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Description of document: Letters, memos, reports and investigation results concerning a complaint re: the disclosure of an unredacted copy of the following document in late 2007 or early 2008: SBA's Oversight of Business Loan Center, LLC Report Number: 7-28, Issued: July 11, 2007

Request date: 16-December-2012

Released date: 01-February-2013

Posted date: 20-July-2015

Source of document: Freedom of Information Act request
Chief, Freedom of Information/Privacy Acts Office
Small Business Administration
409 3rd St., S.W., 8th floor
Washington, DC 20416
Fax: (202) 205-7059
Email: foia@sba.gov

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**U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416**

FEB 01 2013

Via Email

**Re: Freedom of Information Act Request
(FR-12/13-02; Case No. 2013-00934)**

This is in response to your Freedom of Information Act request dated December 16, 2012, in which you sought copies of "any and all letters, memos, reports and investigation results concerning a complaint about the disclosure of a unredacted copy of the following document in late 2007 or early 2008: SBA's Oversight of Business Loan Center, LLC Report Number: 7-28 Date Issued: July 11, 2007." Your request was referred to this office by the Small Business Administration's (SBA) Freedom of Information/Privacy Act Office on December 26, 2012, and has been assigned the number cited in the caption above.

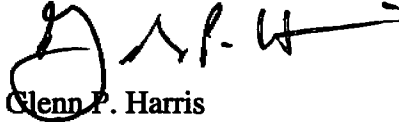
In our search, we located 94 pages of information responsive to your request. We are withholding part of the information in these records pursuant to FOIA Exemption 5. An explanation of the FOIA Exemptions is enclosed. Necessarily, some of the responsive documents included an unredacted version of the above-referenced audit report. As the redacted version of this report was posted on the SBA OIG's website, and the applicable FOIA exemptions justifying the redactions discussed therein, we are withholding that report as well.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with this reply, you have the right to appeal it, within 60 calendar days from the date of this letter, to the Chief, Freedom of Information/Privacy Acts Office, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Should you choose to do so, please include a copy of this letter in your appeal, as well as any other matters you deem appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "G.P. Harris". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke at the end.

Glenn P. Harris
Counsel to the Inspector General

cc: Lisa Babcock, Freedom of Information/Privacy Acts Office

Harris, Glenn P. (Off. Inspector Gen.)

From: Harris, Glenn P. (Off. Inspector Gen.)
Sent: Thursday, September 04, 2008 10:39 AM
To: 'ronald.machen@wilmerhale.com'; 'jeannie.rhee@wilmerhale.com'
Subject: BLX Audit Report

Please note the enclosed correspondence. Lets discuss after you have had a chance to review.

Glenn P. Harris
Counsel to the Inspector General
U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416
glenn.harris@sba.gov
Direct Dial: (202) 205-6862
Fax: (202) 481-2122



Ltr to Machen
(9-4-08).pdf



U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416

September 4, 2008

By Email

Ronald Machen, Esq.
Jeannie Rhea, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Re: Provision of Audit Report Regarding Business Loan Center, LLC to the
Senate Committee on Small Business and Entrepreneurship

Dear Ron and Jeannie:

This letter is a follow-up to our conversation yesterday, during which you indicated the concerns of your client, Business Loan Express (BLX), about an article that appeared in the New York Times on August 3, 2008. The reporter that authored the article stated that she had obtained "an uncensored version of the report ... from a government official." You advised that you planned (1) to send my office a letter asking for an inquiry into whether an employee of the Small Business Administration (SBA) Office of Inspector General (OIG) had been responsible for providing an unredacted copy of the above-referenced audit report to this reporter; and (2) to send a request to the President's Council on Integrity and Efficiency (PCIE) asking for a similar inquiry.

Based upon our conversation, it is my understanding that you do not have any evidence to indicate that an SBA OIG employee was involved in this disclosure of the report other than the quote from the article above that the report had been obtained from a "government official." If you are aware of any such evidence, I trust that you will bring this to our immediate attention.

