

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@csldf.org to receive a free and confidential consultation with an attorney who can discuss the specific laws and options that pertain to your case.



A POCKET GUIDE FOR SCIENTISTS

Handling Political Harassment and Intimidation



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.



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INTRODUCTION

The scientific method is designed around the belief 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.

But sometimes, those whose ideas do not live up to the standards of rigorous science choose to advance their viewpoints through harassment, intimidation, and litigation. As a result, scientists are increasingly subjected to legal and other attacks from ideologically motivated groups. This pocket guide suggests ways that scientists can protect and defend themselves against such attacks, ranging from invasive open records lawsuits to Congressional inquiries to negative media coverage.

When in doubt, call a lawyer. While this pocket guide offers general tips and best practices for commonly encountered situations, the specific facts and circumstances for each scientist will be unique. Therefore, if you are worried that you are becoming the target of harassment or intimidation, or if you receive a request that seems politically motivated, it is important that you seek legal counsel before you respond. Your institution will likely have legal counsel you can contact, although it is important to remember that your institution's counsel represents the institution and not you, and the institution's legal interests may differ from your own.

You can always call us at the **Climate Science Legal Defense Fund**, where we provide free and confidential counsel to scientists facing legal attacks as a result of their work.

Contact us at
(646) 801-0853

Or send an email to
lawyer@csldf.org

TABLE OF CONTENTS

OPEN RECORDS LAWS	2-3
CONGRESSIONAL INVESTIGATIONS	4-5
CIVIL SUBPOENAS	6-7
GOVERNMENT CENSORSHIP	8-9
WHISTLEBLOWING	10-11
HATE MAIL AND HARASSING OR THREATENING CORRESPONDENCE	12-13
NEGATIVE PRESS	14-15
ACTIVISM AND ADVOCACY	16-17

OPEN RECORDS LAWS

One common legal attack on scientists has been via open records laws—the federal Freedom of Information Act (FOIA) or state equivalents—which promote government transparency by allowing citizens to request copies of administrative records. But these laws have also become a tool used to harass scientists, with publicly-funded scientists receiving open records requests for reams of documents, including emails, peer review correspondence, and preliminary drafts. Scientists employed by the government or public universities, or those 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 the state and federal open records laws that apply to your situation. Reach out to your institutional counsel, institutional records office, or groups like CSLDF who can help you understand the laws that may affect you. CSLDF also has resources explaining each state's open record laws at bit.ly/50statereport.

Ensure good recordkeeping:

The importance of protecting confidential scientific research documents and communications cannot be overstated. Indiscriminate release of scientists' files damages science in many ways, including:

- Open records laws can apply to professional email accounts for publicly-funded jobs, so do not use these for personal correspondence and vice versa. Maintaining this separation and ensuring your personal email account does not contain government records can reduce the likelihood of your personal email account and correspondence being captured by an open records request.
- Conduct work-related correspondence in a professional manner. It is important to remember that emails may be “FOIAed,” disclosed due to other legal actions, or even hacked, making their contents public.

- Employees and consultants of public institutions, including government scientists and public university researchers, should retain all public records. The precise determination will vary by state, but generally, documents relating to public business should be saved. Talk to your institution's counsel office, records office, your supervisor, or refer to your institution's employee handbook for more information about your institution's record retention policy.
- Be aware that grants may also require certain recordkeeping. For example, NSF grants stipulate that research data, including databases, must be shared.
- Even if no strict document retention requirements pertain to you, it is advisable to keep files for a few years; 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. Institutional counsel is most likely the party responsible for responding to the open records request. CSLDF can assist with situations in which your legal interests differ from your institution's own interests—a common scenario. CSLDF also provides emotional support by connecting scientists under attack to others who have successfully navigated such situations.

Understand that prompt action is especially key. Some state laws require an initial response within a matter of days.

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 the judicial process overseen by the courts, there are relatively few procedural protections for those who find themselves subject to a Congressional inquiry. Some members of Congress use their position to target scientists whose research they do not like. However, Congress's ability to enforce its requests is limited and public outcries over previous inquiries, to which Congress has responded, show that Congress is ultimately responsible to its constituents.

