

E5.229 Whistleblower and Retaliation Policy for Allegations of Research and Scholarly Misconduct

I. INTRODUCTION

As a public institution, the University of Hawai'i (herein referred to as the University) has a responsibility to conduct its affairs ethically and in compliance with all laws and regulations. This responsibility extends to all faculty, staff, and students of the University, who are expected to conduct themselves in an ethical and legal manner. Furthermore, to maintain the quality, productivity, and funding for research at a major university, the highest research integrity standards must be supported. Accordingly, whistleblowers that make good faith allegations of research or scholarly misconduct will be protected by the University from interference and retaliation. Efforts will be made to protect the positions and reputations of those who make good faith allegations. As such, this policy describes the procedures and protection for all University employees and constituents who make a good faith disclosure of suspected misconduct in research or scholarship in violation of Executive Policy E5.211. The University will take prompt and appropriate action to prevent, correct, and if necessary, discipline behavior that violates this policy (up to and including dismissal from the University).

This policy is also in accordance with the retaliation prohibitions in Executive Policy E1.202 (revision pending approval) entitled "Nondiscrimination, Anti-harassment, and Affirmative Action Policy.

II. SCOPE & PURPOSE

This policy supplements existing Hawai'i Employment Practices Law, Hawai'i Revised Statutes (HRS) Chapter 378 Part V., is related to the University Executive Policy E5.211 – Policy for Responding to Allegations of Research and Scholarly Misconduct, and is modeled upon the Office of Research Integrity's Guidelines for Institutions and Whistleblowers: Responding to Possible Retaliation Against Whistleblowers in Extramural Research. This policy serves to protect complainants or informants, as defined in this policy and by E5.211, from interference in making a protected disclosure or retaliation for having made a protected disclosure.

The purposes of this policy are to:

- A. Comply with the HRS § 378-62, Office of Research Integrity (ORI) Whistleblowers Guidelines, and the Federal Whistleblower Bill of Rights;

- B. Describe procedures for reporting and investigating any disclosures of research or scholarly misconduct on the part of the University or any of its employees;
- C. Protect any University employee or constituent who has made or attempts to make a good faith disclosure of suspected research or scholarly misconduct from any form of retaliation, retaliation threat, or any other form of adversarial action by the University or by a University member.
- D. Provide procedures for processing whistleblower retaliation complaints.

This policy serves to:

- foster an environment that allows individuals to freely disclose research or scholarly misconduct under the guidelines of Executive Policy E5.211,
- prevent and protect individuals from retaliatory and/or adverse academic or employment acts, as a result of having disclosed allegations of misconduct,
- provide a process for individuals, who have been retaliated against or who believe to have been retaliated against, to receive assistance and support.

III. DEFINITIONS

- A. **Adverse Action** – any action, related to a research or scholarly misconduct protected disclosure, taken by the University or its members which adversely affects the University status of the whistleblower, including but not limited to employment, academic enrollment, graduation, or institutional affiliation established by grant, contract or cooperative agreement.
- B. **Allegation** – any disclosure, to the Research Integrity Officer, or other Institutional Official such as an Ethics Committee (EC) member, Departmental Chair or Dean, of scientific research or scholarly misconduct as defined by Executive Policy E5.211.
- C. **Complainant** – a person who makes an allegation of scientific research or scholarly misconduct and agrees to be interviewed in an Inquiry or Investigation under Executive Policy E5.211.
- D. **Deciding Official** – the Senior Academic or Research Institutional Official appointed by the University President, whose duties are defined in Executive Policy E5.211. This individual makes final determinations on allegations of research misconduct, retaliation complaints, and any institutional administrative action based on research misconduct and retaliation complaint decisions.
- E. **Good faith allegation** – an allegation of research or scholarly misconduct made with the belief that the allegation is true. The whistleblower (complainant or informant) has a reasonable basis that the information indicates research or scholarly misconduct.

An allegation that falsely reports retaliation or is reckless and disregards facts that would disprove the allegation is considered not to be a good faith allegation.

