COGR mailing

FREEDOM OF INFORMATION ACT

Although the Department of Health and Human Services has received numerous complaints regarding the proposed changes to their procurement regulations with respect to the Freedom of Information Act, Treatment of Data in Contract Proposals (45 FR 47169, July 14, 1980), HHS officials have indicated that they have no choice but to adopt such changes in accordance with existing law which gives them no discretion in withholding data from release. At present, the FOIA does not protect unfunded proposals from release and does not require consultation with the researcher when a request for information is received by the agency. Furthermore, recent court cases have determined that intellectual property is not protected under the trade secret exemption of FOIA.

Carl Wootten of Duke University (a member of SUPA who is active on COGR's Committee on Patents, Copyrights and Rights in Data) met this fall with Joseph Allen, Staff Assistant, Subcommittee on the Constitution, to discuss the "Reverse Freedom of Information problem." Following this meeting, Carl and his legal staff drafted language amending the FOIA a) to exempt original scientific and technical information in a funded proposal so as to preserve the intellectual property rights of the researcher; b) to exempt original unfunded proposals from coverage under FOIA; and c) to require notification to the submitter whenever a request is received for information not previously in the public domain.

This proposal was approved by the COGR subcommittee and presented to the full committee for review by Clark McCartney for a vote at the upcoming meeting in early February. Meanwhile, Carl recently received a rough draft of a new bill addressing these issues from Bob Gelman, majority staff member on the House Government Operations Committee.