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### UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF INSPECTOR GENERAL

APR - 9 2014

THE INSPECTOR GENERAL

#### Re: Administrative Appeal No. 14-00019-A FOIA Request No. 14-00338-F

I am writing in response to your March 8, 2014, letter appealing the U.S. Department of Education (Department) Office of Inspector General's (OIG) March 6, 2014, denial of your request for access to Department records made pursuant to the Freedom of Information Act (FOIA).

### I. Procedural History

On November 30, 2013, you submitted a FOIA request seeking access to each final report, closing memorandum, or referral letter that the OIG had prepared for a different agency since January 1, 2005. On December 30, 2013, the OIG notified you that it identified a report of investigation (ROI) prepared at the request of and on behalf of the Architect of the Capitol (AOC) and that it referred the ROI to the AOC to make a release determination. By letter dated December 31, 2013, you appealed the OIG's decision to refer the ROI on the basis that the AOC is not subject to FOIA and therefore the referral was inappropriate (Administrative Appeal No. 14-00003-A).

On February 7, 2014, the OIG notified you that it granted your appeal, and agreed to consult with AOC and make its own release determination. By letter dated March 6, 2014, the OIG withheld the report in its entirety citing Exemptions 6 and 7(C). You now appeal the OIG's decision to withhold the ROI in its entirety because you believe there are segregable, releasable, portions of the report and that the OIG's determination letter did not identify any attempt to release those portions (Administrative Appeal No. 14-00019-A).

#### II. Decision on Appeal

Based on a careful review of the correspondence between the parties, the records at issue in your appeal, and applicable legal precedent, I have granted your appeal to identify and provide the segregable, releasable, portions of the report. Nonetheless, we are withholding portions of the ROI under Exemptions 5, 6, 7(C), and 7(E). Enclosed is a copy of the ROI with the applicable redactions.

Initially, I note that the record you requested is contained in the Investigative Files of the Inspector General, a designated system of records that falls under the Privacy Act's protection. *See* 64 Fed. Reg. 30,157-59 (June 4, 1999). Because you are not the individual to whom the

record at issue pertains, and because the OIG does not have written consent to disclose the record, the OIG may only release the record if its disclosure is required under FOIA. 5 U.S.C. § 552a(b)(2), 34 C.F.R. § 5b.9(b)(2). Thus, I have determined that the portions of the ROI that we have disclosed are required to be released under FOIA. However, as explained in detail below, an applicable exemption exists to protect the remaining portions.

Exemption 5 protects information that constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). This exemption incorporates the "deliberative process privilege," which protects the internal deliberations of an agency by exempting from release recommendations, analyses, speculation, drafts, and other non-factual information prepared in anticipation of agency decision-making. The general purpose of the deliberative process privilege is to prevent injury to the quality of agency decision-making. See Nat'l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). The portions of the ROI that have been withheld under Exemption 5 reflect predecisional communications between the AUSA and the OIG investigators concerning potential possible actions to be taken in response to the evidence gathered in the investigation. See Jackson v. U.S. Attorneys Office, Dist. of N.J., 293 F. Supp.2d 34, 40-41 (D.D.C. 2003)(upholding the agency's decision to withhold recommendations and deliberations of the investigating AUSA in deciding whether to prosecute a criminal complaint).

Exemptions 6 and 7(C) protect personal privacy interests. Exemption 7(C), in particular, protects the personal information of witnesses, agency personnel, and targets of investigation in law enforcement records. The disclosure of this information could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6), (b)(7)(C). The portions of the ROI that have been withheld under Exemptions 6 and 7(C) are names, personally identifying information such as job titles and information that witnesses and the subjects of investigation provided to the OIG investigators during interviews.

The AOC-OIG has a small staff of eight, and redacting only the names of those interviewed for this investigation would not adequately protect their privacy interests. The details of these witness interviews, if released, could disclose these individuals' identities and compromise their privacy. *See Nat'l Whistleblower Ctr. v. Dep't of Health & Human Servs.*, 849 F. Supp. 2d 13, 30, 33-35 (D.D.C. 2012)(affirming the Department of Health and Human Services OIG's decision to withhold certain documents in their entirety, including notes of witness interviews, on the basis that "[w]hen the information in question concerns a small group of individuals who are known to each other and easily identifiable from the details contained in the information, redaction does not adequately protect privacy interests."). Accordingly, I have balanced the privacy interests of the AOC-OIG staff referenced in the report against the public interest in the redacted information and determined no ascertainable public interest exists to outweigh the privacy infringement on these individuals.