Congress also holds hearings to help members better understand and explore certain issues. Scientific expert testimony may be sought as part of this process, and the questioning can range from friendly to hostile. Even in friendly circumstances, it would be prudent to talk with a lawyer or legal group like CSLDF before testifying.

Letter of inquiry: Congressional inquiries often start by requesting information on a voluntary basis, usually by sending a letter request or asking for an interview. There is no legal obligation to comply with these requests. How a recipient should respond is a highly individualized decision that should be thoroughly discussed with a lawyer.

Legislative subpoena: A legislative subpoena may seek to compel the production of documents or in-person testimony and must originate from a Congressional committee or subcommittee; the rules governing the subpoena will depend on the rules of the committee pursuing the investigation. In general, Congressional enforcement of a 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 their attorney about their response options.

How to Prepare:

While it is impossible to predict whether a scientist may become one of the unlucky few to be targeted by a member of Congress, we recommend that all scientists **maintain good recordkeeping practices**. See pages 2–3 for more tips on how to keep your records in order.

Scientists can and should exercise their voting rights and support representatives who take their Congressional duties seriously and do not use their position to harass researchers.

How to Respond:

Promptly contact an attorney or legal group like CSLDF. In addition to providing legal resources, CSLDF provides emotional support by connecting scientists under Congressional inquiry to others who have successfully navigated such situations. It is also a good idea to contact institutional counsel although, in these situations, the scientist's legal interests may differ from the institution's own legal interests making institutional representation impossible.

Work with counsel to discuss response options. If there will be testimony, via voluntary or compulsory methods, discuss potential questions and answers to avoid being blindsided while testifying. This process likely will involve going through a mock testimony session with your attorney.

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

CIVIL SUBPOENAS

Scientists can be subpoenaed to appear for trial testimony, pre-trial depositions, or to produce documents for an existing court case. Most of these subpoenas involve disputes between other parties, sometimes including the scientist's institution, and thus are referred to as "third-party subpoenas," meaning that they are made on neither a plaintiff nor a defendant to the litigation.

How to Prepare:

If you believe that you may be subpoenaed in regards to ongoing or imminent litigation, it is imperative that you 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, there is a legal requirement to make a good-faith effort to preserve all documents relevant to the dispute. This can include Facebook or Twitter messages or posts, or documents stored on a personal computer. Generally, an attorney to the litigation will issue a "document hold notice" when necessary, which provides details on what to preserve and how to preserve it.

How to Respond:

Immediately discuss the subpoena with an attorney or legal group like CSLDF. There is usually a limited amount of time available to dispute the subpoena. In federal court, for example, objections must be made within 14 days. By negotiating with the party that served the subpoena, or by filing papers with the court, it may be possible to narrow the subpoena or even nullify it—most commonly via written objections or moving to quash the subpoena in court.

If you are 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, it is highly advisable to 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 you anticipate your answers will be. This likely will involve going through a mock testimony session with your attorney. 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, and make sure to thoroughly review any exhibits and consider your response before answering.
- Always tell the truth. Don't guess or speculate when answering; being truthful may require answering, "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 that you need to do so.

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 containing sensitive information are appropriately protected.

GOVERNMENT CENSORSHIP

The government has been accused of censoring or muzzling its scientists, with agency officials suspected 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 (see pages 10-11). 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 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 (see also pages 16-17).

Know your institution's rules for lodging a complaint and the different channels available to you for filing a grievance. Depending on the agency involved, the nature of your relationship (employee, contractor, grantee, intern, etc.), and the specific issue at hand, these options may include one or more of the following: filing a complaint under the agency's scientific integrity policy, filing a complaint with the agency's Office of Inspector General or Office of Special Counsel, or initiating proceedings, from filing a complaint to participating in mediation series, with the agency's Human Resources department or equivalent personnel office.

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, copier and other equipment, and your paper records belong to the government. (See also pages 16-17 for more information on documenting wrongdoings.) To the extent that your work involves classified information, make sure you are following the rules for how that information should be handled.

