transnational Adoptees and Migrants: From Peru to Spain, Awarded Amount $246,454. NSF Program: Cultural Anthropology

- 7/21/2009 Award #0928339, Human Control of Bicycle Dynamics with Experimental Validation and Implications for Bike Handling and Design, Awarded Amount: $300,000. NSF Program: Division of Civil, Mechanical and Manufacturing Innovation

- 8/7/2007, Award #0722825 and 0723986, The Veiling-Fashion Industry: Transnational Geographies of Islamism, Capitalism, and Identity, Awarded Amount: $199,088. NSF Program: Division of Behavioral and Cognitive Sciences

- 7/28/2006, Award #0550605 1023067, After the JD III: The Trajectories of Legal Careers, Awarded Amount: $735,228. NSF Program: Division of Social and Eonomic Sciences

- 9/26/2010, Award #1024674, Metallurgical Practice, Technology and Social Organization during the Middle to Late Bronze Age in the Southern Urals, Russia, Awarded Amount: $134,354. NSF Program: Division of Behavioral and Cognitive Sciences

- 5/30/2012 Award #1023167, Rags to Riches: An Archaeological Study of Textiles and Gender in Iceland, AD 874 -1800, Awarded Amount: $487,049. NSF Program: Division of Polar Programs

- 8/21/2013 Award #1303898, Weaving Islands of Cloth: Gender, Textiles, and Trade Across the North Atlantic from the Viking Age to the Early Modern Period, Awarded Amount: $217,957. NSF Program: Division of Polar Programs

- 11/16/2011 Award #0909289, The Study of Social Impacts of Tourism in Finnmark, Norway, Awarded Amount: $275,139. NSF Program: Division of Polar Programs.

- 4/23/2008 Award #0747522, Automated Support for Novice Authoring of Interactive Drama, Awarded Amount: $516,000. NSF Program: Division of Information and Intelligent Systems

- 9/16/2005 Award #0524539, Constructal Theory of Social Dynamics, Awarded Amount: $79,988. NSF Program: Division of Social and Economic Dynamics

- 5/6/2010 Award #0947787, Izapa Regional Settlement Project, Awarded Amount: $280,558. NSF Program: Division of Behavioral and Cognitive Sciences

I would appreciate if the information described above could be forwarded to me as soon as possible. If your staff has any questions, please contact Cliff Shannon, Staff Director of the committee's Research and Technology Subcommittee at Cliff.Shannon@mail.house.gov or 202.226.9783.

Sincerely,

Lamar

Lamar Smith

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
DIRECTOR

MAY 0 1 2014

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith:

Thank you for your April 7, 2014 letter requesting paper copies of public records for 20 National Science Foundation (NSF) grants.

We are pleased to provide the Committee with the public records for two of the awards as a template for compiling the remainder of your request. It took approximately 26 hours of NSF staff time to gather and review the documentation for one grant. We estimate that it would take about 18 weeks to complete this review process for the other 18 grants, including the determination of specific material that may be commercial or proprietary. Therefore, before we proceed to complete your request for the balance of the grants, we would like to ensure this material satisfies your interest. The publicly available records we are providing include the proposal, correspondence, fact-based documents, and post-decisional documents, redacted as appropriate to protect the confidentiality of the reviewers and proprietary information.

To further your understanding of our decision process, we are also willing to provide access to NSF's review analyses, which represent the syntheses of individual peer reviews, for all 20 grants. These documents are pre-decisional, deliberative process documents that would not be made available to the public. To help NSF preserve its ability to protect these pre-decisional documents from future disclosure and to further protect the confidentiality of the review process, we would ask you or a senior staff member to examine these documents at the NSF. I would plan to be present during this review to answer any questions.

I would also like to update you on our efforts to accelerate our progress in response to your interest and our commitment to continuous process improvement regarding transparency and accountability. The Transparency and Accountability Working Group established last December has completed its efforts to ascertain best practices and identify needed policy updates to document new procedures.

As of May 1, all of our Assistant Directors have implemented new measures of accountability to enhance their responsibility for the proposals awarded funded through their directorates, as well as the alignment of investment decisions to the national interest. Furthermore, we are working with NSF program staff to strengthen the communication clarity of funding justifications in research grant abstracts made available to the public. Finally, I have appointed Dr. Peter Arzberger within the Office of the Director as the permanent leader for this activity to ensure continued focus and consistency across the Foundation, to evaluate our effectiveness and to be the point of contact for external concerns.

Dr. Arzberger was co-lead of the NSF Transparency and Accountability Working Group, which has produced a report "Strengthening Transparency and Accountability at the National Science Foundation: Policy and Practice Recommendations for a Path Forward." The report contains several recommendations that we will be implementing.

Mr. Chairman, I look forward to working with you and the Committee in supporting our nation's science and engineering enterprise and ensuring strong stewardship of the public trust. Please feel free to contact me directly at fcordova@nsf.gov or (703)292-8000, if you have any questions, or ask your staff to follow up with Judy Gan, Head of our Office of Legislative and Public Affairs, at jgan@nsf.gov or (703)292-8070.