Exemption 7(E) protects information compiled for law enforcement purposes that would disclose techniques and procedures for law enforcement investigations or would disclose guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law. *See* 5 U.S.C. § 552(b)(7)(E). The information withheld from the ROI under Exemption 7(E) generally reflects methods the OIG investigators used to detect whether alleged misconduct had occurred and provides insight into the manner in which the OIG gathers and manages evidence and

the source(s) of such evidence. Because OIG reasonably expects that releasing this information could risk circumvention of the law, I find that it should be withheld under Exemption 7(E). See *Blackwell v. F.B.I.*, 646 F.3d 37, 41-42 (D.C. Cir. 2011)(upholding the FBI's decision to withhold details about procedures used during the forensic examination of a computer).

#### **III.** Notice of Further Rights

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B). In addition, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD, 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Sincerely,

Knone STr

Kathleen S. Tighe Inspector General

Enclosure

UNITED STATES DEPARTMENT OF EDUCATION



## OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATION SERVICES REPORT OF INVESTIGATION CONCERNING

### **FINAL ROI**

REPORT OF:

ARCHITECT OF THE C.

TABLE OF CONTENTS

Section A......NARRATIVE Section B......ENTITIES Section C.....PROSECUTIVE STATUS Section D.....ATTACHMENTS

Submitted By LISAFOSTER Date Submitted 04/16/2013 Approved By WILIAM HAMEL Approved Date 04/16/2013

CASE NO:

13-130018

### UNITED STATES DEPARTMENT OF EDUCATION **OFFICE OF INSPECTOR GENERAL INVESTIGATION SERVICES**





PREPARED BY:	WILLIAM HAMEL	DATE:	04/02/2013
DISTRIBUTION:	IG AOC and AIGI Hame	OPFICE:	REGION 13 - AIGI

#### NARRATIVE

#### Background

In early December of 2012, officials from the Architect of the Capitol, Office of Inspector General ("AOC-OIG") contacted the U.S. Department of Education, Office of Inspector General ("ED-OIG") to discuss allegations related to AOC-OIG employees (0) (6), (0) (7)(C

As a result of those discussions, on December 12, 2012, a Memorandum of Understanding ("MOU") was executed between AOC-OIG and ED-OIG whereby ED-OIG would provide investigative services to conduct (b) (6), (b) (7)(C)The agreement was signed by AOC's Inspector General, Carol Bates (Bates) and ED's Inspector General, Kathleen Tighe (See attachment A).

ED-OIG conducted an investigation, on a reimbursement bases, at the request of, and on behalf of, the AOC-OIG. The services provided under the MOU were authorized in accordance with the Economy Act of 1932, as amended, (31 U.S.C. 1535), and the Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3 § 1 et seq.), and other applicable federal laws and Regulations.



This matter was assigned to Special Agent in Charge (SAC) Brian Hickey (Hickey) of the Northeastern Region, Investigations Services, and SAC Mark Smith (Smith) from the Technology Crimes Division, Information Technology Audits and Computer Crimes Investigations.

The ED-OIG agents assigned to this matter were in contact with Assistant United States Attorney , of the U.S. Attomey's Office, District of Columbia, Criminal Division, AUSA Public Corruption Section, during the course of this investigation to determine if violations of

(b) (6), (b) (7)(C)
(b) (6), (b) (7) (C) Interview
On December 12, 2012, SAC Hickey and SAC Smith interviewed <sup>(b) (6), (b) (7)(C)</sup>
b) 7637 (b) 77 h(C)
(b) (6), (b) (7)(C)
(b) (6); (b) (7) (C) Interview
On December 19, 2012, SAC Hickey and SAC Smith interviewed

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(b)(6)(b)(7)(C)		
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(b) (6), (b) (7)(C)

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(b)(6), (b)(7)(C), (b)(7)(E)

(b) (δ), (b) (7)(C), (b) (7) (E)

