

Authority:

- Approved by the President/CEO
- Whistleblower Protection Act

## Chapter 23 Investigation and Determination of Misconduct & Whistleblower Protection

### 23.1 Policy

Misconduct [\[link: 23.7.6\]](#) subject to this Chapter includes any activity undertaken by anyone affiliated with OIST Graduate University (University), including, without limitation, officers, employees, students, vendors, and contractors that violates applicable Japanese legal or regulatory provisions, or violates Bylaws, University Rules, Policies, Rules, and Procedures (PRPs) (collectively, “non-compliance”) and misconduct in research activities by these people. The scope of non-compliance includes public research fund misuse. Besides this Chapter, the University’s Code of Conduct [\[link: 1.4\]](#) and Research Ethics, Compliance and Prevention of Conflict of Interest [\[link: 4.7\]](#), Operation and Management of Public Research [\[link: 4.11\]](#), Avoiding Conflicts of Interest and Commitment [\[link: 22\]](#), and Resolving Complaints & Disputes [\[link: 39\]](#) should be reviewed for additional guidance.

All officers, employees and students, who are the members of the University, are responsible for maintaining the highest ethical standards. To protect the integrity of the University community, and to ensure the highest standards of conduct by and among members of the University community, the University will investigate, in accordance with the rules set forth in this chapter, any alleged misconduct by faculty, employees, students, vendors, contractors and others having dealings with the University.

Any University officers, employees, students, vendors, and contractors found to have engaged in misconduct will be subject to disciplinary action by the University, up to and including termination of position or employment (officers and employee), expulsion (students), cancellation of contractual relationship (vendors and contractors), and civil or criminal prosecution if warranted.

#### 23.1.1 Whistleblower Protection Policy

The University will not tolerate retaliatory action against any employee or student for making a good faith report of potential or suspected misconduct [\[link: 23.7.6\]](#). Similarly, the University will not tolerate any direct or indirect use (or attempted use) of official authority or official influence [\[link: 23.7.7\]](#) for the purpose of interfering with the rights of an employee or a student to make a Protected Disclosure [\[link: 23.7.8\]](#).

## **23.2 Rules**

### **23.2.1 Reporting Misconduct**

**23.2.1.1** All members of the University are strongly encouraged to report any perceived misconduct if they believe or suspect that the misconduct has taken place. Reports may be made to a senior member (or the supervising faculty member or the Dean of the Graduate School for students) of the person who is suspected to have committed the misconduct, or via the contact points listed in Table 1. Any person other than the University member may make a report via the external contact point shown in Table 1. Procedures for making a report are set forth in 23.4.1.1 below.

**23.2.1.2** A report of a suspected misconduct made by anyone shall be in good faith, based on objective and rational grounds. A groundless report for defaming the respondent or that is driven by bad faith (which means a will solely directed to causing a damage on the respondent, such as for causing harm to the respondent or for obstructing the research carried out by the respondent, or for creating disadvantage for the entity or organization that the respondent belongs to) or a report based on an identical or a similar content (ex: any report with an identical or similar factual background claimed in the previous report, or any report on the investigation regarding the previous report) shall not be made.

**23.2.1.3** All officers and employees who are involved with the process of handling reports, from the receipt of a report to the completion of investigation, shall strictly maintain confidentiality of information pertaining to concerned parties including the whistleblower.

### **23.2.2 Investigation**

**23.2.2.1** When a report of suspected misconduct is received, it will be taken up as a case of one of the misconduct categories and verification of facts and circumstances will commence in accordance with the procedures for the applicable category:

Procedures for investigation of non-compliance are set forth in 23.4.2, procedures for investigation of public research fund misuse are set forth in 23.4.3, and procedures for investigation of Specified Research Misconduct are set forth in 23.4.4. For investigation of misconduct in research activities other than Specified Research Misconduct [link: 23.7.6.2.1] such as duplicate submissions and inappropriate authorship, 23.4.4 will apply mutatis mutandis to the procedures as necessary.

In addition, when the countermeasures to the relevant report are clearly provided in the PRP and other regulations, the said report may be assigned

to the division/section in charge. In this case, the original contact point shall notify the reporter regarding the assignment to the relevant division/section.

**23.2.2.2** Any person subject to the concerned whistleblowing or has an interest in the investigated case shall not be involved in the investigation ; provided, however, this shall not apply if it is under exceptional circumstances.

**23.2.2.3** Results of investigation shall be reported to the President/CEO (and to the Board of Governors and Auditors, if there is any potentially serious non-compliance with legal or regulatory provisions). This report shall be made directly to the Board of Governors and Auditors, if the President/CEO has an interest in the concerned whistleblowing ; provided, however, this shall not apply if it is under exceptional circumstances.

**23.2.2.4** Also, a case brought to the University's attention by means other than a report, such as by a consultation without a clear indication or a willingness of making a report, or by media coverage or findings from external agency such as the Board of Audit, or by an indication of suspected specified research misconduct made by the scientific community such as an academic society or by information of suspected specified research misconduct posted on a website, may also be handled by the same procedures that handle cases initiated by a report.

### **23.2.3 Retaliation Complaint**

**23.2.3.1** Any whistleblower who experiences retaliatory action for making a good faith report of potential or suspected misconduct, or who has been the subject of direct or indirect use or attempted use of official authority or official influence [\[link: 23.7.7\]](#) for the purpose of interfering with his or her right to make a Protected Disclosure [\[link: 23.7.8\]](#), may file a Retaliation Complaint [\[link: 23.7.9\]](#) to the Vice-President for Administrative Compliance (hereinafter, "VPAC").

**23.2.3.2** The Whistleblower Protection Policy [\[link: 23.1.1\]](#) shall apply to any retaliation complaint filed by whistleblowers, attempted whistleblowers or employees or members who have refused to obey an Illegal Order [\[link: 23.7.5\]](#).