Sincerely,

France A. Córdova
Director

Enclosures

CC: Ranking Member Eddie Bernice Johnson
The Honorable Dan Arvizu
The Honorable John P. Holdren

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

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COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
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WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

May 6, 2014

The Honorable France A. Córdova
Director
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Dear Dr. Córdova,

Thank you very much for personally delivering the first installment of information in response to my April 7, 2014 letter. Unfortunately, the material you furnished isn't sufficient.

For the 20 grants listed in my April 7 letter, the Committee requests every e-mail, letter, memorandum, record, note, text message, all peer reviews considered for selection and recommendations made to the National Science Foundation (NSF), or document of any kind that pertains to the NSF's consideration and grant approvals. Per the Supreme Court decisions cited in my letter, NSF should furnish the Committee all of this information.

In your transmittal letter, you refer to "pre-decisional" information that is to be withheld from the Committee, except for supervised access at the NSF offices. This information is essential for the Committee to gain a full understanding of how merit selection is carried out. The Committee should receive copies of all documents, as described above, without limitation.

In your letter, you allude to concerns about public disclosure of confidential or proprietary information. The federal courts have held that release of information to Congress is not considered to be disclosure to the general public. Once documents are in congressional control, the courts presume that committees of Congress will exercise their powers responsibly and with proper regard for the rights of the affected parties.

I appreciate your attention to the points above and look forward to receiving an immediate confirmation that NSF will comply fully with the Committee's request for information.

Sincerely,

Lamar

Lamar Smith
Chairman

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

May 19, 2014

OFFICE OF THE
DIRECTOR

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith:

Thank you for your letter of May 6, 2014, regarding the Committee's request for documents concerning 20 National Science Foundation ("NSF") grants. NSF is committed to cooperating with your Committee's oversight process, appreciating as we do that Congressional oversight is a critical element of the legislative process. We are also implementing internal processes that support this oversight. At the same time, and as Director of NSF, I have responsibilities toward the science and engineering research and education enterprise that has helped our Nation thrive.

NSF is dedicated to the support of fundamental research and education across all fields of science and engineering. NSF's investment in meritorious research projects enables new and transformative discoveries within and among those fields and disciplines, resulting in the expansion of our scientific knowledge and understanding. For 64 years, our investments in research have promoted the progress of science, encouraged technological innovation and helped fuel this Nation's economic growth, educated and trained the next generation of America's STEM workforce, and addressed society's grand challenges. We believe a key element of NSF's historical success is our merit review process.

The Committee has asked for the production of documents that reflect internal pre-decisional and deliberative communications and personally identifiable information, including the names of reviewers. I am not concerned that this personally identifiable information would be mishandled by your Committee, because I share your view that harming the merit review system is not in the national interest. I believe, however, that even the limited disclosure of the names of reviewers or other personally identifying information protected by the Privacy Act would harm the very foundation of a merit review process that depends upon the trust and

confidence of the scientific community. I am concerned that unrestricted disclosure of such material would chill the thoughtful, candid review and advice offered by reviewers, and thereby jeopardize NSF's ability to receive open, frank and independent assessments of proposals – assessments that form the core of our merit review process.

I understand there is a longstanding tradition between the Legislative and Executive Branches to work together to accommodate each other's interests. President Reagan's November 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" sets forth the Executive Branch policy that good faith negotiations between Congress and the Executive Branch are the best way to ensure that the tradition of accommodation serves as "the primary means of resolving conflicts between the Branches."

For over a year now, and prior to my appointment as Director, Acting Director Cora Marrett offered opportunities to accommodate the mutual interests of the Committee and the Foundation. When you initially requested information related to five projects in April 2013, Dr. Marrett responded to your request on May 15, 2013, articulating multiple concerns and expressing "hope that there might be another way to help the Committee understand how NSF makes decisions ... short of the approach outlined in your letter." She offered a briefing to the Committee to further describe our process.

In the interim, there were multiple meetings and correspondence among the Acting Director, the Chairman of the National Science Board, you and the Ranking Member, and Committee staff. These discussions, I understand, set aside your initial request regarding the five grants in lieu of a process-based solution, largely focused on the transparency of the merit review process and the accountability of NSF personnel. Acting Director Marrett embarked on a new pathway to improve transparency and accountability across the Foundation, and this progress was in part due to the informative discussions between NSF and Congressional leadership. I am convinced the Foundation has implemented a number of changes that will strengthen the public's understanding of the justifications for our investment decisions and the accountability of our leadership team for those decisions – all of which were enumerated to you in a meeting with Acting Director Marrett and Board Chairman Dan Arvizu on September 30, 2013.

In March 2014, your original request for individual grant information was resurrected in the form of a public statement at a Committee hearing on the FY15 budget request. In response, Dr. Marrett renewed her May 2013 offer of a briefing in a letter to you on March 27, 2014, asking if there might be a "mutually agreeable way to provide the information that you are looking for while also protecting reviewer confidentiality." She also requested a meeting with you to discuss how to best resolve this issue.

