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US Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, MD 20814
Fax: 301-504-0127
Email: cpsc-foia@cpsc.gov

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**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

August 12, 2014

CERTIFIED MAIL – RETURN RECEIPT

RE: Freedom of Information Act Request #14-F-00493: Request a copy of the final report, closing memo, referral memo, report of investigation, etc., associated with each CPSC Office of Inspector General Investigation closed during calendar year 2013

Thank you for your Freedom of Information Act (“FOIA”) request seeking records from the U.S. Consumer Product Safety Commission (“Commission”). The information from the Commission files responsive to your request is enclosed. We have withheld the identities of the individuals identified in the records pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6), which provides for the withholding of personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: **FOIA APPEAL**, General Counsel, ATTN: The Secretariat - Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408.

Processing this request, performing the file searches and preparing the information, cost the Commission \$35.00. In this instance, we have decided to waive all of the charges. This completes the processing of your request. Should you have any questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-7923 or e-mail addressed to cpsc-foia@cpsc.gov.

Sincerely,

Alberta E. Mills
Freedom of Information Officer
The Secretariat – Office of the Secretary
Office of the General Counsel

Enclosure

Restricted

U.S. CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF IMPROPER AND ABUSIVE PURCHASES

April 19, 2013

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Office of the Inspector General
Investigative Report
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U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda MD 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF ADMINISTRATIVE MISCONDUCT

SUMMARY: Between on or about February 27, 2009 and on or about July 7, 2010 the Office of Information and Technology Services (EXIT) purchased 19 iPhones for testing. The decision making processes regarding the selection of the iPhone for testing and the number to be acquired were both undocumented but appear on their face to be reasonable. However, the manner in which the iPhones were acquired was improper and the iPhones were not entered into the CPSC's property management system (PMS) as required by CPSC directives.

PURPOSE AND SCOPE: The purpose of this investigation was to determine the facts and circumstance surrounding the alleged violations of CPSC and Federal policies and regulations by the Office of Information and Technology Services.

METHODOLOGY: The Office of the Inspector General conducted an administrative investigation into the individuals and circumstances surrounding the alleged misconduct. Documents relevant to the alleged misconduct (financial records, credit card statements, e-mails, etc.) were reviewed. The subject of the investigation and various witnesses were informed of their rights and responsibilities regarding the investigation and then interviewed. The subject and the other witnesses were then given an opportunity to review and edit a summary of their interviews. This summary was then sworn to and signed.

BACKGROUND: This investigation was initiated to inquire into the validity of allegations that the subject inappropriately directed the purchase of iPhones, issued them to "selected IT staff" (NFI), and failed to have the iPhones entered into the property management system (PMS). These allegations were made by a complainant who wished to remain anonymous. The complainant indicated fear that he would lose his job if his identity became known to agency management. (See Atch 1)

During all times relevant to this investigation, subject served as the [REDACTED] of the CPSC and the [REDACTED] for the Office of Information and Technology Services.

The initial recommendation to purchase the iPhones was not made by subject, but by [REDACTED]. [REDACTED], at that time a senior official in EXIT, proposed that iPhones be tested because the iPhone was "wonderful technology" and users were generally much more positive about it than they were the Blackberries the agency was using. (Attechs 2-3)

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On or about February 27, 2009, at the direction of [REDACTED], the CPSC purchased 7 iPhone 3s¹. According to all witnesses interviewed who were aware of the rationale for the purchase, this was done to test the possibility of using iPhones to replace the Blackberry telecommunication devices currently used by the agency. (Atchts 4-5)

In order to use/test the iPhones the agency had to have a data plan. Data plans for iPhones, at that time, were only being offered through ATT; so EXIT contracted with ATT to provide a data plan. (Atchts 5-6)

The iPhones were issued to IT managers (6) and to [REDACTED], who was not a manager but was the individual responsible for managing mobile devices (such as the iPhone). The decision to issue them to IT managers was reportedly based on the desire to have a variety of users all of whom had backgrounds in IT. (Atch 6)

[REDACTED], indicated that although [REDACTED] was clear that the reason for the purchase of the iPhones was to test them as a possible replacement to the Blackberry, there was never a formal project plan and they were never directed to develop a formal testing plan². (Atch 3)

On two occasions, [REDACTED] made the decision to replace the iPhones in the agency's possession with newer models. Thus the original iPhone 3s were replaced by iPhone 3GSs and they in turn with iPhone 4s. These upgrades did not feature any particular advantage in terms of security. However, in each case the model replaced was no longer going to be produced or maintained by Apple. [REDACTED] has indicated that he wanted to make sure that the test platform used by the CPSC was a version of the iPhone that would actually be in production at the time of the switch from Blackberry to iPhone³. (Atchts 3-6)

The lack of documented test results or a formal testing plan makes it impossible to say exactly what use was made of the iPhones. However, it appears that the testing consisted primarily of EXIT using the iPhones to see if they could receive and transmit e-mails on "Exchange," the CPSC's mail server at the time⁴. They also tested the security settings to try and see if they could be made compatible with agency requirements. Two distinct problems were found with the adoption of the iPhones. First, the iPhones could not be encrypted to the standards required by the Federal Government as established by the National Institute of Standards and Technology in their publication FIPS 140-2. Second, there were problems with device management. Device management is the ability to remotely control the devices to monitor, install software and if necessary (due to loss or theft) delete all information from them. In the words of one witness,

¹ Initially, four iPhone 3s were purchased. Shortly thereafter three more were purchased.