Consult with an attorney as early as possible. Delaying legal advice often compounds problems. In particular, be aware that internal channels frequently have strict time limitations and that complaints often must be submitted soon after the issue first arises for the best chance at resolution. Contact a legal group such as CSLDF to discuss your options and to strategize potential avenues for complaints.

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.

WHISTLEBLOWING

Whistleblowers—employees who choose to speak up when they become aware of serious violations of public trust in their workplaces—play a critical role in ensuring accountability and public safety. Recognizing the importance of whistleblowers, Congress has instituted protections for employees who report behavior they reasonably believe shows violation of a law, rule or regulation, gross mismanagement or waste of funds, abuse of authority, or substantial danger to public health or safety. Employees who make a qualifying disclosure are protected against retaliatory personnel actions such as firing, reduction of pay or benefits, or being transferred or reassigned as a result of that disclosure.

It is important to keep in mind that a disclosure about misconduct that does not rise to the level of the standard described above **will not be considered whistleblowing and will not be protected under most whistleblowing laws.** Similarly, if an employee's disclosure relates to a **difference of opinion about a policy decision** and is not connected to specific legal violations, gross mismanagement or waste of funds, abuse of authority, or danger to public health or safety resulting from that policy decision, **that disclosure likewise will generally not be protected under whistleblowing laws.** The First Amendment may, in some cases, shield this kind of speech by scientists, but it will not be considered protected whistleblowing.

How to Prepare and Respond:

Consult a lawyer. If you are considering becoming a whistleblower it is crucial to talk with a lawyer who has experience representing whistleblowers and carefully weigh all possible implications and repercussions. Think about what exactly you want to accomplish, how you want to do it, and how you will deal with any potential fallout. Do not rely on vague notions that truth will prevail.

Understand your institution's rules for speaking to the press, and for handling any classified information that may be relevant to your disclosure.

Take particular 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 (see also pages 16-17). Among other

considerations, the U.S. Supreme Court has held that the First Amendment does not always protect public employees who speak critically of their government employer.

Know the differences between being an anonymous versus a named whistleblower, and whistleblowing through official channels versus whistleblowing using the press or social media. Each of these options has pros and cons and will depend on your particular circumstances, including the legal protections and restrictions that may apply in your specific situation. Consult a lawyer or legal group like CSLDF to discuss what options may be applicable to you.

Create a paper trail. Keep a written log or timeline of all relevant developments. Record what happened and when, to whom you raised your concerns, and any retaliation you experienced. Note the details of any supporting emails, memos, or other evidence. Save any relevant documents you possess and print relevant emails.

Keep relevant documents in a safe place. Authorities usually have essentially unlimited access to a whistleblower's workplace files. However, storing relevant documents at home can be complicated because it raises the risk that the whistleblower will be accused of stealing government documents; any records kept at home must be considered "personal" notes. One option is to secure documentary evidence with your attorney, where the evidence may be shielded by attorney-client privilege. Another possibility is save items in an innocuous archive or electronic folder with a name that is less likely to attract attention. For more information on documentation, see the resource "Make a Note to the Record" at bit.ly/makeanotetotherecord.

Avoid creating any other reason why you could be fired for cause. Maintain good job performance and follow all applicable workplace rules. Be careful not to "take the bait" in work confrontations if you suspect that they may be an attempt to create a pretext for your removal.

HATE MAIL AND HARASSING OR THREATENING CORRESPONDENCE

An increasing number of scientists have become targets of hate mail and other harassing or threatening correspondence. But not all negative messages deserve the same response. Disparaging comments, while unappreciated, usually are not cause for alarm. On the other end of the spectrum, messages with threats of physical harm deserve serious attention and you should immediately notify the appropriate authorities if you receive one.

