

A POCKET GUIDE

FOR SCIENTISTS

HANDLING POLITICAL HARASSMENT & LEGAL INTIMIDATION



Brought to you by
The Climate Science Legal Defense Fund

INTRODUCTION

The scientific method is founded on the idea that skepticism is good. Results should be subjected to the utmost scrutiny through the peer review process, followed by close examination and replication by others in the scientific community.

Sometimes, however, those whose ideas do not live up to the standards of rigorous science choose to harass, intimidate, and litigate. Scientists are increasingly subjected to legal and other attacks launched by ideologically motivated groups.

The Climate Science Legal Defense Fund (CSLDF) team has written this guide to provide scientists with practical information about how they can protect and defend themselves against such attacks—from invasive open records lawsuits to congressional inquiries to media smear campaigns.

WHEN IN DOUBT, CALL A LAWYER

If you are worried that you are becoming the target of harassment or intimidation, seek counsel before you respond. If you receive a request that seems politically motivated, seek counsel before you respond. Your institution likely retains legal counsel that you can contact, but it is important to remember that your institution's counsel represents the institution's legal interests, which may differ from your own.

Contact Us

You can always call CSLDF, where our mission is to provide free legal counsel to climate scientists facing attacks as a result of their work.

Call (646) 801-0853 or send an email to lawyer@climatesciencedefensefund.org

OPEN RECORDS LAWS

One common legal attack on scientists has been through open records laws—the federal Freedom of Information Act (FOIA) or state equivalents. Intended to promote government transparency by allowing citizens to request copies of administrative records, these laws have also become a tool used to harass scientists. Publicly funded scientists have received open records requests for reams of documents, including emails, peer review correspondence, and preliminary drafts. Scientists employed by the government or by public universities, or who have received government grants—including National Science Foundation (NSF) grants—should recognize that open records laws may apply to them.

How to Prepare:

Understand whether state and/or federal open records laws may apply to you. Reach out to your institutional counsel, the staff in your institutional records office, or a group like CSLDF who can help you understand the laws that may affect you.

Ensure good recordkeeping:

- Conduct professional correspondence in a professional manner. Remember that emails may be “FOIAed,” disclosed due to other legal actions, or even hacked.
- Do not use professional email accounts for personal emails and vice versa. Open records laws only apply to government records, so separating personal and professional emails reduces the likelihood that personal correspondence will be affected by an open records request. Similarly, avoid any temptation to use your personal email account for professional correspondence. If it can be shown that your personal email contains government records, this may result in you needing to turn over your personal email account to legal review.

- Employees and consultants at public institutions, including government scientists and public university researchers, should retain all public records. The precise definition will vary by state, but generally, these are documents relating to public business.
- Be aware that grants may require that you follow specific record-keeping rules: for example, NSF grants stipulate that research data, including databases, must be shared.
- Even if no strict document retention requirements apply to your situation, we recommend that you keep your files for a few years, as anyone can be made to look bad when things are missing.

How to Respond:

Promptly contact institutional counsel, a legal group like CSLDF, or ideally both. CSLDF can assist with situations in which your legal interests differ from your institution’s own interests, a common scenario. In addition, CSLDF can provide emotional support by connecting scientists under attack to others who have successfully navigated such situations.

Work with counsel to ensure that only the legally required information is released. Personal information is generally protected, and depending on the applicable laws, you may be able to protect some or all of your research work and other intellectual property.

CONGRESSIONAL INVESTIGATIONS

The U.S. Congress has extensive oversight powers, and Congress's ability to request information is virtually without limitation. Unlike in the judicial process overseen by the courts, relatively few procedural protections exist for those who find themselves facing a congressional inquiry. Unfortunately, some members of Congress have used their positions to go after scientists whose research they do not like. Congress's ability to enforce its requests is limited, however, and congressional acquiescence to public outcries over previous inquiries shows that Congress is ultimately responsible to its constituents.

Letter of inquiry: Congressional inquiries generally start by requesting information on a voluntary basis, usually through a letter asking for documents and/or an interview. There is no legal obligation to comply with these requests, but it may be advisable depending on the situation, and how a recipient should respond is a highly individualized decision that should be discussed with a lawyer.

Legislative subpoena: A legislative subpoena may be used to seek to compel the production of documents or in-person testimony. A legislative subpoena must originate from a congressional committee or subcommittee (not an individual member of Congress), and the rules governing the subpoena will depend on the rules of the committee pursuing the investigation. In general, though, enforcing a legislative subpoena is a lengthy and time-consuming process, each step of which requires a greater level of political commitment. Scientists served with a legislative subpoena should consult with an attorney about their response options.

How to Prepare:

Although you cannot predict whether you will be one of the unlucky few targeted by a member of Congress, it is always a good idea to **maintain good record-keeping practices**, just as you would to comply with potential open records requests (see pages 4-5).