The Committee's response to Dr. Marrett's appeal for accommodation was a letter handed to me in my first meeting with you on April 7, 2014, requesting an even greater amount of information on a new round of 20 grants. I had hoped to use this introductory meeting as an opportunity to reset the relationship between the Foundation and the Committee. As you can appreciate, as the new Director of NSF it is important for me to have the opportunity to gain the confidence of the legislature and to implement internal processes that justify this confidence.

In response to your April 7 letter, I asked NSF staff to collect responsive documents, starting with two of the grants in question as examples, and then asked you – in my May 1, 2014 transmittal letter – if this was the kind of information you sought for all 20 grants. In the transmittal letter accompanying this material, and as a good faith accommodation, I also offered the Committee an opportunity to separately examine the NSF-generated review analyses for all 20 grants funded by NSF. I then scheduled a meeting with you to deliver the material in person and to further understand your interest. Although at your staff's request that meeting did not take place, I did stop by your office to deliver this information and we had a brief but good exchange.

Your most recent letter of May 6, 2014, makes it clear that you wish all information and every document regarding the approval and processing of these 20 grants, including the individual reviews of the merit reviewers. I feel compelled to point out that such an action is in conflict with NSF's formal and written promise of confidentiality to merit reviewers – a promise of privacy that is an integral part of the merit review process, ensuring that reviews can be honest and free from external pressure. As I previously noted, any release of names would have a chilling effect on the scientific and engineering community which believes the integrity of the merit review process should be preserved.

I therefore respectfully request that we find a means of accommodating our respective interests through a compromise. I believe I could greatly benefit from a better understanding of the specific needs of the Committee and why the Committee seeks all of the documents it has requested. Given my desire to preserve a cooperative relationship between NSF and the Committee, a better understanding on my part of the Committee's needs would help shape the compromise I am encouraging.

I remain hopeful that we can reach a mutually beneficial resolution that will enable both of us to meet our respective responsibilities and address our concerns.

Sincerely,

France A. Cordova
Director

cc: The Honorable Eddie Bernice Johnson, Ranking Member
Dr. Dan Arvizu, Chairman, National Science Board

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

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May 30, 2014

The Honorable France A. Córdova
Director
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Dear Dr. Córdova,

This is to follow up on recent discussions between members of our staffs about furnishing the information requested in my April 7, 2014 letter to you. These exchanges seem to have been productive.

I am advised the National Science Foundation is prepared to provide all of the requested information as soon as possible. On behalf of the Committee, I agree to the Foundation's request to redact external reviewers' names and identifying information from the material.
I also understand that Committee staff will come to the Foundation offices next week for an initial review of relevant material. The intention is to identify duplicate or superfluous information and enable the Foundation's staff to compile needed material as efficiently as possible.

Thank you for your direct involvement in this matter. Your assurance in your May 19, 2014 letter that the Committee will receive all of the information it needs to fulfill its responsibilities is appreciated.

Sincerely,

Lamar

Lamar Smith
Chairman

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

June 2, 2014

OFFICE OF THE DIRECTOR

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated May 30 regarding the discussion between members of our staffs to reach an accommodation about the information requested by the Committee. I appreciate your recognition of the sensitivity of this information and the Committee's commitment to ensure that no inappropriate dissemination of this material occurs.

I will be pleased to have available at the National Science Foundation (NSF) for review by your staff the information on the 20 grants described in your April 7, 2014 letter to me. This information, with the redaction of the reviewer's names and any personally identifiable information, will be made available for review by Committee staff on June 5.

All of these materials are being made available to enable Committee staff to assess which documents are needed for the Committee to fulfill its oversight responsibilities. It is my hope that, after this review, agreement can be made between you and the Ranking Member on what documents, if any, might help the Committee better understand how these grants were reviewed and awarded by the Foundation.

Mr. Chairman, I am encouraged by your latest communication and I am hopeful that this will stand as a strong basis for reinstating the robust, productive relationship that has been shared between NSF and your Committee for many decades.

Sincerely,

France Córdova
Director

Copy to:
Ranking Member Eddie Bernice Johnson
Dr. Dan Arvizu, National Science Board

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE DIRECTOR

June 26, 2014

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

I would like to follow up on the June 5 *in camera* review at NSF of the supporting documents for 20 NSF grants. While I am aware that unofficial communications have occurred between our staffs since then, I feel it important to ensure that you, Ranking Member Johnson and I correspond directly on any follow up, as I requested in my letter to you of June 2.

I truly appreciate the Committee's consideration in accommodating our interests in agreeing to the redaction of reviewer names and sensitive information regarding peer reviewers and for the examination of all of the requested materials in house. I am especially pleased that two Committee staff, representing both yourself and Ranking Member Johnson, spent several hours here at NSF reviewing a fairly large and complex set of materials, and I trust that these staff members came away with a better appreciation of our merit review system and associated processes. These materials will remain available at NSF should staff need additional time to review them. As you know, this process is considered the benchmark for other agencies and other countries seeking to emulate the success of our investment in science and engineering research and education. I have not been made aware that any inappropriate actions or misapplication of our procedures were identified during that review.

Since that review, there has been no written request from you and the Ranking Member for any follow up information to be provided to the Committee.