**23.2.3.3** The University will take whatever action is necessary to prevent and correct violations of this Whistleblower Protection Policy, in accordance with applicable laws and regulations and University PRPs.

**23.2.3.4** The VPAC conducts an investigation to verify the facts and

circumstances which constitute the cause of a specific Retaliation Complaint.

**23.2.4** Any individual who files a Groundless Report or Complaint [\[link: 23.7.4\]](#) is not subject to protection under the University's Whistleblower Protection Policy [\[link: 23.1.1\]](#).

## **23.3 Responsibilities**

### **23.3.1 All Employees and Students**

All employees and students are required to report any non-compliance with the University policies as well as Japanese laws, regulations, rules or regulatory controls which apply to activities of the University, based on a rational ground and in good faith. Also, employees and students are expected to be truthful and cooperative in an investigation regarding suspected misconduct.

All employees and students are required to complete the orientation programs before they start working at the University, and also attend periodical training sessions to ensure compliance with the rules concerning appropriate use of research funds including operating expense subsidy and competitive research funding. In the course of these compliance training sessions, employees are asked to sign a form to confirm their understanding and agreement to observe the rules that apply to the University.

### **23.3.2 President/CEO**

The President/CEO is the Chief Administrative Officer for all aspects of the prevention and investigation of misconduct. The President/CEO will fully inform employees and students that they have responsibility to report misconduct and where the contact points for reporting. Also, the President/CEO shall promptly review reported cases and draw a conclusion.

### **23.3.3 Dean of Faculty Affairs**

The Dean of Faculty Affairs is the General Administrative Officer over the response to and investigation of the misconduct in research activities, and is a contact point for reporting public research fund misuse or misconduct in research activities. Also, under the instruction of the President/CEO, the Dean of Faculty Affairs provides instructions to relevant departments and offices and makes inquiry to verify details of a reported case.

### **23.3.4 Vice President for Administrative Compliance (VPAC)**

The Vice-President for Administrative Compliance (hereinafter, "VPAC") is a contact point for whistleblowing concerning any activity that violates Japanese laws or regulations, Bylaws, University Rules or PRPs (excluding those relating to public research fund misuse, harassment and other disputes) and is in charge of investigation. Also, VPAC is in charge of responses to Retaliation Complaints,

and administration of contact points for confidential or anonymous reporting (hotline). Also, the VPAC coordinates relevant departments and offices to ensure that they handle reports in compliance with predetermined procedures and cooperate with each other, and, further, responds to concerns about retaliation or unfair treatment against whistleblowers who have reported misconduct, in cooperation with the people in charge of the concerned case. If there is any potentially serious non-compliance with legal or regulatory provisions, the VPAC will coordinate communication between the President/CEO, the Board of Governors and Auditors.

## 23.4 Procedures

### 23.4.1 Procedures for Reporting Misconduct

**23.4.1.1** A report of misconduct may be made to a person who is a supervisor of the suspected person or a contact point listed below. Supervisors include the following people:

- When an employee is subject to the whistleblowing: A senior employee in the employee's office or department;
- When a student is subject to the whistleblowing: The student's academic supervisor or the Dean of the Graduate School; and
- When a faculty member is subject to the whistleblowing: the Dean of Faculty Affairs.

Table 1: Contact points of report of misconduct

Case Category	Contact Points	
	Internal	External
Non-compliance	VPAC Compliance Section Manager	Misconduct Report Hotline <a href="#">[Link: TBP]</a>
Public research fund misuse	Dean of Faculty Affairs  Misuse of open-recruitment type research funding may also be reported to the Grants and Research Collaborations Section Manager or the Business Development Section Manager.	
Misconduct in research activities	Dean of Faculty Affairs  Occupational Health and Safety Section Manager	

\*Conflicts of interest [\[Link: 22\]](#) may be reported to the VPAC or the Compliance Section Manager, and Harassment and Personnel Dispute [\[Link: 39\]](#) may be reported to the AVPHR or the RWAH Hotline [\[Link: TBP\]](#).

**23.4.1.1.1** Whistleblowers may report suspected misconduct to the listed contact points by email, in writing, or by phone. It is recommended to use the Whistleblower Report [Link: 23.5.1] as much as possible in order to promptly implement the investigation.

**23.4.1.1.2** As a basic rule, a report shall be made by identifying the name of the whistleblower, and only a report that describes details of the case, such as who has committed the suspected misconduct, what kind of misconduct is committed, and a rational ground, will be officially received.

**23.4.1.1.3** Notwithstanding 23.4.1.1.2, whistleblowers may report suspected misconduct anonymously by email, in writing or by phone through the University's Misconduct Report Hotline above. The hotline is taken care of by an external entity in order to maintain confidentiality. The University will handle any anonymous report received by the Hotline in accordance with the equivalent procedures for reports made by identified whistleblowers, taking account of the contents of the case.

**23.4.1.1.4** When a contact point has received a report concerning significant misconduct, it shall promptly notify thereof to the President/CEO.

**23.4.1.1.5** When the contact point finds that the University is not an entity to conduct investigation of the reported case, it will forward the report to an entity that is the investigatory organization. The University will handle any report of suspected misconduct being forwarded from another entity deeming that the report has been made to the University. Also, in the case of the University finds that there is another entity that is in charge of the investigation besides the University, it notifies said another entity of the report.

**23.4.1.1.6** When a contact point has received a report and the fact as to whether or not it has officially received the report cannot be known by the whistleblower, it notifies the whistleblower that it has officially received the report (excluding anonymous reports; however, if the whistleblower is identified before issuance of an investigation report, the whistleblower is treated as an identified whistleblower; the same applies hereinafter).

**23.4.1.1.7** When a consultation contains such a description that misconduct is about to occur or a person is asked to commit misconduct, the contact point notifies the President/CEO or the Dean of Faculty

Affairs.