² This was cooperated by a number of other witnesses.

³ There were some additional costs to the agency generated by the upgrade to the iPhone 4. These were caused because at the time of the upgrade the iPhone 4 has not been placed on the GSA schedule and therefore by switching to the iPhone 4 the agency lost a discount that GSA had negotiated on iPhone 3 accounts. Given the number of iPhones involved and the limited nature of the pilot project, these amounts were de minimis.

⁴ Ultimately, after modifications were made to the agency's server, they were able to do so.

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RIM, the maker of Blackberry, has a number of issues with the functionality of their devices, but they could not be beat for device management. (Attchs 2-4, 6)

There was some disagreement amongst the witnesses as to the decision to not enter the iPhones into PMS. None of the managers interviewed remembered making an affirmative decision to not enter the iPhones into the PMS system. However, ██████████ recalled that he asked ██████████ and ██████████ about entering them into the PMS system and was told that they did not want to put them in PMS because they were only going to have them a few months⁵. Ordinarily, responsibility for entering new equipment into PMS would rest with the property custodians and not senior managers. (Attchs 2-4, 6)

EXIT still has the iPhones and used them relatively recently when they were working on issues related to the implementation of Wi-Fi access to the CPSC network within the CPSC Headquarters building. They could also be used as iPods (i.e. as storage devices) but management wanted to make sure that they were not misused, so once testing was stopped and the data plan cancelled they locked them up⁶. (Atch 6)

When using the purchase card, CPSC employees must comply with both the Government wide regulations applicable to all Federal employees and with CPSC specific regulatory guidance. Although the CPSC has recently revised its regulations regarding the purchase card program (CPSC Directive 1540.1, *Government-wide Purchase Card program*, and its Appendix 1540.1a, *Purchase Card Handbook*) the incidents which are the subject of this investigation occurred prior to these revisions and thus were subject to the regulations in place at the times in question.

FINDINGS: There is very little dispute over facts of the case.

I. Subject directed the purchase of the iPhones and associated data plans. The purchase of the iPhones and associated data plans with a purchase card was an improper purchase, but not an abusive one.

The purchases of the iPhones (both the initial purchase and the later upgrades) and the associated data plans were improper in that they violated the version of CPSC Directive 1540.1 in effect at the time of the purchases.

OMB Circular A-123, Appendix B, Section 4.6, defines an "improper purchase" as, "... any purchase that should not have been made ... under statutory, contractual, administrative, or other legally applicable requirements. ...". GAO Report 08-333 offers a similar definition of improper purchases, "... those purchases that although intended for government use, are not permitted by law, regulation, or government/agency policy."

⁵ Although the iPhones were ultimately kept substantially longer than a "few months" due to the lack documentation it is impossible to determine how long the agency intended to keep them at the time they were purchases.

⁶ They were, as alleged, locked in the desk of ██████████.

CPSC Directive 1540.1 governs the CPSC's purchase card program. The version of this directive in force at the time in question contained a prohibition against CPSC employees using the purchase card to acquire telecommunications services or supplies. Although, the directive contained no definition of the term "telecommunication," the most common definitions (Webster's Dictionary, Wikipedia, etc.) refer to "communication at a distance" and "technology that deals with telecommunication" which would appear to cover telephones and their associated data plans, including the iPhone. As such, their purchase violates the agency's regulation governing the use of the purchase card and is by definition, "improper."

GAO Report 08-333 defines "abusive purchases" as follows: ". . . where the conduct of a government organization, program, activity, or function fell short of societal expectations of prudent behavior . . . examples of abusive purchases (included) where the cardholder (1) purchased goods or services at an excessive cost (*e.g.*, gold plated), or (2) purchased an item for which government need was questionable."

Although, as noted above, the purchases of the iPhones were improper, there is no evidence to indicate that they were abusive. This determination was complicated by the agency's failure to document either the initial decision to purchase the iPhones or the testing plan/test results. However, all of the witnesses were consistent in their explanations of the rationale for the purchase of the iPhones (testing them as potential replacements for the Blackberry) and were able to explain the results of the testing and the rationale for the project being cancelled (the iPhones inability to meet agency security and device management requirements). Based on the evidence available, the purchase of the iPhones did not involve an excessive cost or a questionable need.⁷

2. The decision to issue the iPhones to the seven individuals in question was reasonable.

This determination was complicated by the agency's lack of written documentation. However, all of the witnesses were consistent in their explanations of the rationale for the issuing of the iPhones and the explanation given was reasonable. These individuals all had IT backgrounds and as supervisors qualified to have Blackberry devices issued under existing agency policies.

