

Summary LOWI decision 2016-11

Before the LOWI can deal substantively with a request, it must first be decided whether the LOWI procedure is open to the Petitioner(s) who files/file a request.

In the present case, the Petitioners of two requests to the LOWI were not involved in the previous (ex officio) investigation by the Research Integrity Committee (RIC), thus the question arose whether the appeal procedure by the LOWI was open to them. The Petitioners, Board and Interested Parties were asked to give their opinion on this question. The Petitioners submitted reasons why the LOWI should consider their requests, the Board and Interested Parties brought forward arguments why these should not be eligible for consideration by the LOWI.

Below are the most relevant considerations of the LOWI's decision:

- An Interested Party can file a request with the LOWI. Article 1 of the LOWI Regulations defines the term 'Interested Party', but in this case the definition does not offer sufficient guidance. In cases in which the LOWI Regulations are inconclusive the LOWI shall act in accordance with the General Administrative Law Act (Algemene wet bestuursrecht - Awb);
- Applying Article 1:2 of the Awb when interpreting the term 'Interested Party' would limit access to the LOWI, amongst other things because Petitioners would then have to show that their interests would be affected directly by the (preliminary) decision of the Board. This would be undesirable, because that would mean that the general, non-individual, importance of the integrity of academic practice could no longer be invoked. However, the Awb does provide a point of reference, in particular in chapter 9.
- As stated in previous opinions, the LOWI considers that the internal complaints procedure mentioned in title 9.1 of the Awb can (by analogy) be applied to the complaints procedure of an institution that is affiliated with LOWI, and that the external complaints procedure mentioned in title 9.2 of the Awb (by analogy) can be applied to the follow-up procedure at LOWI;
- Starting point of the internal complaints procedure is that everyone has the right to complain, and the starting point of the external complaints procedure is that in principle only those who have first complained internally may follow the external procedure.
A similar structure is found in the Complaints Procedure of the University involved: Everyone has the right to complain, but only the original Complainant and Defendant may consequently file a request to ask for the LOWI's opinion;
- The Petitioners have not filed an internal complaint with the institution, and the letter the Petitioners later sent to the Board cannot redress this. Contrary to Petitioners' opinion, their letter cannot be seen as a complaint as defined by the Complaints Procedure, because the letter concerns the (preliminary) decision taken by the Board;
- The Petitioners were not involved in the ex officio investigation and did not exercise their right to file an internal complaint. Therefore the LOWI procedure is not open to them. The Complaints Procedure prevents this. It would go too far to consider Petitioners as (fictitious) Complainants, on the sole ground that Petitioners disagree with the outcome of the ex officio investigation. Furthermore the notification requirement of article 9:20 of the Awb prohibits

Petitioners from filing a request with the LOWI. From the notification requirement may only be derogated in case the person(s) involved could not be expected to exercise the right to complain, for example in case of a seriously distorted relationship or extreme urgency. This does not apply in this case;

- The LOWI considers that the application of article 9:20 of the Awb by analogy and of the Complaints Procedure prevent that Petitioners can be considered Interested Parties within the meaning of the LOWI Regulations.

The above implicates that the requests are declared inadmissible. LOWI has not proceeded to a substantive assessment of the requests and has therefore not provided the Board with any substantive opinion.