**23.4.1.2** When an illegal activity violating the Act on the Protection of Personal Information Held by Incorporated Administrative Agencies, Etc. has taken place or is about to take place, a report may also be submitted in writing to the Okinawa Institute of Science and Technology Graduate University Project Office, Okinawa Development and Promotion Bureau of the Cabinet Office.

## **23.4.2 Procedures for Investigation of Non-compliance with Legal or Regulatory Provisions**

### **23.4.2.1 Preliminary Investigation**

**23.4.2.1.1** When the VPAC finds that a reported case needs a Preliminary Investigation, he/she may have Compliance Section to conduct the Preliminary Investigation. When conducting the Preliminary Investigation, the VPAC will investigate the credibility, rationality and the purpose of the report, in addition to the credibility and rationality of conducting the Substantial Investigation, etc.

**23.4.2.1.2** The VPAC shall review the details of the report from the standpoint of credibility, rationality and the purpose of the report, in addition to the credibility and rationality of conducting the Substantial Investigation, etc. within 30 days from the official receipt of the report, and decide whether or not a Substantial Investigation is necessary. However, in case there is a legitimate reason, such as difficulty in administrative procedures, etc., the said period of 30 days may be extended to a maximum of 60 days. In this case, VPAC shall give a written notification on the extended duration and the reason thereof. The VPAC shall notify the President/CEO and the whistleblower of the commencement of the Substantial Investigation when the decision is to conduct a Substantial Investigation, or, when the decision is not to conduct a Substantial Investigation, notify the whistleblower thereof with a reason why the Substantial Investigation will not be conducted.

### **23.4.2.2 Substantial Investigation**

**23.4.2.2.1** The President/CEO shall, when the decision to conduct a Substantial Investigation has been made, promptly instruct and cause the VPAC and Compliance Section to conduct factual investigation. However, the President/CEO may establish a Compliance Investigatory Committee and have the Compliance Investigatory Committee to conduct an investigation, if it deems necessary. The

VPAC chairs the Compliance Investigatory Committee, and convenes meetings on a case basis selecting persons whom the VPAC considers necessary. The Secretariat of the Compliance Investigatory Committee is handled by the Compliance Section.

**23.4.2.2.2** The Compliance Investigatory Committee will investigate whether there was alleged non-compliance, who were involved in the alleged misconduct and how deeply they were involved. The Committee may request the respondent to submit relevant documents, make an attestation, respond to hearing and/or other necessary cooperation.

**23.4.2.2.3** The Compliance Investigatory Committee shall, before making a determination, notify the respondent of the contents of the investigation to ask for the respondent's comments. The respondent may submit his/her comments to the Compliance Investigatory Committee within 30 days from the date of notification of the contents of investigation under the preceding paragraph. In this case, when the Compliance Investigatory Committee has received comments or a response of “no comments” from the respondent, the Committee may make a determination even before the expiry of the 30-day period.

#### **23.4.2.3 Determination**

The Compliance Investigatory Committee shall make a determination as to whether or not there was non-compliance, based on the results of the investigation, and notify the President/CEO of the results of the investigation including said determination. The President/CEO shall notify the respondent of the results of the investigation.

#### **23.4.2.4 Appeal**

The respondent may appeal to the President/CEO within 14 days from the date of notification of the results of the investigation. When an appeal is lodged, the President/CEO may instruct the Compliance Investigatory Committee to conduct a re-investigation at the discretion of the President/CEO. In this case, when the respondent's claims in the appeal and grounds thereof are concerning fairness or integrity of the Compliance Investigatory Committee such as composition of the Committee, members of the Compliance Investigatory Committee may be replaced at the discretion of the President/CEO. When a re-investigation is instructed, the Compliance Investigatory Committee shall promptly proceed with the re-investigation and notify the President/CEO of the results thereof. The President/CEO shall make a decision on the appeal, and notify the respondent and the Compliance Investigatory Committee of the decision. When the President/CEO has decided not to conduct a re-investigation,



he/she will notify the respondent and the Compliance Investigatory Committee of the decision with a reason why the re-investigation will not be conducted. The respondent may not further appeal against said decision on the appeal.

#### **23.4.2.5 Notifying and Reporting**

The President/CEO shall notify the whistleblower, the respondent and the head of the relevant department or office of the results of the investigation, and also, if any concerned person is to receive an adverse disposition, submit reports with additional descriptions including dispositions on the concerned persons, factors facilitated the misconduct and recurrence prevention measures to the Board of Governors, Auditors, the Funding Agency and Cabinet Office, within, unless otherwise specified, 210 days from the official receipt of the report made by the whistleblower.

#### **23.4.2.6 Public Announcement of The Results of Investigation**

When it was determined that there was non-compliance with legal or regulatory provisions, the President/CEO shall publicly announce the results of investigation promptly after the determination, unless the President/CEO finds it necessary to keep the results undisclosed because of a justifiable reason. In this case, names of the involved persons are basically disclosed and other information are also disclosed unless the President/CEO finds it particularly necessary to keep it undisclosed. In addition, when information on the subject case has been divulged outside the University or when the subject case involves a serious issue having a significant social impact, the President/CEO may make a public announcement as a mid-term report even during the investigation is ongoing, if it deems necessary.

#### **23.4.2.7 Measures for Whistleblowers and Respondents**

**23.4.2.7.1** When a determination that misconduct took place has been made, the President/CEO will take an appropriate disciplinary action against a person determined to be involved in the misconduct in accordance with Chapter 38.

**23.4.2.7.2** When a report made by a whistleblower is determined to be bad faith, the President/CEO will take an appropriate disciplinary action against the whistleblower in accordance with Chapter 38.

### **23.4.3 Procedures for Investigation of Public Research Fund Misuse**

#### **23.4.3.1 Preliminary Investigation**

**23.4.3.1.1** When the President/CEO finds that a reported case needs a Preliminary Investigation, he/she may have the Dean of Faculty Affairs to conduct the Preliminary Investigation. When the Dean of Faculty Affairs is instructed by the President/CEO to conduct the Preliminary Investigation, the Dean of Faculty Affairs will investigate the credibility and so on of the report, and will submit the results thereof to the President/CEO within 14 days from the date of receipt of the instruction.