As a result, Mr. Chairman, I am hopeful for closure of this matter. We are both desirous of the same thing, which is that we advance a great nation through our mutual support of talented, entrepreneurial individuals who are committed to advancing discovery and innovation.

Should you have additional specific concerns with the NSF's merit review process, I would like to meet with you as soon as your schedule will permit.

With very best wishes,

France A. Córdova
Director
National Science Foundation

Cc: Ranking Member Eddie Bernice Johnson
Dr. Dan Arvizu, National Science Board Chairman

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

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June 26, 2014

The Honorable France A. Córdova
Director
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Dear Dr. Córdova,

Please send the material that I requested by letter on April 7, 2014. There has been ample time for NSF to compile this information. I understand that all or the bulk of compilation is completed. It is, therefore, my expectation that delivery can be made by the end of this week.

You will recall I agreed to your request that NSF be allowed to remove external reviewers' identities from the material. In order to assure that NSF would not reproduce unneeded material, I also committed that a member of my committee staff would conduct a preliminary review of the 20 project files at the NSF offices.

That preliminary review occurred during a four-hour visit to NSF on June 5, 2014 (i.e., approximately 15 minutes per file). My staff member then communicated to your staff that redundant material and several types of form letters could be omitted from the documents that would be furnished to the committee. A confirming e-mail from your staff indicated that all other material covered by my initial request would be transmitted to the committee within two weeks, if at all possible.

After my staff has had an opportunity to conduct a careful review all of the documents, I would be pleased to meet with you.

Sincerely,

Lamar Smith

Lamar Smith
Chairman

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE DIRECTOR

July 11, 2014

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

The National Science Foundation (NSF) has engaged in a constructive exchange of official communications with the Committee regarding your April 7, 2014 request for information about twenty NSF-funded awards. I have carefully considered how best to accommodate your oversight needs and responsibilities while protecting the integrity of NSF's merit review process. I believe we have arrived at a means of accommodating both of our responsibilities through *in camera* review of the requested documents. NSF provided the Committee full and complete access to the requested material *in camera* at NSF headquarters, and Committee staff reviewed all of that information, assisted by NSF personnel. I appreciate the Committee's consideration in accommodating our interests in agreeing to the redaction of reviewer names and sensitive information regarding peer reviewers for this *in camera* review.

You have subsequently suggested, however, that this review was of insufficient length for the Committee's needs. I welcome your continued interest in and public support of NSF's merit review process, and I would be pleased to accommodate additional *in camera* review of this information at NSF, for as much time as necessary for you or your staff to further understand our merit review process.

Many individuals throughout the U.S. research community, some of them impacted directly by this document request, have expressed concern regarding the exposure of this information and the potential chilling effect it will most certainly have on the merit review system if documents were released beyond the confines of NSF. Our grant proposal files routinely contain confidential and highly sensitive information (*e.g.*, proprietary information, intellectual property, student names, and pre-decisional assessments and evaluations). In addition, personally identifiable information about individual researchers and the declination of any previous grant proposals, if released outside of the confidential proposal jackets, could have a serious detrimental impact on their personal lives and careers. Preserving these documents internally at NSF while providing additional *in camera* review would seem to accommodate our mutual interests.

I feel a deep obligation to honor those concerns and to preserve a process that depends upon the trust and confidence of the scientific community. My commitment to maintain this information here at NSF is borne from respect for our scientific community and their willingness to participate in the merit review process, not out of a concern that the merit review process was executed improperly in the grants in question. In fact, I am confident that the review process in all of these cases was executed fairly and appropriately and believe that you and your staff would arrive at the same conclusion following additional *in camera* review. This is not to say that the merit review process is perfect and that we are not looking to continually improve. On the contrary, we welcome suggestions from the Committee and others for improving the merit review process.

Mr. Chairman, I fully support improved transparency and accountability for NSF use of taxpayer dollars, and I appreciate the Committee's desire to better understand our decision making processes. As you know, NSF has instituted several new policies over the last year to strengthen the transparency and accountability of our processes. We share your intense commitment to fostering American innovation and to ensuring that precious American tax dollars are managed with care. As always, I am available to meet with you to discuss these important matters further.

Sincerely,

France A. Córdova
Director

Cc Ranking Member Eddie Bernice Johnson
Dr. Dan Arvizu, National Science Board Chairman

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
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July 28, 2014

The Honorable France A. Córdova
Director
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Dear Dr. Córdova,

I regret that you do not acknowledge the Committee's authority to receive information from the National Science Foundation. Supreme Court decisions have repeatedly upheld Congress' broad power to obtain information from federal agencies. In *Eastland v. United States Serviceman's Fund*, for instance, the Court asserted that the "scope of [Congressional] power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."

NSF spends more than $7 billion per year of taxpayer funds. Unimpeded Congressional access to official information is required by Congress for appropriate oversight. Such oversight is impossible if an agency of the federal government unilaterally determines to limit the information that it furnishes to Congress, and permits review of official documents only at its offices and under NSF staff supervision. This is legally unsupportable. It is also an affront to taxpayers. In the strongest terms, I urge you to reconsider your decision.