- F. **Informant** – person who wishes to remain anonymous, and informs the University (e.g., through the Ethics Committee, the Research Integrity Officer, or Institutional Official) of the possibility of research or scholarly misconduct.
- G. **Interference** – improper use of authority or influence, either directly or indirectly, to prevent an individual from making a protected disclosure.
- H. **Protected disclosure** – a good faith communication about actual or suspected misconduct carried out by a University member based on a reasonable certainty that the conduct has occurred and is in violation of Executive Policy E5.211.
- I. **Research Integrity Officer** – appointed by the Deciding Official or his/her designee. The Research Integrity Officer is responsible for: (1) assessing each allegation of research misconduct to determine if it falls within the definition of research misconduct, as covered by Executive Policy E5.211 and whether it warrants an Inquiry on the basis of the allegation being sufficiently credible and specific so that potential evidence of misconduct may be identified; (2) overseeing inquiries, investigations, and retaliation complaints; and (3) providing staff support to Review Panels.
- J. **Retaliation** – any adverse action or credible threat of an adverse action taken by the University or University member, as a result of a whistleblower's good faith allegation of misconduct. It does not include a decision to investigate whether an allegation of misconduct has been made in good faith.
- K. **University Member** – a person employed by, affiliated through contract or agreement, or under the authority of the University, including but not limited to, administrators, researchers, clinicians, lecturers, support staff, technicians, post-doctoral fellows, students, and contractors and their employees.
- L. **Whistleblower** – the individual who makes a good faith allegation or shows intent to make an allegation (or that is perceived to be an allegation) against a University member involved in scientific or scholarly research. (Also referred to as complainant or informant.)

IV. POLICY GUIDELINES

These guidelines establish the University's procedures for addressing whistleblower retaliation complaints. Individuals who follow University procedures in making a good faith allegation have a conditional privilege and are protected from retaliatory academic or employment action including termination, suspension, reassignment, relocation, demotion, harassment, or other acts of discrimination. In cases where allegations involve PHS funds, the Office of Research Integrity's Whistleblower's Policy and protections will

apply in addition to this policy. Specifically, the University shall undertake “diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.”

A. Confidentiality

Disclosures made by a complainant or informant are deemed by the University to be strictly confidential. The identity of a whistleblower who agrees to be a complainant will remain confidential to the extent possible, consistent with the ability to conduct an adequate inquiry and investigation as defined by Executive Policy E5.211. The University considers the principle of confidentiality to be fundamental and critical for both whistleblowers and respondents. All parties shall respect and comply with confidentiality guidelines stated in E5.211. Knowledge of informant identity should be limited to the Institutional Official, Research Integrity Officer, Ethics Committee chairperson, or Ethics Committee member to whom the protected disclosure is made. As such, informant identity will not be part of the need to know process for conducting Inquiries and Investigations under E5.211 and retaliation complaint investigations as described below.

Consistent with PHS regulations and ORI policy, the University believes that whistleblowers possess a conditional privilege of protection to disclose, in good faith, to Institutional Officials, the Research Integrity Officer, the Ethics Committee Chairperson, or EC member allegations of research or scholarly misconduct as defined by E5.211. This privilege does not extend to a whistleblower’s violation of confidentiality protections for a respondent as noted in this policy and E5.211, disclosure made to a person or persons not reasonably believed to be necessary to accomplish the purpose of the privilege, and intentional public allegation of misconduct, such as disclosure to the media.

B. Process for Filing a Complaint

A protected disclosure may be filed with any Institutional Official, the Research Integrity Officer, Ethics Committee Chairperson or member. Regardless of to whom the disclosure is made, the complaint will be forwarded to the Research Integrity Officer, who is responsible for assessing and reviewing all allegations of research or scholarly misconduct, conflicts of interest, and responsible conduct of research. Disclosures are highly recommended to be made in writing so that all issues and facts concerning the complaint are clearly communicated.

