

Withdrawal of acceptance based on potentially unconsented data

Two papers were retracted (without dispute from the authors) after a lengthy investigation. It was discovered that some of the data used in these articles were gathered without participant consent for the study or for publication (no participants are identifiable). The investigation was conducted by a public body in the country of the authors, and the journal has been told that they will not be provided with the specific details of the ethically inappropriate data. The investigation also identified a small number of methodological errors, which have also been mentioned in the retraction notices.

During the investigation, four separate letters based on the two articles were submitted, peer reviewed and accepted. They were not published immediately and were placed on hold while the investigation was being completed. On completion of the investigation, the journal revisited the content of the letters, and asked the editor in chief and deputy editor of the journal for their opinions. Because the journal does not have the specific details of the ethically inappropriate data, it was not felt possible to independently verify with certainty whether or not the four letters were free of the use of the ethically inappropriate data. Given that the four letters were heavily based on the papers and cite data, figures, and equations, the decision was made not to publish the letters.

The authors have complained that the journal has gone against COPE guidelines "3.1 Editors should not reverse decisions to accept submissions unless serious problems are identified with the submission". The journal guidelines state that the journal has "the right to withdraw acceptance at any time before publishing, in exceptional circumstances", and also that "Informed consent to participate in the study should be obtained from participants (or their parent or legal guardian in the case of children under 16) for all research involving human subjects". The authors are arguing that their letters do not use the unconsented data. Again, the journal has stated that there is no way to independently verify with certainty whether or not the four letters were free of the use of the ethically inappropriate data, and therefore do not feel comfortable publishing the work.

The journal invited the authors to submit a new letter based on the papers that is more general and that does not use the unconsented data (appreciating it is difficult to know what that is). They have not responded to this invitation.

Questions

1. Was the journal right to withdraw the accept offers for the four letters?
2. Is there any specific guidance that covers articles that comment on retracted papers and what is permissible?

Advice

The journal's decision to withdraw the acceptance of these letters is reasonable as the authors did not provide evidence that the data used in the letters were not based on the unconsented data. The authors need to be able to prove that the data they are using for their submission are valid and have the required ethical consent; if they are using third party data and cannot prove this, they should revise the submission or accept that the paper will not be published. The assumption is that the four letters, which could be critiquing one or both papers, come from at least two separate sets of authors, so there is no issue of salami letters.

If the letters are directly and solely based on the results of the affected papers, rejection should be straightforward. If they mention the papers among other cited research in a

commentary or even a research type letter, the authors could remove the affected material and references, without referring to the retracted papers. If the letters cite the papers in the context of journalology, or criticise the same issues that underlie later retraction, it could be argued the letters could stay, with an explanatory editorial note (see for example <https://retractionwatch.com/2020/06/22/tortuous-and-torturous-why-publishing-a-critical-letter-to-the-editor-is-so-difficult/>).

An intermediate solution might be to consider adding a note indicating that the articles were retracted and why. The journal could then ask the authors of the letters to adapt what they have written with this in mind and focus on what else they might want to say. The editor could write a forward to this, outlining what was done and why the letters are being published as part of a debate around the issues involving the retraction.

The journal's policy is clear that they may decide to change the acceptance decision in exceptional circumstances. The journal might consider updating their policies or having their own code of conduct, based on COPE's core practices, in relation to submissions. In hindsight, perhaps the letters should not have been accepted during the investigation but rather put on hold first; a relevant office policy or process could be developed to prevent this in the future. It is also commendable that the journal has a statement on the consent from guardians/parents of children; the journal might wish to include a statement on assent.