**23.4.3.1.2** The President/CEO shall review the details of the report from the standpoint of rationality within 30 days from the official receipt of the report, decide whether or not a Substantial Investigation is necessary, and notify the Board of Governors, Auditors, the Funding Agency and the Cabinet Office of the decision when the decision is to conduct a Substantial Investigation. The President/CEO shall notify the whistleblower of the commencement of the Substantial Investigation when the decision is to conduct a Substantial Investigation, or, when the decision is not to conduct a Substantial Investigation, notify the whistleblower thereof with a reason why the Substantial Investigation will not be conducted.

#### **23.4.3.2 Substantial Investigation**

**23.4.3.2.1** The President/CEO shall, when the decision is to conduct a Substantial Investigation, promptly establish and cause a Public Research Fund Investigatory Committee to conduct factual investigation. The Dean of Faculty Affairs chairs the Public Research Fund Investigatory Committee, and convenes meetings on a case basis selecting persons whom the Dean of Faculty Affairs considers necessary from the people listed below. The Secretariat of the Public Research Fund Investigatory Committee is handled by the Office of the Dean of Faculty Affairs.

- (1) Dean of Faculty Affairs
- (2) General Counsel
- (3) Vice-President for Administrative Compliance (VPAC)
- (4) Vice President, Financial Management
- (5) Dean of Research
- (7) HR Management Section Leader
- (8) Compliance Section Leader
- (9) Accounting Section Leader
- (10) Grants and Research Collaborations Section Leader
- (11) Business Development Section Leader
- (12) Other eligible persons whom the chairperson considers necessary

**23.4.3.2.2** The Public Research Fund Investigatory Committee will investigate whether there was public research fund misuse, what kind of misuse took place, who were involved in the alleged misuse and how deeply they were involved, what is an amount equivalent the misuse, etc. The Public Research Fund Investigatory Committee shall discuss the policy of the investigation and what and how to investigate before the commencement of the Substantial Investigation. The Public Research Fund Investigatory Committee may request the respondent to submit relevant documents, make an attestation, respond to hearing and/or other necessary cooperation. In addition, the Public Research Fund Investigatory Committee may order the respondent not to use the public research funds subject to the investigation, if it deems necessary.

**23.4.3.2.3** The Public Research Fund Investigatory Committee shall, before making a determination, notify the respondent of the contents of the investigation to ask for the respondent's comments. The respondent may submit his/her comments to the Public Research Fund Investigatory Committee within 30 days from the date of notification of the contents of investigation under the preceding paragraph. In this case, when the Public Research Fund Investigatory Committee has received comments or a response of “no comments” from the respondent, the Committee may make a determination even before the expiry of the 30-day period.

#### **23.4.3.3 Determination**

The Public Research Fund Investigatory Committee shall make a determination as to whether there was public research fund misuse, what kind of misuse took place, who were involved in the alleged misuse and how deeply they were involved, what is an amount equivalent the misuse, etc., based on the results of the investigation, and notify the President/CEO of the results of the investigation including said determination.

#### **23.4.3.4 Notifying and Reporting**

**23.4.3.4.1** The President/CEO shall, based on the results notified under the preceding paragraph, notify the whistleblower, the respondent and the head of the relevant department or office of the results of the investigation, and also submit reports with additional descriptions including dispositions on the concerned persons, factors facilitated the misuse, information on mechanisms for managing and supervising public research funds which are other than those subject to the investigation and said concerned persons are involved in and recurrence prevention measures to the Board of Governors, Auditors,

the Funding Agency and the Cabinet Office, within, unless otherwise specified, 210 days from the official receipt of the report made by the whistleblower. The President/CEO shall notify the respondent of the results of the investigation.

**23.4.3.4.2** The President/CEO shall, even when the investigation is on-going, when any parts of the facts of the misuse have been verified, make a determination promptly and submit reports to the Board of Governors, Auditors, the Funding Agency and the Cabinet Office. In addition, when the Funding Agency or the Cabinet Office requests, even before the completion of the investigation, a progress report of the investigation or a mid-term report shall be submitted and it shall be reported to Auditors. Also, if the Funding Agency or the Cabinet Office requests, the President/CEO shall submit materials related to the matter or permit their inspection and on-site investigation, unless there are appropriate reasons for not doing so, such as when it is likely to cause an adverse effect on the investigation or undue violation of individual rights

#### **23.4.3.5 Appeal**

The respondent may appeal to the President/CEO within 14 days from the date of notification of the results of the investigation. When an appeal is lodged, the President/CEO may instruct the Public Research Fund Investigatory Committee to conduct a re-investigation at the discretion of the President/CEO. In this case, when the respondent's claims in the appeal are concerning fairness or integrity of the Public Research Fund Investigatory Committee, such as composition of the Committee, members of the Public Research Fund Investigatory Committee may be replaced at the discretion of the President/CEO. When a re-investigation is instructed, the Public Research Fund Investigatory Committee shall promptly proceed with the re-investigation and notify the President/CEO of the results thereof. The President/CEO shall make a decision on the appeal and notify the respondent and the Public Research Fund Investigatory Committee of the decision. When the President/CEO has decided not to conduct a re-investigation, he/she will notify the respondent and the Public Research Fund Investigatory Committee of the decision with a reason why the re-investigation will not be conducted. The respondent may not further appeal against said decision on the appeal.

#### **23.4.3.6 Public Announcement of the Results of Investigation**

When it was determined that there was misuse, the President/CEO shall publicly announce the results of investigation promptly after the determination, unless the President/CEO finds it necessary to keep the

results undisclosed because of a justifiable reason. In this case, names of the involved persons are basically disclosed and other information are also disclosed unless the President/CEO finds it particularly necessary to keep it undisclosed. In addition, when information on the subject case has been divulged outside the University or when the subject case involves a serious issue having a significant social impact, the President/CEO may make a public announcement as a mid-term report even during the investigation is on-going, if it deems necessary.