All scientists can and should exercise their voting rights. Support those representatives who take their congressional duties seriously, not as a pulpit to harass researchers.

How to Respond:

Promptly contact an attorney or a legal group like CSLDF. In addition to providing legal resources, CSLDF can provide emotional support by connecting scientists under congressional inquiry to others who have successfully navigated such situations. You should also contact institutional counsel to inform them about the situation, but your legal interests may differ from your institution's interests, making institutional representation impossible.

Work with counsel to discuss your response options. If testimony is requested (either by voluntary or compulsory methods), discuss the potential questions and answers you may face—you don't want to be blindsided by unexpected questions while testifying. This preparation likely will involve a mock testimony session with your attorney.

Work with counsel to discuss political and institutional opportunities that may be leveraged. Understanding the political dynamics at play is as important as understanding the legal protections available.

CIVIL SUBPOENAS

A scientist may be subpoenaed to appear for trial testimony or pretrial depositions, or to produce documents for an existing court case. Most of these subpoenas involve disputes between other parties, perhaps including the scientist's institution, and thus are referred to as "third-party subpoenas," meaning that they are subpoenas served upon a person who is neither a plaintiff nor a defendant to the litigation.

How to Prepare:

If you believe that you may be subpoenaed for ongoing or imminent litigation, you must preserve any documents that may be relevant. Once litigation is reasonably anticipated, meaning there is credible information that a lawsuit may be brought at some point, the law requires you to make a good-faith effort to preserve all documents relevant to the dispute. This can even include Facebook or Twitter messages, or documents stored on a personal computer. An attorney involved in the litigation will typically issue a "document hold notice" when necessary, which provides details on what to preserve and how to retain it.

How to Respond:

Immediately discuss the subpoena with an attorney or a legal group like CSLDF. The amount of time you will have to dispute the subpoena is usually limited. By negotiating with the party that served the subpoena, or by filing papers with the court, you may be able to narrow the subpoena or even nullify it (most commonly through written objections or moving to quash the subpoena in court).

If you are being subpoenaed in relation to a court case involving your institution, discuss the matter with your institution's counsel. Your institution's counsel represents the institution, not you, and it is important to understand what legal assistance, if any, the institution is able to extend to you. If the institution's legal interests differ from your own interests, we strongly recommend that you retain your own attorney.

If you have been subpoenaed for testimony—either for in-court testimony or an out-of-court deposition—review with your attorney the questions you are likely to be asked, and discuss what your answers should be. This preparation will likely involve a mock testimony session. Your attorney will have individualized suggestions for your specific situation, but here are some general pointers:

- When testifying, do not be afraid to ask the questioner to repeat or rephrase a question.
- Make sure to thoroughly review any exhibits, and consider your response before answering.
- Don't guess or speculate when answering; being truthful may require that you answer "I don't know" or "I don't remember."
- If, while testifying, you realize that you made a mistake in prior testimony or need to add something, tell your lawyer.

If you have been subpoenaed for documents, discuss with your attorney any protections that may apply to the requested documents. Carefully review the documents to be produced, to make sure that unrelated documents have not slipped in and that the sections needing redactions have received them.

GOVERNMENT SUPPRESSION

At times, the government has been accused of suppressing or muzzling government scientists. Agency officials have been accused of altering scientific reports, modifying testimony submitted to Congress, and circumscribing or even preventing scientists' attempts to publicly discuss their work.

Every institution has its own rules and guidelines about what a scientist can say in public, what research is undertaken and how that research is used, and the way promotion and hiring decisions are made. If you feel those rules are being broken, a variety of avenues may be open to you to protest a decision—from requesting an internal review to becoming a public whistleblower. Each institution is different, so you need to understand how your institution works. It is also important to remember that these situations are rarely easy to navigate and the answers will not always be what you want to hear.

If faced with this sort of situation, consult an attorney and carefully weigh the risks before proceeding. If your work involves classified information, you must be especially careful to not disclose or mishandle this information.

How to Prepare:

Understand your institution's rules for speaking to the press and otherwise communicating your research to the public, and when clearance requirements may apply. Take note of any distinctions made between a scientist communicating personal views as a citizen and one who is speaking as a federal or state researcher representing the government. Among other considerations, the U.S. Supreme Court has held that public employees who speak critically of their government employer are not always protected by the First Amendment.

Understand your institution's rules for lodging a complaint, and the different channels available to you for filing a grievance.

How to Respond:

Document what is happening, including keeping a record of your conversations in a file. Do not use government resources to maintain these records, because your workplace computer, the office copier and other equipment, and your paper records ultimately belong to the government. To the extent that your work involves classified information, make sure you are following the rules for how that information is to be handled.

Consult with an attorney as early as possible; delaying legal advice often compounds problems. Contact a legal group such as CSLDF to discuss your options.