In spite of your improper withholding of information, the Committee intends to press forward as best as it can with carrying out its oversight responsibilities. When Committee staff members were allowed limited, supervised access to information requested in my April 7, 2014 letter, the brief period of time allotted to review project files did not allow much information to be absorbed. Nevertheless, a few initial impressions were made:

- Project jackets are organized consistently, but the amount and detail of information in individual jackets varies widely. A few jackets contain fairly detailed information about how reviewers evaluated both funded and competing proposals. But other project jackets contained almost no information about the peer review process that resulted in taxpayer funding.

- Reviewers' written comments varied significantly, from reviewer to reviewer and from project to project. There no minutes or notes of discussions among external reviewers and NSF staff. Some reviewers' comments were detailed and substantive. Other reviewers' written comments were just one or two paragraphs, providing little or no insight into their views of the scientific merits and potential value of proposals.
- In one case, the documents in a project jacket featured an NSF notification to an applicant that relatively low competitive standing would not permit funding of a proposal. But the proposal was funded, and the project jacket yielded no additional information – about reconsidered reviews, additional availability of funds, or merits of competing unfunded proposals.

Committee staff members will be contacting your staff soon in order to arrange for additional document review. Among the material they will seek to inspect: (a) grant applications that competed with the 20 projects identified in my April 7, 2014 letters; (b) reviewer and NSF staff written evaluations of these competing grants; and (c) the competitive rankings of all of these grant applications.

Sincerely,

Lamar Smith

Lamar Smith
Chairman

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

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August 27, 2014

The Honorable France A. Córdova
Director
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Dear Dr. Córdova,

In the spring of 2013, I wrote to then-acting Director Cora Marrett and requested that information about several research projects funded by the National Science Foundation (NSF) be provided to the Committee on Science, Space, and Technology. This information was directly related to fulfillment of Congressional oversight responsibilities. As detailed below, the U.S. Supreme Court has ruled consistently that Congressional entitlement to all official documents and information held by executive branch agencies and bodies is virtually unlimited.

Nevertheless, Dr. Marrett declined to provide the requested information. She did not acknowledge the Committee's right to receive any information for oversight, except that which the NSF leadership deemed to be useful (e.g., a general briefing for Members and staff about how NSF evaluates research grant proposals). Dr. Marrett also indicated a willingness to entertain requests from Committee Members and staff for on-site, supervised review of limited information at the NSF offices.

After discussions with current and past Members of the Committee and with leaders in the academic research community, I determined to set aside the request for information until a permanent NSF director was installed. Although the nomination and confirmation process took more than one year, I refrained from pressing the Committee's legal entitlement to information needed to discharge its oversight responsibilities.

Once you assumed your duties, however, my first official action was to renew the request for project-specific information, which I did by hand-delivering a letter to you at our meeting on April 7, 2014. In this letter, I asked that the Committee be provided all official documents pertaining to 20 NSF-approved research projects. You assured me personally that you were committed to establishing a relationship of mutual trust and cooperation and would provide the

Committee with the information it needed, with the caveat that several weeks would be required to accumulate requested information.

Your office subsequently requested a follow-up discussion between us on May 1, 2014, described by your office as an update on NSF work to comply with my April 7 information requests. A few hours before our meeting, however, my travel plans changed and my office postponed our meeting. You, however, still visited my office and delivered a small amount of material and a transmittal letter pertinent to my April 7 request.

The material you delivered on May 1 consisted of the original grant proposals to NSF for just two of the 20 projects specified in my original request. The transmittal letter indicated that NSF would provide only the grant proposals for the 20 projects and that compilation and reproduction of the proposals for the remaining 18 projects would require several additional weeks. The transmittal letter also conveyed your decision that all "pre-decisional" material would be withheld from Congress based on your concern that Congress would publicly release confidential information.

I was surprised by the contradiction between your positive statements at our April 7 meeting and what was conveyed on May 1. Your transmittal letter not only did not acknowledge Congressional legal rights to official information needed for oversight, it posited that Congress could not be trusted with "sensitive" information and cited this mistrust as a basis for unilaterally refusing the Committee's requests for information.

I responded by letter dated May 6, 2014, that simply providing photocopies of two grant proposals was not responsive to the Committee's request; the only satisfactory response from NSF was full compliance with the April 7 information request. My letter also set forth the federal courts' rulings that official documents, once in Congressional control, are presumed to be handled by Congress with proper regard for any relevant confidentiality concerns. To punctuate this point, I should have noted that there has been no question about the Committee's handling of potentially sensitive information from the National Aeronautics and Space Administration, National Institute on Standards and Technology, Department of Energy's Office of Science, or any other agency within the Committee's jurisdiction.

The Committee, having exhibited unprecedented patience (waiting for more than one year) regarding receiving documents to which it was legally entitled, was now apprised that the NSF would disobey the law by refusing to furnish information to which the Committee is legally entitled because you had determined that the Committee would not handle sensitive information in an appropriate manner.