#### **23.4.3.7 Measures for Whistleblowers and Respondents**

**23.4.3.7.1** When a determination that misuse took place has been made, the President/CEO will take an appropriate disciplinary action against a person determined to be involved in the misuse in accordance with Chapter 38.

**23.4.3.7.2** As a result of the reporting, if the President/CEO is ordered to refund the public research funds determined to be misused by the Funding Agency or the Cabinet Office, the President/CEO may request the respondent to return the amount. If the misuse is serious such as misappropriation for a private purpose, legal measures may be taken, if it is deemed necessary.

**23.4.3.7.3** When no misuse was determined, the President/CEO may, based on the results notified under the preceding paragraph, take measures for preventing possible disadvantages on the whistleblower and the respondent, if it is deemed necessary.

**23.4.3.7.4** When a report made by a whistleblower is determined to be bad faith, the President/CEO will take an appropriate disciplinary action against the whistleblower in accordance with Chapter 38.

#### **23.4.4 Procedures for Investigation of Specified Research Misconduct**

##### **23.4.4.1 Preliminary Investigation**

A Preliminary Investigation is conducted in order to determine whether or not an official Substantial Investigation is necessary, in accordance with the following guidelines:

**23.4.4.1.1** The Dean of Faculty Affairs will, with members selected from following list based on the research field in question, promptly undertakes a Preliminary Investigation to evaluate the possibility that the alleged Specified Research Misconduct took place, credibility of the rationale provided as a scientifically reasonable ground of reporting,

rationality of the contents of the reporting, whether or not an investigation is warranted and so on, while providing any and all reasonable and practical means.

- (1) Dean of Faculty Affairs
- (2) General Counsel
- (3) Dean of Research
- (4) Chair of the Faculty Counsel
- (5) Chair of the Faculty Assembly
- (6) Occupational Health and Safety Section Leader
- (7) Grants and Research Collaborations Section Leader
- (8) External Experts
- (9) Other eligible persons whom the Dean of Faculty Affairs considers necessary

**23.4.4.1.2** When conducting a Preliminary Investigation with respect to a manuscript which has been withdrawn before receiving the reporting, the Dean of Faculty Affairs will, in the process of the Preliminary Investigation, also evaluate as to whether or not the case should be investigated in a Substantial Investigation as an issue of Specified Research Misconduct, taking account of such matters as how and why the manuscript was withdrawn and any other relevant situations, and make a decision whether to proceed with a further full-scale investigation.

**23.4.4.1.3** The Dean of Faculty Affairs will confirm the source of funding which funds the research subject to the reporting. Budget Section, and Grants and Research Collaborations Section will provide a report on the source of funding to the Dean of Faculty Affairs.

**23.4.4.1.4** The Dean of Faculty Affairs will decide whether to conduct a Substantial Investigation within 30 days after the official receipt of the reporting and report to the President/CEO.

**23.4.4.1.5** When the decision is not to conduct a Substantial Investigation, the Dean of Faculty Affairs shall notify the whistleblower of the decision and the reason why the Substantial Investigation will not be conducted. In this case, the Dean of Faculty Affairs shall archive reference materials used in the Preliminary Investigation, and, upon request by the relevant Funding Agency, the Cabinet Office or the whistleblower, disclose these archived references.

**23.4.4.1.6** A report of a Preliminary Investigation and relevant documents will be archived for 7 years at the University.

### **23.4.4.2 Substantial Investigation**

#### **23.4.4.2.1 Notifying and Reporting**

i) A Substantial Investigation is carried out by the Committee to Promote the Responsible Conduct of Research (hereinafter, “CPR”). The Dean of Faculty Affairs chairs the CPR, and convenes meetings on a case bases selecting persons whom the Dean of Faculty Affairs considers necessary from the people listed below. Internal Faculty members and external members are selected by the Dean of Faculty Affairs based on the research field in question. The Secretariat of the CPR is handled by the Dean of Faculty Affairs Office.

- (1) Dean of Faculty Affairs
- (2) General Counsel
- (3) Dean of Research
- (4) Chair of the Faculty Counsel
- (5) Chair of the Faculty Assembly
- (6) Occupation Health and Safety Section Leader
- (7) Grants and Research Collaborations Section Leader
- (8) External Experts (Needs to be over half of the members)
- (9) Other eligible persons whom the chairperson considers necessary

When a decision to carry out a Substantial Investigation has been made, the President/CEO will notify in writing the whistleblower and the respondent that the Substantial Investigation will be carried out and ask them to cooperate with the investigation. When the respondent belongs to an entity other than the University, the notice will also be given to said entity. The chairperson will, when it has established the CPR, provide the whistleblower and the respondent with a list of committee members identifying their organizations. In response thereto the whistleblower and the respondent may file an opposition within 7 days after he/she received said notification. In the case where an opposition is filed, the chairperson will review the contents of the opposition, and if the chairperson finds the opposition is reasonable, it will replace the committee member(s) objected in the opposition and notify the complainant and the respondent of the replacement. In carrying out the investigation of the alleged case, a special care shall be used so that, unless the whistleblower agrees to the contrary, the whistleblower cannot be identified by the respondent or a person other than the persons working in the investigation.

ii) The Dean of Faculty Affairs notifies the Board of Governors, Auditors, the Funding Agency and the Cabinet Office that it will carry out a Substantial Investigation.

iii) A Substantial Investigation shall be commenced no later than 30 days after the decision to conduct the Substantial Investigation.

