

AFFIDAVIT OF [NAME]

STATE OF ????????)
) ss
COUNTY OF ????????)

COMES NOW the undersigned, after being duly sworn, depose and state:

1. That I, [FULL NAME], am over 18 years old and competent to testify to the facts as set forth herein. All statements herein are based on my personal knowledge. I am [TITLE] of/for [COMPANY NAME].

2. [COMPANY NAME] is a [provide brief description of what type of company it is] that provides/sells [provide brief description of goods/services] to customers at competitive prices.

3. [Suggested language; revise as necessary] I have reviewed a public record request received by Iowa State University. I also reviewed our agreements with Iowa State University that would be responsive to this request. The responsive documents contain [COMPANY'S] trade secrets as defined by Iowa Code Chp. 550.2(4) that it does not share publicly and takes significant measures to protect. The protective measures in place include [list/describe the protective measures taken; e.g. limited distribution within the company only to employees with a need to know, the information is password protected, the information is under lock and key, etc.].

4. The information contained in the document(s) derives independent economic value from not being generally known to the public, and is not readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use. Disclosure of the information would cause substantial and irreparable injury to [COMPANY]. {Describe the

specific injury/damage – For example: The documents include specific pricing information, including a margin schedule, and information regarding [COMPANY’S] pricing and program offerings to the [University department]. The disclosure of this pricing information would erode [COMPANY’S] competitive advantage.}

5. Disclosure of the documents would require the release of non-public confidential financial information of [COMPANY NAME], a private company.

6. I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

[FULL NAME]

Subscribed and sworn to before me by [Affiant’s Full Name] on this _____ day of _____, 20____.

Notary Public in and for the State of ???????

From: "Gold, Marc" <[REDACTED]>

To: "Biederman, Barbara [G CSL]" [REDACTED]

Cc: "Lelis, Ann [G CSL]" [REDACTED]

Subject: RE: Iowa State University Public Records Request - Review Requested

Date: Fri, 13 Feb 2026 18:45:31 +0000

Importance: Normal

Attachments: Iowa_Open_Records_Letter_Draft_02-13-26b.docx

Inline-Images: image001.png

Barbara: Thank you for your response. Prior to receiving your email today, we outlined NAS's positions with respect to the information request in the form of a letter to the University, which is attached. We believe the positions set out in the attached letter will provide the University sufficient basis to protect the NAS's Records.

Please let me know if we can provide additional information to support NAS's position.

Thank you for your assistance in this matter.

Regards,

Marc Gold

Deputy General Counsel

National Academy of Sciences

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From: Biederman, Barbara [G CSL] [REDACTED]

Sent: Friday, February 13, 2026 9:26 AM

To: Gold, Marc <[REDACTED]>

Cc: Lelis, Ann [G CSL] [REDACTED]

Subject: RE: Iowa State University Public Records Request - Review Requested

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Marc,

We request that NAS's position be provided in the form of an affidavit. We have an affidavit format previously used for trade-secret matters that can be adapted for this purpose, incorporating the relevant references related to the information at issue so that ISU can rely on the affidavit when responding to the request.

If you need additional time to prepare this, or if a call would be helpful, please let me know.

Barbara

Barbara Biederman | Associate General Counsel

IOWA STATE UNIVERSITY
Office of General Counsel
3550 Beardshear Hall
515 Morrill Road
Ames, Iowa 50011-2103

From: Gold, Marc <[REDACTED]>
Sent: Thursday, February 12, 2026 9:38 AM
To: Biederman, Barbara [G CSL] [REDACTED]
Cc: Lelis, Ann [G CSL] [REDACTED]
Subject: RE: Iowa State University Public Records Request - Review Requested

Barbara: NAS intends to submit an objection to release of committee member records related to the Manual. Should we direct our comments to your attention?

I have a question related to the form of the letter. Are you available for a quick call today?

Best,

Marc

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From: Biederman, Barbara [G CSL] [REDACTED]
Sent: Monday, February 9, 2026 12:05 PM
To: Gold, Marc [REDACTED] >
Cc: Lelis, Ann [G CSL] [REDACTED]
Subject: RE: Iowa State University Public Records Request - Review Requested

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Marc,

Thanks for the call. I understand that NAS is taking the position that Dr. Carriquiry's contributions and communications related to the Manual identified in the request constitute confidential information of NAS.

Under Iowa's open records law (Chapter 22 of the Iowa Code), Iowa State University is obligated to produce responsive emails unless they qualify as "confidential records." [Iowa Code ? 22.7](#) identifies the exemptions that may apply to confidential information under the statute.

We ask that you review the information in the request and let us know by **February 13** if you believe the information in the request constitutes the National Academies' confidential information under Iowa's open records law.

Barbara

Barbara Biederman | *Associate General Counsel*

IOWA STATE UNIVERSITY
Office of General Counsel
3550 Beardshear Hall
515 Morrill Road
Ames, Iowa 50011-2103

From: Gold, Marc <[REDACTED]>
Sent: Thursday, February 5, 2026 2:25 PM
To: Biederman, Barbara [G CSL] [REDACTED]
Subject: RE: Iowa State University Public Records Request - Review Requested

Barbara: Thank you for sharing the request. I am available this afternoon.