Gauge whether your colleagues share your concerns and whether key people agree with your account. Seek out potential allies and, if possible, consider lining up the assistance of sympathetic groups.

If you are interested in becoming a whistleblower—either publicly or anonymously—carefully consider all possible implications and repercussions with your lawyer. Think about what exactly you want to accomplish and how you want to do it, or how you might deal with any potential fallout. Do not rely on vague notions that truth will prevail.

HATE MAIL AND HARASSING OR THREATENING CORRESPONDENCE

Hate mail and harassing correspondence is a real problem, and affects an increasing number of scientists since the advent of the internet and social media. However, not all negative messages should be treated in the same way. Disparaging comments, though unappreciated, are usually not cause for alarm. On the other end of the spectrum, messages containing threats of physical harm deserve serious attention and should immediately be passed along to the appropriate authorities.

How to Respond:

In general, do not delete any harassing or threatening messages. Even in borderline cases, you should save all messages in case you ever need evidence to prove that it happened, which is especially important if the situation begins to escalate.

If you receive a critical or harassing message:

- Don't be afraid to ignore it. Look for signs that the sender is wasting your time or seeking to provoke you, such as with "gotcha" questions or inflammatory statements. Do not respond but archive emails you feel were sent in bad faith. An attacker may be seeking to rattle you, use your response to malign you publicly, and/or use your response as a launchpad for further harassment.
- If an inquiry appears to be valid, you may want to respond. If you do, remember that any response you write may be forwarded or published online, and be cognizant of not getting caught up in an endless back-and-forth argument.

- If you are feeling unsettled, reach out to your colleagues, scientific societies, or a group like CSLDF for emotional support.
- Although this rarely happens, if you receive a harassing message from a sender at your own institution, refer to your employee or student handbook for information about the proper internal channels to consult for guidance, such as the human resources department or a complaint committee.

If you receive a message that threatens you or your family:

- Report the threats to your institution (your supervisor and the human resources staff are probably the best starting points) as well as law enforcement.
- Contact a legal group such as CSLDF, especially if law enforcement becomes involved. If you are the victim of harassment that violates criminal laws, a lawyer can help you navigate the situation.

NEGATIVE PRESS

Scientists are criticized in the media in a host of situations ranging from mainstream critiques to misleading attacks posted on fringe blogs. The recent rise of social media and the ability for platforms to develop overnight have broadened this problem, especially at the extreme end, and certain corners of the internet have become permanent homes for virulent strains of antiscience thought.

Many scientists have found their work the subject of negative press, sometimes because their work has been twisted inadvertently or purposely by partisan forces.

How to Respond:

Before agreeing to speak to any reporter or interviewer, research their work. If it becomes obvious that an interview request is being made in bad faith, think carefully about agreeing to speak with a hostile journalist. You are unlikely to change his or her opinions, and may instead provide more fodder for an attack.

If you do choose to speak to a reporter, come to the interview well prepared. Consider the questions you are likely to be asked and outline draft answers. For higher-profile situations, your institution's public relations office or scientific society may assist you with preparing the best message to communicate.

If you find yourself targeted by hostile articles—online or in print—determine whether the source is obscure or widely read. If it appears to be obscure, ignoring it is often your best option. If the source appears to be widely read and/or looks to be gaining traction, you may want to consider your response options.

Save PDFs or screenshots of any hostile articles, including relevant blog comments, in case you ever need evidence to prove that it happened.

Do not be afraid to ask for help, especially if you have limited media experience. Reach out to your institution's public relations office, colleagues with more media experience, scientific societies, or a legal group like CSLDF. You will especially benefit from such assistance if politicians or other public officials become involved in the issue.

If you believe you have been defamed, remember that the United States has very broad freedom of speech laws and that, in general, defamation suits are difficult to win. (This is also an important point to remember if you are accused of defamation.) Contact a legal group such as CSLDF that can explain your legal options.

If you believe you are being threatened, notify your employer and law enforcement. Contact a legal group such as CSLDF for support as you navigate the situation.

This pocket guide was produced by the Climate Science Legal Defense Fund. Its purpose is to inform scientists about the legal aspects of issues that may arise when scientific work is challenged by politically-motivated opponents, and how to prepare for such scenarios. This guide concerns only U.S. laws, and it does not constitute specific legal advice for dealing with the particular situation of any individual.

If you are facing any of the situations described in this guide, or one not covered here, call us at **(646) 801-0853** or email **lawyer@climatesciencedefensefund.org** to receive a free consultation with an attorney who can discuss the specific laws and options that pertain to your case.



The Climate Science Legal Defense Fund (CSLDF) works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

Mailing Address

435 W. 116th St., Rm. 527
New York, NY 10027

Website

www.climatesciencedefensefund.org