#### **23.4.4.2.2 Investigation Method and Delegated Power**

i) The Substantial Investigation will be carried out by scrutinizing various reference materials such as manuscripts, experimental or observational notebooks and raw data relating to the research activities in question, conducting interviews with relevant personnel, requesting reproduction of the same experiments. In doing so, the respondent shall be given an opportunity for explanation.

ii) For investigating the possibility that the alleged Specified Research Misconduct took place, when the CPR requests the respondent to prove reproducibility by conducting the same experiment or when the respondent voluntarily requests to do such experiment and the CPR finds it necessary, the reproduction of the same experiment will be carried out within the extent that the CPR finds it reasonably necessary taking account of a necessary period and opportunity (including equipment, costs, and other relevant matters). In doing so, guidance and supervision provided by the CPR will be followed.

iii) With respect to the Substantial Investigation, the CPR may request other entities to conduct a necessary investigation.

iv) With respect to the preceding three paragraphs, the CPR has the power to require concerned persons to submit reference materials, appear in hearings and conduct reproduction of the same experiment, and require the University to pay costs reasonably necessary for the procedures. Also, concerned persons including the whistleblower and the respondent shall cooperate with the investigation carried out by the CPR based on said delegated power in good faith.

#### **23.4.4.2.3 Research Activities Subject to Investigation**

In addition to the research activities in question, other research activities which involve the respondent and are relevant to the investigation may be subject to investigation at the discretion of the CPR.

#### **23.4.4.2.4 Measures for Preserving Evidence**



In order to carry out a Substantial Investigation, the CPR will take measures for preserving reference materials which may be used as evidence for the research activities in question. In this case, if the research activities in question took place at a venue controlled by an entity other than the University, the CPR will request the entity to take measures for preserving reference materials which may be used as evidence for the research activities in question. The respondent's research activities will not be restricted to the extent that does not negatively affect these measures.

#### **23.4.4.2.5 Mid-term Investigation Report**

If the Funding Agency or the Cabinet Office which has distributed or took measures for the budget of the research activities in question requests, the President/CEO will submit a mid-term investigation report to the Funding Agency or the Cabinet Office even before the completion of the investigation, and it will be reported to Auditors.

#### **23.4.4.2.6 Protection of Research or Technical Information Subject to Investigation**

In carrying out investigation, a special care shall be used so that research or technical information subject to investigation such as data and manuscripts before publication will not be disclosed beyond the extent that is just necessary for carrying out the investigation. In a case where there are more than one respondents, if it has been found that they were not collectively involved in the alleged misconduct, investigation reports may be prepared individually for these respondents, for the sake of maintaining confidentiality.

### **23.4.4.3 Determination**

#### **23.4.4.3.1 Determination**

i) The CPR will complete documentation of the results of the investigation within 150 days from the commencement of the Substantial Investigation and make a determination as to whether or not Specified Research Misconduct took place.

ii) If it is determined that Specified Research Misconduct took place, the CPR will further determine the details thereof, including name of persons involved in the Specified Research Misconduct, the degree of involvement of each person, and the roles of authors of the manuscripts relating to the research activities being determined as Specified Research Misconduct in said manuscripts or in said research activities.

iii) When it is determined that Specified Research Misconduct did not take place, if it has been found that the reporting was bad faith, the CPR will make the determination of bad faith reporting at the same time. In doing so, the whistleblower shall be given an opportunity for explanation.

iv) Upon completion of the determinations according to the preceding three paragraphs, the CPR will immediately report the determinations to the President/CEO.

#### **23.4.4.3.2 Accountability for Reporting of Specified Research Misconduct**

In the investigation carried out by the CPR, when the respondent intends to remove the suspicions over the research activities in question, the respondent shall explain, under his/her own responsibility, that the research activities have been carried out in accordance with scientifically appropriate methods and procedures, and the papers have been written based thereon using appropriate expressions, presenting scientific evidence that supports his/her explanation.

#### **23.4.4.3.3 Determination Whether or Not Specified Research Misconduct Took Place**

i) The CPR takes into account the explanation given by the respondent under the preceding paragraph and makes comprehensive evaluation of all evidence obtained by the investigation including physical or scientific evidence, testimonies and self-admission of the respondent, to determine whether or not Specified Research Misconduct took place. Credibility of evidence is determined by the evaluation of the CPR, but, to determine factual basis of the misconduct and intentionality, it is important to take account of various aspects such as the organizational mechanisms applied to the research of the respondent and how the data were checked in the mechanisms. In addition, determination that Specified Research Misconduct took place cannot be made if the respondent's self-admission is the only evidence supporting the determination.

ii) In the case where evidence supporting the Specified Research Misconduct is submitted, when a suspicion that the Specified Research Misconduct took place cannot be reversed by the respondent's explanation and other evidence, the determination that Specified Research Misconduct took place will be made. Also, the same applies to the case where the respondent is unable to present sufficient evidence that reverses the suspicion that Specified Research Misconduct took place due to lack of basic elements which normally

exist in research activities, such as lack of raw data, experimental or observational notebooks, experimental materials or reagents. However, this does not apply to the case where it is found that there is a justifiable reason for that, such as when the respondent had used a good manager's care and the inability of presenting sufficient evidence based on the basic elements was due to a cause beyond control of the respondent (such as loss by disaster). Also, the same applies to the case where lack of raw data, experimental or observational notebooks, experimental materials or reagents, etc. is because of expiry of the reasonable period for storage specified by OIST Guidelines on Research Data and Laboratory Notebooks [\[link: TBP\]](#) or the research institution that the respondent belonged to when he/she was carrying out the alleged research activities.

iii) Specific standard of proof regarding the preceding two paragraphs and basic elements which should normally exist in research activities as mentioned in the preceding paragraph are determined by the CPR taking account of the characteristics of the relevant research field.

iv) A report of a Substantial Investigation and relevant documents will be archived for 7 years at the University.