If you are not aware of any such evidence, we would have to question the filing of such an inquiry with the PCIE. As we discussed, an unredacted copy of the report was provided to numerous officials within the SBA. Therefore, dozens of SBA employees had access to the unredacted version of the report. At the request of the Chair of the Senate Committee on Small Business and Entrepreneurship (SCSBE), an unredacted copy of the report was also provided to each of the Senators on the Committee. In

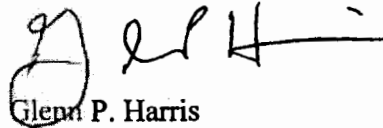
Ronald Machen, Esq.
Jeannie Rhee, Esq.
September 4, 2008
Page 2

addition to the approximately 32 listed staff positions on the SCSBE, this report was accessible to hundreds of additional Senate employees on each individual Senator's personal staff. Any of these SBA or Senate employees could have been the "government official" mentioned in the article.

It should be noted, however, as reflected in the attached example letter, in providing this report to the SCSBE, the SBA OIG advised that BLX considered portions of the report to contain information that is subject to the Trade Secrets Act and that the report should be properly safeguarded. Thus, although the SBA OIG was not under any obligation to do so, we took appropriate steps to advise the SCSBE that the report should not be disclosed.

As the PCIE only has authority to investigate actions of OIG employees, the potential consequence of filing a request with the PCIE would be to suggest that your client BLX is in possession of evidence to suggest that an SBA OIG was responsible for leaking this report. Although your client is certainly free to pursue this matter, since, as we understand this matter, there is no such evidence, and, given the fact that there are hundreds of other government officials that could have released the report, we would have to seriously question the motivations behind filing, what would appear to many, to be a baseless request for an inquiry. Therefore, it is my hope that your client would give careful consideration as to whether this proposal was the appropriate course of action.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn P. Harris". The signature is fluid and cursive, with a long horizontal stroke at the end.

Glenn P. Harris
Counsel to the Inspector General

Enclosure



U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416

August 23, 2007

Honorable Olympia J. Snowe, Ranking Member
Senate Committee on Small Business and Entrepreneurship
United States Senate
Washington, DC 20510-6350

Re: Audit Report Regarding Business Loan Center, LLC.

Dear Senator Snowe:

This letter is a response to a written request from the Chair of the Senate Committee on Small Business and Entrepreneurship that we send an un-redacted copy of the above-referenced audit report to each member of the Committee. Therefore, I have enclosed a copy of the report. Pleased be advised that both the Office of General Counsel (OGC) at the Small Business Administration and attorneys for the Business Loan Center, LLC (commonly known as "BLX") have written us contending that portions of the report should not be publicly disclosed under the trade secrets, banking examination, and deliberative privilege exemptions under the Freedom of Information Act (FOIA). Although FOIA does not apply to information requests from Congress, these concerns indicate that the report should be properly safeguarded.

Please do not hesitate to contact me if there are any comments or questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric M. Thorson".

Eric M. Thorson
Inspector General

Encl.

Harris, Glenn P. (Off. Inspector Gen.)

From: Harris, Glenn P. (Off. Inspector Gen.)
Sent: Thursday, September 18, 2008 7:51 AM
To: McClintock, Peter L. (Off. Inspector Gen.)
Subject: Fw: Your letter of Sept. 5, 2008

FYI
Glenn Harris (sent from my Blackberry)

----- Original Message -----

From: Machen, Ronald <Ronald.Machen@wilmerhale.com>
To: Harris, Glenn P. (Off. Inspector Gen.)
Cc: Ahn, Demian <Demian.Ahn@wilmerhale.com>
Sent: Wed Sep 17 16:47:31 2008
Subject: RE: Your letter of Sept. 5, 2008

Glenn: I got the letter. Thanks.

