

# OGRD Guideline 26

## Non-Disclosure and Confidentiality Agreements

WASHINGTON STATE UNIVERSITY

The Office of Research  
Office of Grant and Research Development

July 2009

Sponsored or non-sponsored research and scholarly activities may require access to information that is proprietary or otherwise considered by the provider to be privileged and confidential. Such information must be specifically identified by the provider prior to disclosure to WSU personnel. Should law or legal process require disclosure of proprietary information, WSU's Public Records Officer will determine, if able, whether an exemption to disclosure applies. If the WSU's Public Records Officer determines an exemption applies or is unable to determine whether an exemption applies, WSU will notify the provider of the request and the date that such records will be released to the requestor unless the provider obtains a court order enjoining that disclosure. If the provider fails to obtain a court order enjoining disclosure, WSU will release the requested information on the date specified.

Maintaining the confidentiality of such information to the extent allowed by law is primarily the responsibility of the Principal Investigator or Project Director. However, faculty and staff with access to the confidential information undertake this responsibility as part of their employment responsibilities.

Providers of confidential/proprietary information usually require formal agreements prior to the exchange of confidential information (nondisclosure or secrecy agreements). Such agreements which involve WSU personnel, acting within the scope of their employment, **must be** signed by an authorized WSU official.

The Office of Grant & Research Development will review the contract for compliance with WSU's policies, negotiate (or arrange for the negotiation of) changes where needed, and arrange for proper approvals and signatures when appropriate.

In addition, WSU may not be bound by a contract that is signed without proper authority. In such a case, the Principal Investigator, Project Director, and/or researcher may be the only one bound by the agreement. If the provider wants WSU and its employees and agents to be bound, the researcher should ensure that an authorized WSU representative signs the agreement. For the researcher's own protection, the researcher is strongly encouraged to contact the Office of Grant & Research Development when presented with a contract related in any way to the researcher's work at WSU.

Each dean and director shall be responsible for compliance with the provisions of agreements in force in the organization he or she directs, and for making adequate provisions to protect WSU, especially when personnel involved leave WSU employment.

Before a faculty member leaves WSU, the dean or director shall determine how to dispose of or transmit to other faculty any nondisclosure obligations associated with the departing faculty member. The dean or director shall advise the Vice President for Research & Dean of the Graduate School of any resulting changes.

**Important Areas of Concern in a Confidential Relationship:**

- a) publication
- b) definition of confidentiality
- c) Effect of the Washington State Public Disclosure Act and other law requiring disclosure
- d) Compliance with Washington state document retention schedules
- e) confidentiality exclusions
- f) retention rights for appropriate recordkeeping
- g) governing law
- h) indemnification
- i) term of non-disclosure
- j) identification of parties

In most instances, a non-disclosure agreement will require some negotiation of these issues to obtain terms that appropriately protect the rights of the institution and the researcher. WSU, as a public institution and state agency, is frequently restricted by law in what it can and cannot agree to.

**Process and Approval:**

If the non-disclosure agreement relates to teaching, research or scholarly service, then the non-disclosure agreement should be routed to the Office of Grant and Research Development for review, negotiation and authorized institutional signature.