Please let me know what time works best for you.

Regards,

Marc Gold
Deputy General Counsel
National Academy of Sciences
Washington, D.C. 20418
[REDACTED]

From: Biederman, Barbara [G CSL] [REDACTED]
Sent: Thursday, February 5, 2026 3:10 PM
To: Gold, Marc <[REDACTED]>
Subject: Iowa State University Public Records Request - Review Requested

Caution: This email originated outside the organization. Please exercise caution when opening attachments or clicking links, as they may contain malicious content.

Mr. Gold,

I am an attorney for Iowa State University (ISU). ISU has received the attached public records request from Francis Ryan of The Patriots Foundation, which concerns contributions and communications by ISU faculty member Dr. Alicia Carriquiry related to the *Reference Manual on Scientific Evidence* (4th ed.), coordinated in service of the National Academies of Sciences, Engineering, and Medicine (NASEM).

As a state institution, ISU is subject to Iowa's open records law (Chapter 22 of the Iowa Code) and must produce responsive records unless an exemption applies. Before responding to the request, I would like to understand NASEM's position relating to Dr. Carriquiry's communications and contributions to this publication.

Please let me know your availability for a brief discussion.

Barbara

Barbara Biederman | *Associate General Counsel*

IOWA STATE UNIVERSITY

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NATIONAL ACADEMY OF SCIENCES

Barbara Biederman
Associate General Counsel
Iowa State University
Office of General Counsel
3550 Beardshear Hall
515 Morrill Road
Ames, Iowa 50011-2103

Dear Ms. Biederman:

I am writing on behalf of the National Academy of Sciences (NAS) to object to release under Iowa Code chapter 22, of records relating to a university employee's service on an outside committee—specifically the Committee for the Reference Manual on Scientific Evidence, Fourth Edition (Manual)—where the only connection to Iowa State University (the "University") is incidental use of the University's email system. NAS is a private tax-exempt corporation based in Washington, D.C.

Background

Dr. Alicia Carriquiry is a faculty member at the University. She served as an unpaid volunteer on the Committee on Sciences for Judges – Development of the Reference Manual on Scientific Evidence, Fourth Edition (the "Committee"), which had oversight for the publication of the Reference Manual on Scientific Evidence, Fourth Edition, a publication of the NAS and the Federal Judicial Center (the "Manual"). NAS is not affiliated with the Federal Judicial Center.

Dr. Carriquiry's committee service was undertaken in a personal, pro bono capacity based on subject-matter expertise, not as a representative or agent of the University. The service was not part of Dr. Carriquiry's assigned University duties and was not undertaken at the direction of, for the benefit of, or under the control of the University. The only nexus to the University and the records related to the Manual, which may include emails between NAS staff and Committee members, drafts of Manual chapters, and peer review materials (collectively "Records") is incidental use of a University email account.

Drafts of individually authored chapters were shared with the Committee. The draft chapters and related materials shared with Committee Members were marked:

NATIONAL ACADEMIES
PRIVILEGED PROPRIETARY INFORMATION
DRAFT/DO NOT CITE QUOTE OR CIRCULATE

Committee members were asked to maintain the confidentiality of draft chapters, peer review materials, and committee deliberations. NAS's *Getting to Know the Committee*

Process publication reminds Committee members of the critical importance of protecting confidentiality:

Committee deliberations, drafts of the report in progress, and tentative conclusions all are confidential until a completed report passes through review and receives sign-off by the Report Review Committee and by the major unit responsible for the study. Committee members are expected to reject any requests for early briefings or media interviews on the committee's findings, and to treat committee deliberations and draft products as confidential.

The Records Are Not Public Records Under Iowa Code Chapter 22

Under Iowa Code Chapter 22, the threshold question is whether the requested Records constitute "public records." Iowa courts and the Iowa Public Information Board ("IPIB") have held that not all records created or possessed by a public employee are public records. Rather, the determination turns on the nature and purpose of the records and whether they were created or held in the employee's official capacity.

The Iowa Supreme Court has recognized that "not every document which comes into the possession or custody of a public official is a public record," and that "the nature and purpose of the document, not the place where it is kept," governs its status. *Linder v. Eckard*, 152 N.W.2d 833, 835 (Iowa 1967).

The IPIB has applied this principle to electronic communications. In Advisory Opinion 24AO:0007 (2024), the Board concluded that private or personal emails sent from a government email address do not become public records merely because of the email system used. The Board emphasized that records created or held outside an individual's official capacity are not public records under chapter 22, even when transmitted through a government account. In reviewing the relevant cases, the Board held that:

These cases demonstrate the fundamental principle of Iowa's public records law that the record itself, rather than the location the record is stored, dictate whether it is a public record required to be disclosed under Iowa Code chapter 22. 'It is the nature and purpose of the document, not the place where it is kept, which determines its status,' *Linder v. Eckard*, 152 N.W.2d 833, 835 (Iowa 1967).