However, efforts to address your concerns and trigger NSF compliance continued. These efforts culminated with both an exchange of e-mails and a "virtual handshake" between our senior staff members and a June 26 letter from you that acknowledged and addressed your principal concern that the identities of NSF external reviewers be protected. Your letter acknowledged my agreement to allow NSF to redact identification of external reviewers. It also consented to my suggestion that majority and minority Committee staff be afforded an expedited

opportunity to pre-review the pertinent 20 project files at NSF in order to eliminate the need for NSF staff to reproduce documents that weren't needed by the Committee.

But two weeks later, on July 11, 2014, without any intervening communication from you, you reversed course by sending me a letter in which you disavowed the agreement described in the preceding paragraph. In this letter, you asserted, "I have carefully considered how best to accommodate your oversight needs and responsibilities while protecting the integrity of NSF's merit review process." You went on to conclude unilaterally that the only means of accommodating the Committee's needs was by limiting information access to inspection of redacted official documents at NSF by appointment and under NSF staff supervision.

You and I have had subsequent exchanges of correspondence, but it seems your latest position has not changed. You maintain that NSF is bound by self-regulated standards regarding potentially sensitive information and is not bound by the U.S. Constitution, per the federal courts. On behalf of the Committee, I continue to maintain that the NSF is obligated to provide what is frankly ordinary and routine access to information that corresponds to the level of Congressional oversight that taxpayers deserve and is directly relevant to Congress' role as the legislative branch of government. Unfortunately, in no communication with the Committee have you acknowledged the legitimacy of Congressional authority or NSF accountability to Congress and taxpayers.

At some level, this vital principle – accountability to Congress and taxpayers – seems to have disappeared from the culture of the NSF and the National Science Board. The Department of Defense, the Central Intelligence Agency and the National Institutes of Health, and other agencies under the Committee's purview routinely provide official documents to Congress that bear directly on sensitive national security matters, commercially valuable intellectual property and confidential personal information. That the NSF, under your leadership, has decided to withhold information that a reasonable person would conclude was vital to sufficient oversight by the Committee with jurisdiction over the NSF expenditure of about $7 billion per year of taxpayer money puts you and the NSF in an indefensible position.

The most positive aspect of this irresponsible and illegal stance is that it is in keeping with this Administration's overall aggressive withholding of information from Congress, the media and taxpayers. In effect, you and the White House senior officials with whom you are reported to have consulted have decided that scientific research is political, that information about the Administration's politicized science policies are to be kept secret at all costs, and that the NSF and the National Science Board are not bound by the U.S. Constitution to be accountable to Congress or taxpayers.

Congress's authority to obtain information, including but not limited to, confidential information is extremely broad. The U.S. Supreme Court has unequivocally established that Congress' power to conduct investigations and oversight is so essential to the legislative function that it may be implied from the general vesting of all legislative powers in Congress. In *McGrain v. Daugherty*, the Supreme Court described the power of inquiry, with the accompanying process to enforce it, as "an essential and appropriate auxiliary of to the legislative function." (*McGrain*, 273 U.S. at 174-5.) The Court also noted that "[a] legislative

body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *(Id.)*

In *Eastland v. United States Serviceman's Fund*, the Court stipulated that the "scope of [Congress's] power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." (*Eastland*, 421 U.S. at 504 n.15 (quoting *Barenblatt*, 360 U.S. at 111). The Court has also described Congressional power as "broad," "indispensable," and "encompassing inquiries concerning the administration of existing laws as well as proposed or possible needed statutes." (*Watkins*, 354 U.S. at 187.)

Absent an express statutory restriction, federal courts have held that executive agencies may not refuse to provide information to Congress, even if such information is confidential, proprietary, or otherwise barred from being disclosed to the public. (*F.T.C. v. Owens-Corning Fiberglass Corp.*, 626 F.2d 966, 970 (D.C. Cir. 1980); *Exxon Corp.*, 589 F.2d at 585-6; *Ashland Oil*, 548 F.2d at 979).

Specifically, the courts have held that release of information to Congress is not considered to be disclosure to the general public. Once documents are in Congressional control, the federal courts have ruled that appropriate handling of sensitive information is to be presumed. (See *Owens-Corning Fiberglass Corp.*, at 626 F.2d at 974; see also *Exxon Corp.*, 589 F.2d at 979; *Moon v. CIA*, 514 F. Supp. 836, 849-51 (S.D.N.Y. 1981). Moreover, it would appear that courts may not prevent Congressional disclosure of confidential information, at least when such disclosure would serve a legislative purpose. (See *Doe v. McMillan*, 412 U.S. 306 (1973; see also *Owens-Corning Fiberglass Corp.*, 626 F.2d at 970).

There is no question of the Committee's jurisdictional authority over NSF. NSF is, under House rules, within the jurisdiction of the Committee on Science, Space, and Technology. Under House Rule X (1) (p)(10) and (14), the Committee has jurisdiction over "the National Science Foundation" as well as "[s]cientific research, development, and demonstration, and projects therefor" respectively. The Committee is also empowered to exercise special oversight functions "to review and study on a continuing basis laws, programs, and government activities relating to nonmilitary research and development." In addition, under House Rule XI, the Committee is permitted to "conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities."

