


MEMORANDUM

TO: Lloyd Fleisher, Institutional Animal Care and Use Committee Chair
Steve Dempsey, University Attending Veterinarian
Judith Lassiter, Regulatory Compliance Administrator – IACUC
Paula DeLong, Regulatory Compliance Coordinator – IACUC

FROM: 
Matt Ronning, Associate Vice Chancellor

VIA: Terri Lomax, Interim Vice Chancellor and Institutional Official
Judy Curry, Associate General Counsel

DATE: 06-19-2008

RE: IACUC Meetings – Closed Session Rule

The nature of animal subject use in research, instruction and service/demonstration programs is such that it demands exploitation of all protections of confidentiality available to ensure that the Institutional Animal Care and Use Committee (IACUC) maintains uncompromised objectivity in deliberating applications for such use. The nature of research in particular is such that certain aspects of exploration represent emerging knowledge that may represent new intellectual property of the institution and/or rely entirely or in part upon the confidential or proprietary information of third parties such as the institution's sponsors. These fundamental characteristics of IACUC protocols are cause for the promulgation of the following rule for all IACUC meetings:

Rule:

1. All IACUC meetings shall be subject to the open meetings rules and regulations of the State of North Carolina as implemented by NC State University¹.
2. Prior to discussing anything pertaining to an application for the use of vertebrate animals under the control of NC State University personnel beyond the lay description thereof shall be done under "Closed Session."²
3. Prior to discussing anything related to the names, phone numbers, addresses, training and experience of the applicant, researchers, and persons providing animal care or the name of the researcher's department or location of animal research, the meeting shall go into "Closed Session."

¹ NC State University Open Meetings Regulation: <http://www.provost.ncsu.edu/governance/openmeet/index.php>

² As necessary to comply with the North Carolina Open Records act promulgated in: NCGS 15-132.1.2

4. To enter “Closed Session” the Chair or a member of the committee should state the following: “The Chair moves to enter closed session in order to prevent the disclosure of information that is privileged or confidential pursuant to North Carolina General Statute 143-318.11(a)(1) and to comply with legal precedence established by relevant case law³ protecting against the disclosure of certain information about animal subject use.”
5. The committee, in “Closed Session”, must focus its deliberations and discussions on areas that involve the technical aspects of a protocol that may contain privileged information, confidential information of third parties or contain technical aspects of the study that could lead to the development of new knowledge or intellectual property^{4, 5}. Additionally, committee discussions or deliberations that involve information about the names, phone numbers, addresses, training and experience of the applicant, researchers, and persons providing animal care, the name of the researcher's department or location of research shall all be handled in “Closed Session.
6. Examples of items that should be discussed in “Open Session” not otherwise subject to “Closed Session” deliberations pursuant to items #2 and 3 above include:
 - a. Review of prior month meeting minutes
 - b. Program review
 - c. Inspection reports
 - d. Any other activity that does not meet the criteria of “Closed Session.”
7. The Chair may make an executive decision about the appropriateness to enter “Closed Session” where it is unclear whether or not the subject matter is subject to this rule. Such executive decision will be reviewed post facto by the Associate Vice Chancellor for Research Administration, and when necessary in consultation with Legal Affairs for concurrence or discordance. In the case of discordance, after careful review with the IACUC Chair, Regulatory Compliance Administrator and University Attending Veterinarian, the details of the “Closed Session” shall be made available in the minutes in detail beyond customary for other IACUC business.

Cc: Deans Warwick Arden and Johnny Wynne
Associate Deans David Dorman and Steve Lommel

³ Case law includes the Huffines case which held that the names, phone numbers, addresses, training and experience of the applicant, researchers, and persons providing animal care are confidential, as is the name of the researcher's department, location of research, etc. The court in Huffines did not identify a statutory exception, so in engaging case law for purposes of going into closed session for any of the Huffines reasons, the IACUC's authority is "North Carolina law"

⁴ Privileged or confidential information is protected under NCGS 143-318.11(a)(1) which states, in part, that closed session is permissible to “...prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 [Public Records Act] of the General Statutes.”

⁵ Trade secrets are protected under: NCGS 66-152(3)