

VIA TELECOPY

TO: JOHN MULDERIG
ROGER WHIDDEN
MARK BERLIND
DATE: AUGUST 7, 1996
RE: RESEARCHERS' PRIVILEGE

Attached is a copy of a FOIA opinion from the D.C. Circuit, *Burka v. HHS*. Plaintiff in the case filed a FOIA request with the National Cancer Institute, seeking computerized baseline data on smoking habits in the possession of an NCI contractor. The opinion discusses the general degree of acceptance of a researchers' privilege in jurisdictions around the country and concludes, "At this juncture in the development of the law, we cannot say that there is an established or well-settled practice of protecting research data in the realm of civil discovery on the grounds that disclosure would harm a researcher's publication prospects." The court remanded the case to the district court to require NCI to release the research data.

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