There can be no dispute about the Committee's authority to oversee the NSF. Furthermore, in its attempts to obtain information about 20 NSF-funded research projects and gain information and insights into the NSF peer review process for awarding approximately $7 billion annually for scientific research, the Committee is certainly pursuing a valid legislative purpose.

I understand that all of the requested information was accumulated and ready for delivery to the Committee until you decided to renege on our agreement and withhold all of the requested information. Your current position is that Members of the Committee and their appointed staffers may access *only* such information as you deem appropriate to respond to this Committee's inquiries, under NSF supervision and at a place and time convenient to NSF.

Because the Committee's oversight responsibilities do not cease in the face of legal intransigence, Committee staffers are making an extraordinary effort to review pertinent information under the limitations you have imposed. Committee staff members have visited the NSF offices as often as they have been allowed – four times in the past four weeks, encompassing a total of approximately 25 hours.

During the course of these limited on-site reviews, my Committee staff members have noted numerous inconsistencies in the project file information provided by NSF. They have been informed that some information is either not available or will require additional time to compile. In all cases, access to even the most basic information (e.g., lists of research grant proposals – by title only – received and evaluated by NSF) is subject to the same NSF-imposed limitations: at NSF and by appointment only, under supervision and with NSF redactions.

On the basis of the most optimistic appraisal of progress, the current review work is 5% complete, which implies that this oversight initiative will span at least 12 months. During the next 12 months, NSF will award more than 10,000 federal research grants, amounting to ~$7 billion for Fiscal Year 2015, and Congress will be responsible for authorizing and appropriating a similar amount for Fiscal Year 2016.

The current circumstances will enable you to continue business as usual at NSF, without the burden of Congressional questions. You apparently intend to ignore Congressional questions about fairness, accountability, fiscal responsibility and legitimacy, leaving taxpayers and Congress to speculate about malfeasance in the administration of scientific research. This is a tragic state of affairs that will harm NSF's standing with Congress and American taxpayers.

You and those to whom you answer may be banking on a cumbersome, time-consuming federal court process to avert the otherwise inevitable legal repudiation of your position regarding the provision of information. But I do not intend to disregard my oath of office and be complicit in this rebuff of taxpayers and their elected representatives, and I am confident that my colleagues on the Committee will be equally concerned.

I urge you once again to reconsider your decision to withhold from the Committee official documents and information to which it is constitutionally entitled in order to fulfill its legislative and oversight responsibilities, and provide by the end of the week all of the documents requested in my April 7, 2014 letter to you.

Sincerely,

Lamar Smith

Lamar Smith
Chairman

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

September 9, 2014

OFFICE OF THE DIRECTOR

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith,

Thank you for your August 27, 2014 letter regarding the availability of NSF grant information for the House Science Committee.

As I have expressed to you in person and in several letters over the last four months, NSF fully recognizes, appreciates and acknowledges the Committee's jurisdictional authority and oversight responsibilities. For example, we recently delivered 31 packages of material including over 27,000 documents to the Committee in response to your request for information regarding the NSF headquarters relocation.

With respect to your request for documents concerning 20 NSF-funded grants, your letter suggests that we have been withholding information from the Committee. To the contrary, NSF has provided the Committee full and complete access to our files for each of the grants of interest, providing *in camera* review by Committee staff at NSF with the only redactions being the deletion of reviewer names, per our agreement. I have not been made aware of any indication of inappropriate actions or misapplication of our procedures during these document reviews. Any variability in the documents produced is due to program officers' approaches to administrative record keeping – not any purposeful removal of data, as your letter seems to suggest. Also, it is my understanding that we have been accommodating of your staff's schedule and their availability for review of this information, as well as for the Committee's recent additional request for documentation regarding competing, non-funded proposals. I visited with Committee staff during one of the recent review sessions, and I can attest that the Committee staff members received the appropriate information they sought.

Your letter asserts that NSF does not trust the Committee, yet the agency has provided unprecedented and complete access to Committee staff for the requested information. As I have previously mentioned, we are balancing this access with the need to preserve the trust of the scientific community whose participation in the merit review process occurs in a confidential environment. Proposers and reviewers alike rely on the understanding that their comments, evaluations, intellectual property and other proprietary information will be safeguarded. An *in camera* review protects the integrity of the expert peer review process.

In camera inspection is a time-honored and well-accepted accommodation for Congressional review of agency documentation. It is a practice that has been accepted by many different Administrations and Congresses. This approach, I believe, best supports our mutual interests. It provides full access to requested information to enable Congressional oversight. And it preserves the expectation of confidentiality by the scientific community who engage in the merit review process and the undeniable benefits of that process for the American people. Finally, this *in camera* process of providing the Committee with highly confidential material and Privacy Act protected information helps mitigate any unfounded and unreasonable allegations of political interference with the merit review process, a point I know you also feel very strongly about. Indeed, by keeping the grant material in house, we are helping to ensure that the process remains apolitical.