Applying these principles, the Committee's records and reviews of draft Manual chapters and related Records that may incidentally be in the University's IT system are not public records. The Records were not created, received, or used in furtherance of any official University function. As described above, Dr. Carriquiry was not acting as a University representative, but as an independent expert selected by NAS and the Federal Judicial Center. The Committee process is wholly separate from University governance, operations, or policymaking. Any incidental subject matter overlap with Dr. Carriquiry's expertise does not convert private advisory work into public business. Similarly, the mere incidental use of a University email account does not transform private Committee records into public records.

Accordingly, under Linder and IPIB Advisory Opinion 24AO:0007, the requested materials fall outside the scope of Iowa Code chapter 22.

The Records are Confidential, Proprietary and Exempt from Disclosure

Without waiving the foregoing threshold determination, and in the alternative, the Records are confidential and exempt from disclosure under Iowa Code section 22.7.

A. Draft and Deliberative Scientific Materials — Iowa Code § 22.7(65)

Iowa Code section 22.7(65) permits withholding of “tentative, preliminary, draft, speculative, or research material” where disclosure would inhibit candid discussion and the free exchange of ideas prior to final decision-making. The IPIB has explained that this provision is intended to protect the decision-making processes prior to a final decision. See IPIB Advisory Opinion 23AO:0008 (2023).

We understand that the requested Records likely consist of draft scientific analyses and records related to NAS’s peer review process reflecting tentative judgments rather than final products. Disclosure of preliminary drafts of chapters, peer review materials, and other Records would undermine the integrity of this scientific process by chilling candid discussion, discouraging expert participation, and exposing internal scientific discussions, expert peer review, and deliberations out of context. Courts have recognized the importance of protecting the independence of NAS’s scientific advisory processes. For example, as set out in *Plough, Inc. v. National Academy of Sciences*, 530 A.2d 1152 (1987), courts rejected efforts to compel disclosure of internal NAS committee drafts, emphasizing that confidentiality of deliberations is essential to the effectiveness and independence of scientific advisory bodies. The same reasoning supports nondisclosure under section 22.7(65).

The Manual and individual chapters have nothing to do with any Iowa State government function. The exemption in 22.7(65) does not apply to public records submitted for use in the formulation, recommendation, adoption, or execution of any final official policy or action of a governmental body by a public official. That clearly is not the case with respect to the requested Records, which are entirely the product of independent organizations outside the state government.

B. Proprietary and Confidential Scientific Information of a Private Tax Exempt Corporation — Iowa Code § 22.7(3)

Iowa Code section 22.7(3) protects trade secrets and proprietary information recognized and protected by law. The IPIB has recognized that private entities do not forfeit confidentiality of proprietary materials merely because they are possessed by a public entity. See IPIB Advisory Opinion 25AO:0006 (2025); *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711 (Iowa 1993).

The Records likely include draft materials that reflect confidential scientific methodologies, analytical frameworks, and deliberative judgments of a private nonprofit

organization. Protection of the Committee's deliberations and draft reports is a central tenet of NAS policies. The NAS considers internal committee records to be confidential scientific information that facilitates its tax exempt mission and ability to perform its grants and contracts. As quoted in *US West Communication*, "there is virtually no category of information that cannot, as long as the information is protected from disclosure to the public, constitute a trade secret." Although some of the information in the Records may not be considered trade secrets, the information is confidential scientific information of NAS, a private tax-exempt organization. NAS treats these documents and the information included as confidential and privileged, and does not disclose these documents to the public.

Here, public disclosure of the Records would undermine the independence of the NAS and its internal research process, erode expectations of confidentiality essential to expert participation in NAS activities, and impair NAS's ability to conduct future scientific work. The draft reports were all marked as highly confidential and Committee members were reminded to protect their confidentiality throughout the committee process. Even if incidentally possessed by the University, such Records retain their fundamentally proprietary and confidential character.

Conclusion

The requestor has sought under the Iowa Fair Information Practices Act to obtain Committee records from the University, which has no direct interest in the NAS Committee records in question. The University gained possession of copies (primarily electronic copies) of the Committee Records solely due to Dr. Carriquiry's incidental use of the University email when performing an outside volunteer activity. Accordingly, we request that the University reject an end-run around NAS's procedures by allowing a third party to gain access to protected records that would not otherwise be available if the request were directed to NAS itself. The disclosure of the requested Records goes to the heart of the integrity of the NAS's internal committee processes, and we respectfully request that such records not be released to the requestor.

NAS has not had an opportunity to review the Records that may be in the possession of the University. We request that University treat all NAS records as either not constituting public records as described above or as otherwise exempt from disclosure for the reasons stated herein. To the extent the University believes any NAS Records may be responsive to the request, we request an opportunity to review such records prior to release.

Thank you for your consideration of these comments.

Sincerely,

Marc S. Gold
Associate General Counsel