

Data Retention and Access

Background

The University must have access to data generated on sponsored programs and during the course of other activities carried out under University auspices. This is necessary to carry out the University's responsibilities with respect to (1) the protection of intellectual property, (2) matters connected with the use of animals or human research subjects, recombinant DNA, etiologic agents, radioactive materials, and the like, (3) research misconduct, and (4) conflicts of interest. Broadly speaking, these and other occasions in which the University must exercise access rights arise in situations in which the rights of students, faculty, or other members of the University community must be protected or when terms of a sponsored program agreement or an applicable law or regulation must be followed. In order to preserve the access rights and to satisfy sponsor requirements, the custodian of the data, normally the faculty member in responsible charge of the research effort, must preserve the data for a period of time; in the case of a sponsored program, the data should be kept at least five years after the final technical and fiscal reports are submitted to the sponsor.

Policy

The University claims rights of access to data derived from any research or other scholarly activity which is performed by its faculty, staff, students or other individuals and is undertaken in connection with a sponsored project or is directly and immediately related to duties or responsibilities for which a person is compensated by the University or one of its units, or is conducted with more than insignificant use of facilities or equipment provided by the University or one of its units (hereinafter, "research"). These rights will be exercised only for University purposes, which include, but are not restricted to:

1. securing intellectual property rights;
2. protecting the rights, including those of access to the data, of graduate and other students, post doctoral researchers, and other members of the University community;

3. facilitating the investigation of charges, such as misconduct or conflict of interest;
4. carrying out its responsibilities with regard to the use of animals, human subjects, recombinant DNA, etiologic agents, radioactive materials, and the like;
5. carrying out the terms of sponsored project agreements; and
6. meeting the requirements of law.

The meaning of the term “data” varies from field to field and, in case of doubt or ambiguity, the University will look to the custom of the relevant field. At a minimum, however, the term includes information recorded or customarily recorded in the relevant field, as a result of research. Data include notes, records, slides, photographs, drawings, information stored in electronic and/or computer readable form, reports, publications, correspondence, and summaries, compilations, or derivatives of other data.

Since research at Notre Dame is ordinarily performed under the responsible charge of its faculty, the usual custodian of the data will be the faculty member in charge of the research. The data must be retained by the faculty member for a period that is reasonable under the circumstances. For sponsored projects, for example, data should be retained for the period required by the sponsor; in the absence of other information, five years after the submission of final fiscal and technical reports may be considered sufficient.

If there are questions about the research or its performance, the data must be retained until the questions are resolved. If a student is involved, the data must be retained at least until the degree is awarded or it is absolutely clear that the student has abandoned the work. If the work is published, the data should be retained until a reasonable period has elapsed so that any questions concerning the publication may be answered. Applicable records retention policies of the unit must also be followed.

Where necessary to effect its rights of access, the University has the option to take custody of the data in a manner to be specified by the Vice President for Research.

In those circumstances in which a University faculty member is not in responsible charge of the research, the non-faculty principal investigator or other person designated by the relevant department chair or center director must retain the data. If a faculty member or other designated person is no longer capable of retaining the data, it must be deposited with the department chair or center director for retention.

If a faculty member or other custodian of the data wishes to remove the data from the University, for example to take with him or her to a new position at another university, approval of the department chair or center director is required. The Vice President for Research or designee must also approve the removal of the data if a sponsored project, a patent or other intellectual property, an unresolved dispute involving the data, an apparent injustice or unfairness to another individual if the data were to be removed, or any other question concerning the data, the research, or its performance, is involved. The ability of a student to maintain progress toward a Notre Dame degree shall be a major consideration in any decision as will the ability of other members of the University community to continue their research at Notre Dame. The removing custodian shall have the same obligation of providing access to the University as he or she had while the data were at Notre Dame and must agree to provide that access whenever requested by the University. As a memorial of that obligation, the department chair shall retain for at least a five-year period a copy of this policy signed and dated by the removing custodian, along with a list of the data that was removed.

This policy does not deal with the legal “ownership” of data. That is rarely at issue and in those cases in which ownership might be of practical significance the matter would be determined by applicable law, by the University’s Intellectual Property Policy and, in the case of a sponsored project, by the sponsored project agreement. The Intellectual Property Policy requires that faculty and others to whom it applies execute formal assignments to the University of the invention and any resulting patents.

The University, as a matter of operating policy, rarely exercises exclusive ownership rights and then only when it is furtherance of the University’s mission to do so. Even in cases in which the assertion of an exclusive ownership right might be appropriate, the University would normally permit custody by the faculty member or other project principal investigator as described above.