

# OGRD Guideline 26 Non-Disclosure and Confidentiality Agreements

## WASHINGTON STATE UNIVERSITY

### The Office of Research Office of Grant and Research Development June 2013

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 (PRO) will determine, if able, whether an exemption to disclosure applies. If the PRO determines an exemption does not apply 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 (PI) or Project Director (PD). 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 (non-disclosure or confidentiality agreements – NDAs). 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 (OGRD) will review the proposed NDA for compliance with WSU policies, negotiate (or arrange for the negotiation of) changes when 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 PI/PD, 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 OGRD 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 non-disclosure 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 Records Act and other laws 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, an NDA will require some negotiation of these issues to obtain terms that appropriately protect the rights of WSU and the researcher. WSU, as a public institution and state agency, is restricted by law in what it can and cannot agree to.

**Process and Approval:**

If the NDA relates to teaching, research, or scholarly service, then the NDA should be routed to OGRD for review, negotiation, and approval. As part of this process, the PI/PD will be sent an internal WSU NDA approval form (APPROVAL FORM) along with a copy of the proposed NDA (a sample APPROVAL FORM available at: <http://www.ogrd.wsu.edu/forms.asp>). The PI/PD must review the proposed NDA and indicate his/her understanding and acceptance of the terms and conditions of the proposed NDA by signing the APPROVAL FORM. The PI/PD must then forward the APPROVAL FORM and the proposed NDA to the PI/PD's chair/director/dean for approval and signature before final routing back to OGRD.

The purpose of the APPROVAL FORM is to ensure PI/PD notice and compliance with the terms and conditions of the proposed NDA. OGRD will not sign any NDAs on behalf of WSU without PI/PD **and** Chair/Director/Dean approval.