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Political Control Over Public Communications by Government Scientists

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Abstract

In recent years, there has been a great deal of controversy over political control of communications by government scientists. Legitimate interests can be found on both sides of the equation. This essay argues for adoption and implementation of a framework that accommodates those interests—a framework that allows advance notice to political officials, including the White House, without hindering the free flow of scientific information.

In a free society, scientists—even those working for the government--should have the right to communicate with the public. But government employees have long been subject to restrictions on what they can say and when they can say it, even when simply presenting scientific results. In recent years, both Democratic nor Republican administrations have failed to develop clear principles governing political control of communications from government scientists, with potentially detrimental consequences to our nation. Our goal here is to suggest initial steps to fill this gap, and to do so in a brief space. We emphasize that this is a preliminary step and leaves open questions and gray areas. But in the absence of some kind of framework, we risk losing the advantages that ready access to scientific information can provide.

During the Obama Administration, the effort to develop such principles produced intense internal and external controversy. As Administrator of the White House Office of Information and Regulatory Affairs, one of the present authors (Sunstein) was directly involved in the internal debates. The defining moment came in December 2010, when Science Advisor John Holdren tried to synthesize the consensus within the White House with four defining principles.

1. In response to media requests on scientific or technological issues, agencies should offer an "objective and nonpartisan" spokesperson.
2. Federal scientists may speak to the media and the public about scientific and technological matters based on their official work, with appropriate coordination with their immediate supervisor and their public affairs office.
3. In no circumstance may public affairs officers ask or direct Federal scientists to alter scientific findings.

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4. Mechanisms should be devised to resolve disputes about whether or not to proceed with public information-related activities.

Each of these principles deserves support, but they leave too many unanswered questions. Who, exactly, is an objective and nonpartisan spokesperson? What counts as "appropriate coordination" with a public affairs office? What kinds of "disputes about whether or not to proceed" are even legitimate, and what would "mechanisms" look like? How does an agency treat data not originating within its organization? And how do we guarantee that set policies are actually implemented?

In response to this guidance, a number of government agencies developed implementing policies, some of which tried to address these issues through formal, publicly available documents or through other informal practices. Even so, critical gaps remain, both in understanding and in policy and practice. Under President Donald Trump, the White House has yet to announce its own principles, and many people are concerned by what they see as a precipitous trend toward more severe restrictions on communications from government scientists. A few important distinctions, not yet part of the debate, can cut through the fog – and show how to accommodate legitimate concerns of both government scientists and political officials.

Communications offices or other public officials – in, say, the White House or the office of the Cabinet head – are often concerned about the consequences of communications between government scientists and the public. Issues range from issues with obvious political valence to the more abstract; they may involve avian flu, particulate matter, asteroid collisions, artificial intelligence, distracted driving, the origins of life, and nuclear material. Government officials who oversee federal agencies might ask for one of three things from government scientists.

1. They might want *advance notice* of public communications from government scientists. They might fear surprises. They might not want to have to address questions from the press or the public without having time to prepare.

2. They might want to control *the timing* of those communications. A disclosure of a scientific finding might disrupt a policy announcement scheduled for that same day. Perhaps the disclosure would distract attention from the announcement or be in some tension with it. For reasons that are not self-evidently illegitimate, political officials might want the announcement to occur only after some kind of specified delay.

3. They might want to control *the content* of those communications, in extreme circumstances by forbidding their disclosure altogether. In some cases, political officials might insist that government scientists describe their findings in a particular way, perhaps to ensure clarity and to avoid confusion. In other cases (and these are the most troublesome), they might think that the disclosure of the findings, even if they are valid, would jeopardize some identifiable political position or goal.

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4. They might want to control what agency employees say, even when not speaking on the agency's behalf.

For its part, science that comes from the government can be categorized in three ways:

1. *Policy relevance*. Some scientific findings are tightly connected with high-level policy debates. For example, a government scientist might conclude that the climate change problem is likely to be far more (less) serious than existing research suggests, in the sense that anticipated warning, by 2100, will be higher (lower) than previously projected. Or a government scientist might conclude that some chemical, now in widespread use, poses serious health risks for children; public disclosure of that finding will predictably produce a market reaction, with economic consequences, and trigger a demand (and perhaps a legal requirement) of regulatory action.

2. *No policy relevance.* Some scientific findings have no evident connection with high-level policy debates. For example, a government scientist might make some new finding about black holes, or might offer fresh information about a new species of dinosaur or bird. In such cases, let us simply stipulate that public disclosure of the relevant findings will not raise issues or produce concerns that could possibly be of interest to policymakers.

3. *Potential policy relevance*. Some scientific findings might seem to government scientists and to most people to have no connection with high-level policy debates, even when those who work in the White House or an office of an official in the Cabinet might not find that entirely clear. For example, some findings with respect to dwindling fish populations, ocean acidification, or the spread of influenza might seem to be highly technical, but they might be used to embarrass the executive branch, or they might be invoked in debates about policy issues.

With these distinctions, we can identify nine kinds of cases, five of which seem perfectly straightforward.

1. There is no reasonable objection when political officials merely seek advance notice of a scientific finding that has policy relevance. Both communications offices and policy officials can legitimately contend that in order to do their jobs, they need to have a clear sense of scientific announcements that bear on policy.