Retaliation complaints submitted to the Research Integrity Officer should: be relevant to the allegation, in sufficient detail, include the name of the individual(s) involved, list the date(s) and nature of the retaliation, and the names of any witness(s) or individual(s) who may have direct knowledge of the retaliatory acts. Upon receipt of a complaint, the Research Integrity Officer shall follow the procedures described below.

C. Process for Review of the Complaint

A protected disclosure of potential research or scholarly misconduct will be evaluated following the standards that apply as outlined in Executive Policy E5.211. After a disclosure has been received, the Research Integrity Officer and Chair of the Ethics Committee will conduct a preliminary assessment of the allegation to determine if an Inquiry is warranted. After a protected disclosure has been made, whistleblowers are advised to continue to perform assigned duties.

Interim measures that may be implemented, when situations warrant, to protect complainants or informants during preliminary assessments, Inquiries and Investigations may include:

1. Temporary relocation;
2. Reassignment, or temporary transfer to a different supervisor;
3. Changing graduate advisors (students);
4. Alternative work/research schedule.

D. Protection from Retaliation

The University will not tolerate: 1) retaliatory actions against any employee or constituent for making a good faith allegation of misconduct, or 2) use or attempted use of institutional authority, or influence, to interfere with the rights of another employee or constituent who wishes to make a protected disclosure.

E. Making a False Disclosure

Making a false disclosure that is not in good faith, is considered to be a serious ethical violation and will be treated accordingly. If an allegation of scientific misconduct was not made in good faith, the institution is responsible for proving this by a preponderance of the evidence, and whether or not a whistleblower abuses his or her conditional privilege will be a matter of fact specific inquiry.

V. Procedures for Processing Whistleblower Retaliation Complaints

A. Responsible Official

The Research Integrity Officer is the designated responsible official for implementing the University's whistleblower policy and procedures. The Research Integrity Officer serves as the contact person between the University and the Public Health Service's Office of Research Integrity, and shall not have any real or apparent conflicts of interest in any case. If a real or apparent conflict of interest exists the Deciding Official shall appoint a replacement who has no conflict of interest.

B. Notice of Institutional Policy

Notice of this whistleblower's policy and procedures will be provided to all University members. This policy includes a whistleblower's time limit for filing a retaliation complaint. The policy and procedures shall be distributed and be made publicly available.

C. Filing Complaints

1. Procedural protections described by this policy shall be extended to a whistleblower who files his or her retaliation complaint within 180 days from the date of the alleged adverse action. The University will review and investigate all whistleblower retaliation complaints within 180 days after receipt of the complaint. In cases where allegations involve PHS funds, if acknowledgement of the complaint is not received within ten (10) working days, the whistleblower should file the retaliation complaint directly with Office of Research Integrity at the following address:

Office of Research Integrity
Division of Investigative Oversight
1101 Wootton Parkway, Suite 750
Rockville, MD 20852
Telephone: (240) 443-8800
Fax: (301) 594-0043

The Office of Research Integrity will forward such complaints to the University Research Integrity Officer for appropriate action.

2. The retaliation complaint must include a description of the alleged misconduct and believed retaliation, or threat thereof, against the whistleblower made by the institution, or any of its members, in response to an allegation made in accordance with E5.211. If the allegations and/or complaint are incomplete, the Research Integrity Officer shall inform the whistleblower of additional components necessary to meet the minimum requirements of a complaint under this Part.

D. Responding to Complaints

1. Once a whistleblower retaliation complaint is received, the Research Integrity Officer shall notify the whistleblower (or informant intermediary) of receipt within ten (10) working days. The whistleblower will also be informed of the process that the University will follow to resolve the retaliation complaint, and any additional actions required by the whistleblower under that process.

2. The whistleblower has the right to raise any concerns about the process or procedures with the Research Integrity Officer, and the University has the right to decide whether or not to modify these procedures taking into consideration the whistleblower's concerns.