From: Harris, Glenn P. (Off. Inspector Gen.) [<mailto:glenn.harris@sba.gov>]
Sent: Wednesday, September 17, 2008 4:43 PM
To: Machen, Ronald
Cc: Ahn, Demian
Subject: Your letter of Sept. 5, 2008
Importance: High

Please note the attached response and confirm that you received this email.

Thanks,

Glenn P. Harris
Counsel to the Inspector General
U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416
glenn.harris@sba.gov <<mailto:glenn.harris@sba.gov>>
Direct Dial: (202) 205-6862
Fax: (202) 481-2122

From: Ahn, Demian [<mailto:Demian.Ahn@wilmerhale.com>]
Sent: Friday, September 05, 2008 6:09 PM
To: Harris, Glenn P. (Off. Inspector Gen.)
Cc: Machen, Ronald
Subject: CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL TREATMENT REQUESTED

Dear Mr. Harris:

On behalf of Ron Machen, I have attached to this email copies of two letters, one addressed to your attention, and another addressed to the President's Council on Integrity and Efficiency (PCIE). If you have any questions, please call Ron at (202) 663-6881.

Thank you.

Demian S. Ahn
WilmerHale
1875 Pennsylvania Avenue NW
Washington, DC 20006 USA
+1 202 663 6736 (t)
+1 202 663 6363 (f)
demian.ahn@wilmerhale.com

This email message and any attachments are being sent by Wilmer Cutler Pickering Hale and Dorr LLP, are confidential, and may be privileged. If you are not the intended recipient, please notify us immediately -- by replying to this message or by sending an email to postmaster@wilmerhale.com <<mailto:postmaster@wilmerhale.com>> -- and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at <http://www.wilmerhale.com> <<http://www.wilmerhale.com>> .



U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416

September 17, 2008

By Email (Read Receipt Requested)

Ronald Machen, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

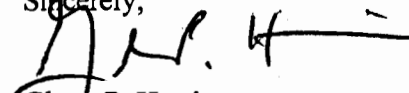
Re: Request for Investigation Into Disclosure of Unredacted Audit Report
Regarding Business Loan Center, LLC

Dear Ron:

This letter responds to your correspondence of September 5, 2008 in which you requested that the Small Business Administration (SBA) Office of Inspector General (OIG) conduct an investigation of the disclosure of the unredacted copy of the OIG's audit report number 7-28 regarding SBA's oversight of your client, Business Loan Center, LLC (BLX). You also provided a copy of a letter, also dated September 5, 2008, that you sent to the Integrity Committee of the President's Council on Integrity and Efficiency (PCIE) asking for an identical investigation. The SBA OIG believes it would be highly inappropriate to conduct a separate parallel investigation during such time as the PCIE Integrity Committee is considering your identical request or, should it choose to do so, conducting an identical investigation. For us to conduct such an investigation, we would necessarily be required to identify and interview relevant witnesses within the SBA OIG, which could be perceived as an effort to interfere with any investigation conducted by the PCIE Integrity Committee or to undermine its authority. ||

Although we are, therefore, declining your request at this time, we will, of course, cooperate fully with any investigation that is conducted by the PCIE Integrity Committee.

Sincerely,


Glenn P. Harris
Counsel to the Inspector General

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Ronald C. Machen

Glenn P. Harris, Esq.
Counsel to the Inspector General
United States Small Business Administration
409 3rd Street, SW
Washington, DC 20416

+1 202 663 6881 (t)
+1 202 663 6363 (f)
ronald.machen@wilmerhale.com

Re: Request for Investigation into Disclosure of Unredacted SBA OIG Audit Report

Dear Glenn:

We are writing on behalf of our client, Business Loan Center, LLC ("BLX"), to request an investigation by the United States Small Business Administration's Office of the Inspector General (hereinafter "SBA OIG") into the public disclosure of an unredacted copy of the SBA OIG's Audit Report 7-28, "SBA's Oversight of Business Loan Center, LLC," dated July 11, 2008 ("SBA OIG Report").