2. Political officials may appropriately control the timing of release of a scientific finding with manifest policy relevance. Officials can legitimately argue that they are entitled to control the policy agenda and that it is appropriate to ensure that scientific announcements from government employees do not compromise that agenda. There is an important qualification: There should be a fixed limit to the delay—without a compelling justification, no more than a few days.

3. If a scientific finding has potential policy relevance, political officials can appropriately seek advance notice of its disclosure. Officials should be entitled to have a clear sense of scientific announcements that might bear on policy discussions, even if we emphasize the word "might."

4. If a scientific finding has even potential policy relevance, it remains legitimate for political officials to control the timing of its disclosure. The considerations in point 2 above apply here as well.

5. No democratic government should seek to control the content of disclosure of scientific findings that lack policy relevance. Such findings might be intriguing, controversial, or disturbing, but policy officials, not versed in science, have no business altering them in any way.

Four cases are more controversial, and so we approach them with questions:

6. *Is it appropriate for public officials to seek advance notice of disclosure of scientific findings without policy relevance*? At first glance, the answer would seem to be No. The first complication is that officials might not trust the scientists' judgment about policy relevance; they might want advance notice of a very broad set of disclosures in order to test that judgment. The second complication is that some such findings might attract public attention, which means that communications offices and policy officials might want advance notice. For some and perhaps many agencies, it would be simplest to have no clearance process for scientific findings that fall in this category. But a more general clearance process might be justified, so long as it is defended and administered with the single goal of preventing surprises.

7. *Is it appropriate for public officials to seek the control the timing of disclosure of scientific findings without policy relevance*? At first glance, the answer is again No. By hypothesis, the disclosure will not produce real concerns from the standpoint of officials themselves. But if the findings are potentially newsworthy and might attract public attention, it would not necessarily be inappropriate for public officials to say: Tomorrow, not today.

8. *Is it appropriate for public officials to control the content of disclosure of scientific findings with policy relevance*? This is the most important and challenging question. The answer depends on the meaning of "control the content."

    (a) It would never be appropriate for policymakers to direct government scientists to misreport or misrepresent the science, or to allow only a partial release of data. Policymakers have no business distorting the evidence and the facts.

(b) It can be appropriate for policymakers to direct government scientists not to venture into policymaking domains that do not involve science, strictly speaking. If policymakers want to restrict government science to science, and to direct scientists not to offer judgments about regulation or legislation, they are entitled to do that so long as there is no conflict with their scientific integrity.

(c) So long as there is no violation of (a), it would be appropriate for communications offices and policy officials to consult with scientists to ensure clarity and intelligibility, and to work to prevent public misunderstandings of what the science shows. It is important, however, that a consultation is just that, and not an order to government scientists. If the question is how to present the science accurately, scientists should have the final say.

(d) Apart from (b) and (c), there should be a very strong presumption against political interference with the *content* of scientific communication by government scientists, or of scientists' decisions about how present their results. We recognize that some circumstances can test the strength of these presumption and that reasonable people might disagree on question when, if ever, it might be rebutted. Issues of national security or potential violations of privacy may deserve special treatment. More difficult examples would arise when a finding might have an adverse effect on some portion of the economy, or might conflict, in some sense, with the administration's policy positions and goals. Policymakers might not welcome disclosure of new evidence that some widely used product might be carcinogenic, not because they distrust the science, but because they believe that the evidence might create an excessive public reaction that will have serious adverse consequences on millions of people.

It would of course be entirely acceptable for policy makers to present their own interpretation of how to construe results, or of how they believe those results should inform policy. So too, policymakers might legitimately disapprove of a presentation because they think it has not been suitably qualified. But scientists should have the ultimate say in how they present their results. It is also critical that agencies dealing with scientific topics include scientists with expertise, and do not exclude them on the basis of prior association with the agency under previous administrations.

9. *Is it appropriate for public officials to control the content of disclosure of scientific findings with potential policy relevance*? The answer is the same as for (8). To be sure, we are speaking here of merely potential, rather than clear, policy relevance, but the relevant considerations are not different.

Conclusions

The following matrix summarizes our conclusions:

	Policy relevance	Potential policy relevance	No policy relevance
Advance notice	Yes	Yes	A qualified no
Control timing	Yes (with deadline)	Yes (with deadline)	A qualified no
Suggest (but not require) content changes	Yes, but with limitations, e.g., for clarity and with the understanding that scientists can reject changes that they believe incorrectly alter or suppress scientific content	Yes, but with limitations, e.g., for clarity and with the understanding that scientists can reject changes that they believe incorrectly alter or suppress scientific content	No

Important questions remain, most importantly how to guarantee information flows in accordance with the foregoing guidelines. Our hope is that at a minimum, a clear set of principles can provide a framework under which any disputes can be settled or at least addressed in a systematic and well-defined fashion. Another question is whether and when government employees are entitled to speak in their individual capacity, even when disagreeing with the policy of the agency to which they belong or when they are suppressed. This is not our central concern here, and it is too complex to resolve in this brief essay, but agencies should work to develop clear guidelines so that their employees can have clear expectations.

Free societies are deeply skeptical, and properly so, about any efforts to control the flow of scientific information, even when that information comes from government employees. We have attempted to vindicate that skepticism here, while also identifying the most legitimate bases for political coordination and intervention. Gray areas remain, but we are hopeful that the foregoing categories and distinctions might provide a promising start toward achieving the ideal of maintaining the most transparent and robust uses of science in an open and democratic society.