3. The whistleblower has ten (10) working days from the date of receipt of the initial notification in Part 1 above to:

a. Accept the proposed process, even if accepted, the whistleblower may submit written concerns regarding the proposed process/procedures; or

b. Not accept the proposed process. Should the whistleblower reject the proposed process, he or she is required to appeal, in writing, to the Deciding Official.

4. In matters involving PHS funds, the University shall notify The Office of Research Integrity of any whistleblower retaliation complaint received within ten (10) working days from date received.

E. Interim Protections

1. At any time, including prior to obtaining and confirming evidence of a whistleblower retaliation complaint, or prior to resolution, the whistleblower may submit in writing a request to the Research Integrity Officer to take interim actions for protection from an existing adverse action or credible threat of retaliation by the institution or a member.

2. Based on the obtainable evidence, the Research Integrity Officer shall make a determination on whether to take interim action and shall advise the whistleblower of that decision in writing. Should interim protection be provided, the documented actions shall become part of the record of the complaint. Once the whistleblower retaliation complaint is fully resolved, any applied interim measures used to protect the whistleblower shall be removed and replaced with permanent resolutions.

F. Institutional Investigation

1. Based on the available evidence, the Research Integrity Officer shall make a determination if the retaliation complaint is credible and specific relevant to an adverse action and protected disclosure concerning misconduct as defined by E5.211.

2. Upon determination by the Research Integrity Officer that the complaint is credible and specific, the University shall conduct an institutional investigation of the whistleblower retaliation complaint according to these procedures and take appropriate administrative actions or preventative measures consistent with this policy, the investigation's finding and institutional decision.

3. An investigation of whistleblower retaliation shall be prompt, factual, objective, and thorough. The investigation should be conducted by a qualified panel of at least three (3) individuals, including faculty and staff, appointed by the Research Integrity Officer in consultation with the EC Chair. The members of the investigation panel, which may include individuals from outside the institution, shall have no relationship or other conflict of interest with any parties of the alleged misconduct and/or retaliation complaint.

4. All relevant evidence shall be obtained and examined by the panel during the investigation, including interviews with the whistleblower (if a complainant), the alleged retaliator(s), and any other individual (witness) who can provide pertinent and factual information regarding the claimed retaliation.

5. The University shall be in full cooperation with the investigation and shall use all available administrative resources to secure documents, testimony, and other evidence relevant to supporting the investigation.
6. The confidentiality of all proceedings during the investigation, and of all participants, shall be maintained to the extent possible.
7. The Research Integrity Officer and Panel members shall evaluate any concerns raised by the whistleblower and respond appropriately at any time, including prior to resolution of the complaint. Concerns about the process, including conflicts of interest on the part of institutional officials or a specific panel member, should be brought to the attention of the Research Integrity Officer.
8. A written report shall be submitted to the Deciding Official when the investigation has concluded. The report shall also be made available to the whistleblower and individual who the retaliation allegations are against. At a minimum, the report shall include a description of the investigative process, a summary of the analysis of evidence, a list of all individuals interviewed, and a summary of the panel's evaluation of the complaint.
9. Based on the report, the complete investigative case record, and using a preponderance of evidence standard, the Deciding Official shall make a final determination as to whether retaliation occurred.
10. If the Deciding Official determines that retaliation has occurred, he or she shall identify what remedies are to be applied in order to fulfill the institution's obligation to protect whistleblowers. The remedies could include but are not limited to those provided by other UH policies and Hawaii State regulations in the Hawai'i Employment Practices Act. The Deciding Official shall take steps to protect or restore the whistleblower's position and reputation, and may release any public or private statements at his or her discretion. The Deciding Official may also include measures that provide additional protection against further retaliation, and also has the authority to discipline the retaliator.
11. If PHS funding was involved in scientific misconduct allegation(s), the Research Integrity Officer shall promptly notify the Office of Research Integrity of its investigation, conclusion, outcome and remedies, if any, and forward the investigation report to ORI.
12. University compliance with these procedures does not restrict the whistleblower from pursuing redress against the University's decision under items 9 and 10 as otherwise provided by law.