(ð) (7)(Ē) (b) (6), (b) (7)(C)
(b)(\$),rb)(Z)(G) Interview
On December 20, 2012, SAC Hickey and SAC Smith interviewed
(b)(6),(b)(7)(C)
(b) (6), (b) <b>nterview</b> (7)(C)
On December 20, 2012, SAC Hickey and SAC Smith interviewed
(b) (61, (b) (7)(C)
ED/OIG Analysis of (0) (6, (6) (7)(6)
In accordance with all policies and procedures of ED-OIG's Information Technology Audits and Computer Crimes Investigations, Technology Crimes Division, SAC Smith conducted a review of DIVISION CONSTRUCTOR
(b) (6), (b) (7)(C), (b) (7)(E)

(S), (B) (7)(C), (B) (7)(E)	
	(b) (6), (b) (7)(C), (b) (7)(É)
(b) (7)(E)	
	(b) (6), (b) (7)(C), (b) (7)(E)
(b) (6), (b) (7)(C), (b) (7)(E)	

oy (6), (b) (7)(C), (b) (7)(E

(b) (6), (b) (7)(C), (b) (7)(E)

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ED/OIG Forensic Analysis of

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) (6), (b) (7)(C), (b) (7)(E

In accordance with all policies and procedures of ED-OIG's Information Technology Audits and Computer Crimes Investigations, Technology Crimes Division (TCD), SAC Hickey conducted a review of

(b) (6), (b) (7)(C) Interview

(b) (6), (b) (7(C) On February 28, SAC Hickey and SAC Smith interviewed				
(b) (6), (b) (7)(C)				

(5) (6) (7)(C)	
B) (8) (8) (7)(C)	
χοι (δ). (β) (7)(C)	
(b) (6), (b) (7)(C)	
(δ1:6), (b) (7 <sub>4</sub> C)	
(5) (6), (5) (7)(C) <b>Interview</b>	
In early February 2013	

(b) (6). (b) (7)(C)
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
AOC Coordination
The ED-OIG agents assigned to this matter were in continuous contact with the second states on investigative results and the course of this investigation to provide updates on investigative results and
prosecutorial decisions. On February 26, 2013, SAC Hickey and SAC Smith met with
U.S. Attorney Coordination
On February 2, 2013, the facts of the case pertaining to (7)(C) were discussed with AUSA (D) (7)(C) (b) (5)
On March 7, 2013, the facts of the case pertaining to (5)(6). (b)(7)(0)(0)(
(b) (5) (b) (7)(E)
(b) (7)(E)



### SUBJECT

index Name Index Code SSN Birth Date Individual Address Individual Telephone	Street1 Street2 City Country	(6) (6). (5) (7)(C) (6) (6). (5) (7)(C) USA (5) (6). (5) (7)(C)	State	Zip Code (C)
Entity Address Entity Telephone	Street1 Street2 City Country		State	Zip Code
Index Name Index Code SSN Birth Date Individual Address	Street1 Street2 City Country	(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) <b>USA</b> (b) (6), (b) (7)(C)	State	<sup>(0) (6), (b) (7)(C)</sup> Zip Code
<u>Entity Address</u>	Street1 Street2 City Country	(b) (6), (5) (7)(C)	State	Zip Code

Entity Telephone

index Name		(b) (6), (b) (7)(C)		
Index Code				
<u>SSN</u>				
Birth Date				
Individual Address	Street1			
	Street2			
	City	(b) (6), (b) (7)(C)	State	(b) (6) (b) (7)(C)
	Country	USA		
Individual Telephone		(b) (6), (b) (7)(C)		
Entity Address	Street1	(b) (6), (b) (7)(C)		
	Street2			
	City		State	Zip Code
	Country			
Entity Telephone				

#### ADMIN ACTION REPORT

Point Contact	Office of Inspector General
Refferal Type	
Referral Date	2/21/2013 12:00:00AM
Allegation	(b) (6), (b) (7)(C)
Admin Action	
Action Date	2/21/2013 12:00:00AM
Response Date	1/1/1900 12:00:00AM

 Point Contact
 Office of the General Council

 Refferal Type

 Referral Date
 4/2/2013 12:00:00AM

 Allegation
 Difference

 Admin Action
 Difference

 Action Date
 2/7/2013 12:00:00AM

 Response Date
 1/1/1900 12:00:00AM

#### Attachments (all attachments from documents)

#### **DOCUMENT FILENAME**

Case Closing Attachments.pdf