I assure you that accountability to Congress and the taxpayers is of paramount importance to me. NSF's Congressional charter requires us to "promote the progress of science." The integrity of the merit review process, which has served the nation well for over 60 years, is essential to this mission. As you are aware, the Foundation has taken significant steps over the last year to strengthen this process even further, including ensuring greater transparency and documenting accountability for our investment decisions. These efforts have included new processes for accountability within all of our research directorates, the establishment of a position within the Office of the Director to ensure continued focus and consistency, community awareness, and training for NSF program staff on clearer and more transparent justifications for funding decisions. For example, as of May 1, we have implemented new processes to ensure that titles and abstracts more clearly convey the potential societal impact of the funded research to the public.

NSF welcomes suggestions from the Committee and others for continuous improvement of our merit review process. I am also available to answer any specific questions about the merit review process or any other NSF matters. I will continue to make documents available for *in camera* review at NSF for as long as the Committee needs in order to conduct its review and oversight.

Mr. Chairman, I am eager to meet with you to discuss these issues at your convenience.

Sincerely,

France A. Córdova
Director

Cc: Ranking Member Eddie Bernice Johnson
Dr. Dan Arvizu, National Science Board Chairman

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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September 11, 2014

The Honorable France Cordova
Director, National Science Foundation
4201 Wilson Blvd
Arlington, VA 22230

Dear Dr. Cordova,

I request paper copies of the following public records: every e-mail, letter, memorandum, record, note, text message, all peer reviews considered for selection and recommendations made by the research panel to the National Science Foundation (NSF), or document of any kind that pertains to the NSF's consideration and approval of the grants listed below, including any approved amendments to the grants:

- Comparative Histories of Scientific Conservation: Nature, Science, and Society in Patagonian and Amazonian South America
- Regulating Accountability and Transparency in China's Dairy Industry
- Does Community-Based Rangeland Ecosystem Management Increase the Resilience of Coupled Systems to Climate Change in Mongolia?
- Izapa Regional Settlement Project
- CAREER: A Political Approach to Rural Sanitation in India
- Life History Transitions among the Toba in Northern Argentina
- Ancient Mayan Wooden Architecture and the Salt Industry
- Bronze Age Village Life and Landscape Dynamics at Politiko-Troullia, Cyprus
- Ecosystem Resilience to Human Impacts: Ecological Consequences of Early Human-Set Fires in New Zealand
- How Marginalized Populations Self-Organize with Digital Tools: Ethnographic Case Studies in Africa and China
- Metallurgical Practice, Technology and Social Organization During the Middle to Late Bronze Age in the Southern Urals, Russia
- Kinship, Women's Labor and China's Economic Performance in the 17th – 21st Centuries
- Ethnic Boundaries and Cultural Change in an Amazonian Population
- Oppression and Mental Health in Nepal
- A History of the Impact of Euro-American Linguistic Technologies on Chinese Information Infrastructure
- An Ethnoarcheological and Archeological Study of the Gamo Caste System in Southwestern Ethiopia
- Investigating the Operation of and Reaction to the Public Vehicle Registry in Mexico

- Climate Change Narrative Game Education
- CRPA: How Do We Learn the Fate of Tropical Forests Under Climate Change? A Multimedia Exhibition of Photographic Art Portraying Scientists and Students at Work in Amazonia
- The Change
- Hotspot California: Bringing Dioramas to Life Through Community Voices
- Crowd Sourcing Apprenticeship Learning: LawMeets – A Web Platform for Teaching Entrepreneurial Lawyering
- Productive Play: The Convergence of Play and Labor in Online Games and Virtual Worlds
- Communicating Climate Change
- Cultural Dynamics and Overlapping Interaction Spheres in the Marmara Lake Basin, Western Turkey
- A Linguistic Ethnography of the Global Trade in Indigenous Plants
- Polar Learning and Responding: POLAR Climate Partnership (I and II)
- Culture, Change and Chronic Stress in Lowland Bolivia
- Legal Mobilization of Enslaved Litigants: Ecclesiastical versus Civil Lawsuits
- Phonelab: A Programmable Participatory Smartphone Testbed

Please make this information available to me by Monday, September 22. If you or your staff have any questions, please contact Cliff Shannon, Staff Director of the Research and Technology Subcommittee at Cliff.Shannon@mail.house.gov or 202.226.9783.

Sincerely,

Lamar Smith

Lamar Smith
Chairman
Committee on Science, Space,
and Technology

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

September 15, 2014

OFFICE OF THE DIRECTOR

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith,

Thank you for your September 11, 2014 letter requesting paper copies of records for 30 NSF grants.

I will be pleased to provide the information responsive to your request for *in camera* review at NSF. We will start to collect these documents immediately and would plan to provide the first few files for the Committee's examination by September 22, with the balance completed by October 1. As before, we will redact reviewers' names and any personally identifiable information. I have asked Judy Gan, Head of our Office for Legislative and Public Affairs, to coordinate this review with Committee staff. She can be reached at jgan@nsf.gov or (703)292-8070.

Sincerely,

France A. Córdova
Director

Cc: Ranking Member Eddie Bernice Johnson
Dr. Dan Arvizu, National Science Board Chairman