#### **23.4.4.3.4 Notifying and Reporting of Results of Investigation**

i) The President/CEO will promptly notify the whistleblower and the respondent (including those who are other than the respondent and determined to be involved in the Specified Research Misconduct; the same applies hereinafter) of the results of the investigation (including the determination; the same applies hereinafter). When the respondent belongs to an entity other than the University, said entity will also be notified of said results of the investigation.

ii) In addition to the preceding paragraph, the President/CEO will report said results of the investigation to the Board of Governors, Auditors, the Funding Agency and the Cabinet Office.

iii) When the reporting by the whistleblower was determined to be bad faith, the President/CEO will also notify the entity that the complainant belongs to.

#### **23.4.4.3.5 Appeal**

i) The respondent of the reporting being determined as the Specified Research Misconduct may file an appeal to the within 14 days from the date of notification of the results of the investigation.

However, once an appeal is filed, another appeal based on the same reason cannot be filed even before the expiry of said period.

ii) The whistleblower (including those who have been determined as making a bad faith reporting in the appeal proceedings initiated by the respondent; the provision of “23.4.4.3.3 Determination Whether or Not Specified Research Misconduct Took Place” above will apply *mutatis mutandis* to the determination in this case) whose reporting has been determined to be bad faith may file an appeal, by applying *mutatis mutandis* the preceding paragraph.

iii) Review in the appeal proceedings will be handled by the CPR. In doing so, if claims of the appeal may require a new determination based on expert knowledge, the President/CEO will replace or add committee members or delegate the review to another body in place of the CPR. However, this does not apply to the case where the President/CEO finds there is no reasonable ground for requiring a change of the members of the CPR with respect to said appeal proceedings.

iv) With respect to the appeal proceedings initiated by the respondent in the case being determined that Specified Research Misconduct took place, the CPR (including those in place of the CPR according to (iii) above; the same applies hereinafter in “23.4.4.3.5 Appeal”) will promptly determine whether or not it will carry out re-investigation of the case, taking account of the claims and the ground of appeal and other relevant matters. If it determines that the appeal should be dismissed without the need of carrying out re-investigation of said case, it will promptly report the President/CEO thereof, and the President/CEO will notify the respondent of said determination. In this case, if the CPR finds that the primary purpose of said appeal is to delay the conclusion of said case or to postpone the measures to be taken relating to a possible determination, the President/CEO may decide not to receive a further appeal. When a determination to carry out re-investigation has been made regarding the appeal of (i) above, the CPR will request the respondent to cooperate with the re-investigation for prompt resolution of the case, such as submission of reference materials that can be sufficient evidence to overturn the conclusion of the earlier investigation. If the respondent is not cooperative, the CPR may decide to terminate the review without conducting re-investigation. In that case, the President/CEO will immediately be reported of the decision, and the President/CEO will notify the respondent of said decision.

v) When the President/CEO has received an appeal from the respondent regarding the determination that Specified Research Misconduct took place, it will notify the whistleblower thereof. In addition, the President /CEO will report the relevant Funding Agency, the Cabinet Office thereof and Auditors. The same applies to the case where it has decided to dismiss the appeal or to carry out re-investigation.

vi) When the CPR has started re-investigation, it will decide, within a period of 50 days, whether or not it will overturn the conclusion of the earlier investigation, and immediately report the President/CEO of the decision, and then, the President/CEO will notify the decision to the respondent, the entity that the respondent belongs to and the whistleblower. In addition, the President/CEO will report the same to the relevant Funding Agency, the Cabinet Office and Auditors.

vii) Upon receipt of an appeal from the whistleblower of the reporting being determined to be bad faith as provided in (ii) above, the President/CEO will notify the entity that the whistleblower belongs to and the respondent thereof. In addition, the University will report the same to the relevant Funding Agency, the Cabinet Office and Auditors.

viii) With respect to the appeal according to (ii) above, the CPR will carry out re-investigation within 30 days, and will immediately report the President/CEO of the results thereof. The University will notify the results of the review to the whistleblower, the entity that the whistleblower belongs to and the respondent. In addition, the University will report the same to the relevant Funding Agency, the Cabinet Office and Auditors.

#### **23.4.4.3.6 Public Announcement of The Results of Investigation**

i) When it has been determined that Specified Research Misconduct took place, the President/CEO promptly makes public the results of the investigation including the category of Specified Research Misconduct, researcher(s), expenses and subject of research project, and specific description of the Specified Research Misconduct and other required information.

ii) When it has been determined that Specified Research Misconduct did not take place, unless otherwise provided, the President/CEO will not make public the results of the investigation. However, it will make public the results of the investigation if information of the case under investigation has been divulged outside

the University or if an unintentional mistake was found in a research paper. When it has been determined that the reporting was bad faith, the results of the investigation will be made public.

iii) When information of an investigated case has been divulged and become known to a person other than those in charge of the case, the President/CEO may officially explain the investigated case even if the investigation is ongoing, provided that the whistleblower and the respondent give consent to do so. However, if the divulgence of information is due to a cause attributable to the whistleblower or the respondent, consent of the person is not necessary.

#### **23.4.4.3.7 Measures for Whistleblowers and Respondents**

i) When it has been determined that Specified Research Misconduct took place, the President/CEO will take appropriate measures in accordance with Chapter 38 “Disciplinary Actions” [\[link: 38\]](#) for the person determined to be involved in the Specified Research Misconduct or a person who is not determined to be involved therein but determined to be responsible for the contents of a paper relating to the determined Specified Research Misconduct as its author (hereinafter, “determined person”) and recommend the determined person to withdraw the paper or the like being determined to be Specified Research Misconduct.

ii) When a reporting has been determined to be bad faith, the President/CEO will take appropriate measures against the whistleblower in accordance with the Chapter 38 “Discipline” [\[link:38\]](#).

iii) No one shall partially or totally prohibit the respondent from carrying out research activities, nor fire, demote, pay cut nor give any other disadvantageous treatment on the respondent, simply based on the fact that the person has been accused in the reporting without substantial reason.