3. The iPhones should have been entered into the property management system (PMS) but were not. Appendix A to CPSC Directive 820.1, states that:

ITEMS ACQUIRED BY GOVERNMENT CREDIT CARD. Accountable property (property with an acquisition cost of \$500 or more) and "sensitive property⁸," . . . purchased with a Government credit card must be entered into the Personal Property Management System. Credit card holders are required to submit to their property custodians the description of the item, make, model serial number, manufacturer's date (when provided), date of receipt, and unit cost. In addition, credit card holders must provide the property custodian a copy of the credit card monthly statement,

⁷ The iPhones were purchases at market cost and in commonly used configurations.

⁸ Sensitive Property is defined as property costing between \$100 and \$499 that, because of its appeal, is subject to theft, loss, or conversion to personal use, is subject to the accountability and control procedures of accountable property. The iPhones unquestionably qualify.

annotated with the description and unit cost of each item purchased (a separate sheet can be provided when multiple items are purchased). The property custodian must initiate actions to enter the new items in the property system within three (3) working days of receipt. This procedure will facilitate the identification/matching of accountable property purchased with credit cards.

As of the time of this investigation, the iPhones had not been entered into the PMS system. Thus, for more than four years, the iPhones remained unaccounted for by the agency. (Attch 7)

CONCLUSION: The standard of proof applicable in an administrative proceeding is "preponderance of the evidence" (5 U.S.C. 7543). That standard of proof has been met and, as detailed above, it has been established that:

1. Subject violated the version of CPSC Directive 1540.1 in effect at the time in question, by authorizing the purchase of iPhones via purchase card.
2. The process used to determine to whom the iPhones were issued was reasonable.
3. Agency rules were violated when the iPhones were not entered into the property management system.

RECOMMENDATIONS:

1. A copy of this report of investigation should be provided to the Executive Director so that he can determine what administrative action, if any, it is appropriate to take regarding subject's regulatory violations.
2. Appropriate administrative action should be taken to ensure that EXIT complies with CPSC Directive 820.1 and promptly enters both the previously purchased iPhones and any newly purchases equipment into PMS.

ADDENDUM: Corrective Action regarding a number of these recommendations may have already been taken as a result of the recent purchase card audit. It should also be noted that although this investigation took place after the issuance of the purchase card audit report, the actual violations of policy took place before that audit was issued to agency management. As a result of said audit, the agency has revised its regulations governing the purchase card program and these revisions should be taken into account while determining the appropriate administrative action to take.

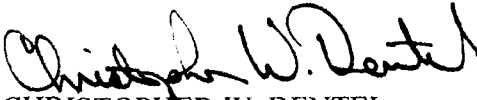
8 Aug 13

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Misappropriation of Funds and False Official Statements

The subject of the investigation resigned rather than be questioned regarding the alleged misappropriation of funds. As DoJ had already declined criminal jurisdiction over the case, this office had no jurisdiction over the member once he resigned. Preliminary investigation had indicated that it was more likely than not that the subject committed the offenses alleged. Complaint dismissed for lack of jurisdiction.


CHRISTOPHER W. DENTEL
Office of the Inspector General


Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegation of Reprisal

Preliminary investigation determined that this was a matter between a non-governmental, non-contractor employee and his employer.

Neither the OIG nor CPSC have jurisdiction over this matter.


CHRISTOPHER W. DENTEL
Office of the Inspector General


Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations of Misconduct by CPSC Employees

Preliminary investigation determined that the alleged misconduct did not fit the traditional definition of "fraud, waste, abuse, or mismanagement" as applied to OIG operations.

However, the complainant has stated a prima facie case for conduct unbecoming a Federal employee. As this office does not have jurisdiction over this offense the complaint was transferred to agency management for further action.


CHRISTOPHER W. DENTEL
Office of the Inspector General

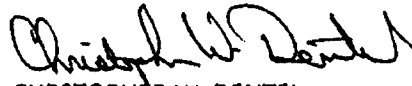
Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegation of Employee Misconduct

Preliminary investigation determined that this was a matter of employee misconduct more closely related to the mission of the agency than to the mission of the OIG.

Matter was transferred to agency management.

A handwritten signature in black ink, appearing to read "Christopher W. Dentel". The signature is written in a cursive, somewhat stylized font.

CHRSTOPHER W. DENTEL
Office of the Inspector General


Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegation of Fraudulent Commercial Practice

Preliminary investigation determined that this was a matter more closely related to the mission of the agency than to the mission of the OIG.

Matter was transferred to agency management.



CHRISTOPHER W. DENTEL
Office of the Inspector General