How to Respond:

In general, do not delete the messages. Even in borderline cases, you should save or archive all harassing or threatening 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:

- It is okay not to respond. Look for signs that the sender is wasting your time or seeking to provoke you, such as with “gotcha” questions or inflammatory statements. Ignore and archive emails when there are signs they were sent in bad faith. An attacker may be seeking to rattle you, use your response in attempting to malign you publicly, and/or use your response as a launchpad for harassing you further.
- If it appears to be a valid inquiry, you may want to respond. If you do respond, 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 groups like CSLDF, who can provide emotional support.
- While this rarely happens, if you receive a harassing message from a sender at your institution, you should consult your employee or student handbook on the internal channels that may need to be consulted, such as HR or a complaint committee.

If you receive a message threatening you or your family:

- Report the threats to your institution—your supervisor and HR are probably the best starting points, as well as law enforcement.
- Contact a legal group such as CSLDF, especially if law enforcement gets involved. If you have been the victim of harassment that violates criminal laws, it is helpful to have a lawyer to help you navigate the situation.

NEGATIVE PRESS

Scientists can be criticized in the media in a host of situations ranging from mainstream critiques to misleading attacks via fringe blogs. Social media and the ability of online 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 anti-science thought.

Many scientists have found their work the subject of negative press, which can happen when partisan forces twist their work, either by accident or on purpose.

How to Respond:

Before agreeing to speak to any reporter or interviewer, research their work.

It may become obvious that the interview request is being made in bad faith. Think carefully about agreeing to speak with a hostile journalist, as you are unlikely to change their mind and instead may provide them with further fodder for an attack.

If you decide to speak to a reporter, prepare for the interview. Consider the questions you are likely to be asked and outline draft answers. For higher profile situations, you may be able to get assistance from your institution's public relations office or scientific society to prepare how to best communicate.

If you find yourself targeted by hostile online or print articles determine whether the source is obscure or well read. If it appears to be obscure, it may well be best to ignore it. If it appears to be popular 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 they were published.

If you have limited media experience, ask for help from your institution's public relations office, your colleagues with more media experience, scientific societies, or legal groups like CSLDF. This is especially true if politicians or other public officials are involved in the issue you're discussing.

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

Notify your employer and law enforcement if you believe you are being threatened. Contact a legal group such as CSLDF who can help you navigate the situation.

ACTIVISM AND ADVOCACY

Many scientists are engaged in scientific advocacy and political activism. Although the chances of encountering trouble when you stand up for science are small, there are concrete things you can do to protect yourself and ways to respond if you feel your rights have been violated.

How to Prepare:

Separate your personal advocacy from your professional role:

- Always maintain separate personal and professional email accounts, and use the personal account for your activism activities. This will protect against your personal emails being made public pursuant to open records laws or other legal inquiry.
- Don't organize or discuss activism at work. These activities should always be done outside of your workplace and work hours.
- Don't use work or government-funded supplies for your activism activities. Always use your personal computer, printer, phone, etc.
- When demonstrating, don't wear work paraphernalia, such as a hat with your university logo or a work-issued lab coat.
- Don't provide your work affiliation when publicizing your involvement in advocacy. If you must do so for identification purposes, always clarify that you are not speaking on behalf of your institution.

Know how to demonstrate:

- Peaceful and non-obstructive demonstration is constitutionally protected even without a permit.
- Obey traffic signals and keep space open for non-demonstration pedestrian traffic. Do not maliciously obstruct or detain passersby.
- Use cardboard tubes for posters; don't use sticks, which may be considered weapons.

- If you are organizing a protest or demonstration, get a permit to notify police about your activities and reserve your location. Rules and procedures vary—review your city's official website to learn the rules for your location.
- For more information, review our brochure, "Know Your Rights: Scientific Activism & Protests," at bit.ly/csldfknowyourrights.

How to Respond:

If you feel your rights have been violated, know that police misconduct can't be challenged on the street, but it can be later on. Try to record the incident on your phone or write down everything you can: badge and patrol car numbers, the officer's agency, and contact information of witnesses. Take photos of any injuries (but seek medical attention first). Keep all official paperwork and receipts for medical treatment. Then file a written complaint with the agency's internal affairs division or civilian complaint board. Contact an attorney for additional help.