#### **23.4.4.3.8 Refund of Competitive Research Funding and Application for Grant and Qualification of Applicants**

i) Subsequently to the determination of Specified Research Misconduct, if the Funding Agency requests to refund a part or all of the granted competitive research funding, the determined person and the University will respond to the request in good faith.

ii) The determined person may be subject to restrictions on submitting an application for grant of competitive research funding, and on participating in granted projects. The Grants and Research

Collaborations Section gathers information relating to said restrictions and appropriately administers the processing of applications.

#### **23.4.5 How to Submit A Retaliation Complaint to the VPAC**

**23.4.5.1** A Retaliation Complaint shall be submitted to the VPAC as promptly as possible after experiencing a suspicious action or interference or a likelihood of retaliation.

##### **23.4.5.2 Requirements and Criteria for Making Complaint**

A Retaliation Complaint under the Whistleblower Protection Policy shall be submitted in writing, with indications of the date of complaint and names of relevant persons, and detailed descriptions of necessary facts and circumstances identifying the activity or the like that are considered to be retaliation. The complainant shall provide facts to prove that:

- i) The complainant made a report or a protected disclosure with respect to specific misconduct;
- ii) The complainant was under the influence of threatening, coercion or order not to make a report, or gave up making a report due to threatening; or
- iii) The complainant rejected to obey an Illegal Order.

**23.4.5.3** The provisions of the investigation regarding non-compliance [\[link: 23.4.2\]](#) apply mutatis mutandis to the investigation regarding Retaliation Complaint.

#### **23.5 Forms**

##### **23.5.1 Whistleblower Report**

#### **23.6 Contacts**

##### **23.6.1 Policy Owner**

Dean of Faculty Affairs

Vice President for Administrative Compliance

##### **23.6.2 Other Contacts**

The Office of Dean of Faculty Affairs

Compliance Section

Grants and Research Collaborations Section

Business Development Section

Occupational Health and Safety Section

#### **23.7 Definitions**

### **23.7.1 Funding Agency**

It means an agency that distributes grants or provides measures through competitive research funding or other open-recruitment type research funding.

### **23.7.2 Preliminary Investigation**

It means an investigation consisting of a preliminary information gathering and a preliminary fact-finding investigation, based on which a determination as to whether a report of misconduct or a fact that is suspected to be misconduct has substance. Based on the results of a Preliminary Investigation, a decision whether to conduct a Substantial Investigation is made.

### **23.7.3 Substantial Investigation**

It means an official investigation and evaluation of relevant facts in order to determine whether or not misconduct took place.

### **23.7.4 Groundless Report or Complaint**

It is a report or complaint made through a major oversight in the fact, with an intentional falsity, or with a bad faith intention. Individuals who have made such reports or complaints may be subject to disciplinary actions by the University and/or legal claims by individuals wrongfully accused of such conduct.

### **23.7.5 Illegal Order**

Any directive to violate or to assist in violating any applicable Japanese and local legal or regulatory provisions, or to violate or to assist in violating University policies, rules and procedures.

### **23.7.6 Misconduct**

It means any activity undertaken by anyone affiliated with OIST Graduate University (University), including, without limitation, officers, employees, students, vendors, that violates any applicable Japanese legal or regulatory provisions, or violates Bylaws, University Rules, Policies, Rules, and Procedures (PRPs), (collectively, “non-compliance”), and misconduct in research activities by these people. The scope of non-compliance includes public research fund misuse.

#### **23.7.6.1 Non-compliance**

It means any activity that contradicts with applicable Japanese legal or regulatory provisions or with Bylaws, University Rules, Rules or the PRPs.

##### **23.7.6.1.1 Public Research Fund Misuse**

It means any activity that violates the University's internal rules or Japanese legal or regulatory provisions by submitting falsified documentation for disbursement claim, such as obtaining deposit



money taking advantage of a relationship with a vendor and receiving money based on false claims for business trip expenses, wages and other remuneration, and involves spending of the University's public research expenses sourced from operating expense subsidies and competitive research funding such as grants-in-aid for scientific research and sponsored research funding.

#### **23.7.6.2 Misconduct in Research Activities**

It means, in the conduct of research activities or activities to make the research results public, any act that distorts the essence or the spirits of these activities, and impedes normal scientific communication among the members of the scientific community. Specifically, acts that fall within the scope of misconduct include fabrication or falsification of data or results being obtained, plagiarism and an act that contradicts research ethics, but are not limited to these. Determination of misconduct will be made on a case basis and depend on the specific details of the case.

##### **23.7.6.2.1 Specified Research Misconduct**

It means fabrication, falsification and plagiarism relating to data, findings of study and the like which are present in research results published in a paper submitted to academic journals, which are caused by a willful act or gross negligence of due care that shall have been exercised by an ordinary researcher.

- (i) **Fabrication:** It means making up data, research results, etc.
- (ii) **Falsification:** It means manipulating research materials, equipment or processes, or changing data or results being obtained from research activities such that the research is not accurately represented.
- (iii) **Plagiarism:** It is the appropriation of another researcher's ideas, analysis processes, data, results, manuscripts or words without obtaining consent from the researcher or giving appropriate credit.

In addition, misconduct in research activities are not limited to those fall under the Specified Research Misconduct.

#### **23.7.7 Use of Official Authority or Official influence**

It means to give an order, proposal, treatment or approval to give benefits or make a promise to give benefits, exercise retaliation or make a threat to retaliate, take personnel measures (including, but not limited to, appointment, promotion, relocation, selection, performance appraisal, suspension and other disciplinary actions) or an order, proposal, treatment or approval to have others to do any of these.

#### **23.7.8 Protected Disclosure**

Any good faith communication that discloses or demonstrates an intention to disclose an alleged misconduct.

#### **23.7.9 Retaliation Complaint**

It means a complaint made by an employee or a third party claiming that a retaliation against a Protected Disclosure or the rejection to an Illegal Order has been made, or a complaint made by an employee or a third party claiming that an interference was made in the course of making a Protected Disclosure, which is submitted in writing along with a statement that the contents of the complaint are true or a statement that the complainant believes that the contents of the complaint are true.