As you know, BLX was not even in possession of an unredacted copy of the full SBA OIG Report, despite our repeated requests for one, until recently. However, approximately one month ago, we learned that New York Times reporter Gretchen Morgenson had obtained an unredacted copy of the SBA OIG Report and planned on writing an article about it. That article, which appeared in the August 3, 2008 edition of the New York Times was entitled "Fair Game: An S.B.A. Lender, Uncensored." In the article, Ms. Morgenson asserted that she had obtained an unredacted version of the report from "a government official." Shortly after Ms. Morgenson's article, we learned that James Brickman, a self-described short seller of Allied Capital Corporation who is appealing a Northern District of Georgia order dismissing a civil lawsuit against BLX, also obtained an unredacted copy of the report. In a letter to the Board of Directors of Allied Capital Corporation, Mr. Brickman attached a complete and unredacted copy of the report. Significantly, this is not the first time that Mr. Brickman, who we believe routinely communicates about BLX with SBA OIG employees, has obtained BLX's confidential and proprietary information. In July 2007, Mr. Brickman wrote another letter to the Allied Board making reference to and including pages from a BLX insurance application that was not publicly available.

As you are aware, the redactions in the SBA OIG Report pertain to BLX's confidential business information provided to the Farm Credit Administration auditors, contracted by the SBA to perform mandatory annual audits of SBA lenders. The redactions withheld from public disclosure include detailed comments about BLX's loan portfolio; its past, present and future business strategies; the Farm Credit Administration's audits of BLX and its purported findings; BLX's relationship with its own lenders; its business practices with respect to sales in the secondary market and securitizations; and BLX's relationship and communications with the SBA, including the March 2007 confidential agreement.

CONFIDENTIAL TREATMENT REQUESTED

Glenn P. Harris
September 5, 2008
Page 2

In light of the highly sensitive and proprietary nature of this information, BLX engaged in an extended discussion with your office and the SBA Office of General Counsel from July to October 2007 in order to ensure that the final public version of the Report did not improperly disclose trade secrets or agency privileged information pursuant to 18 U.S.C. §1905 and exemptions 5 and 8 of the Freedom of Information Act. As you know, the unauthorized disclosure and, or, use of this information violates the Trade Secrets Act, 18 U.S.C. §1905. *See, e.g., United States v. Wallington*, 889 F.2d 573 (5th Cir. 1989) (affirming conviction of a United States Customs Service official for publicly divulging information obtained within the scope of his official duties in violation of the Trade Secrets Act); *see also* 18 U.S.C. § 1832(a). Furthermore, the first page of each FCA audit contains the following warning: "This report is the property of the Small Business Administration and is furnished to the institution for its confidential use. Under no circumstances shall the institution, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof." As the SBA's SOP 51 00, Chapter 2, ¶15, makes clear, "[u]nauthorized disclosure of any of the contents of this [FCA] Report is subject to the penalties in 18 U.S.C. § 641" – the criminal prohibition against the theft of government property. Federal laws and SBA policies on confidentiality exist to promote regulatory oversight by providing a mechanism for lenders to disclose full and accurate information to the agency for candid review, while giving assurances that the lender will be protected from the competitive harm that would result from the public disclosure of that information. The damage from an unauthorized disclosure is especially severe when, as here, that information is provided to a direct adversary of the company – indeed, an individual who is currently involved in active litigation against the company.

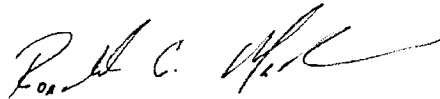
Significantly, when BLX sought permission from the SBA Office of General Counsel to disclose the actual FCA audits – in order to demonstrate that the overall conclusions from those audits were inconsistent with the conclusions drawn in the SBA OIG Report – the company was prohibited from sharing the audits with the public.

CONFIDENTIAL TREATMENT REQUESTED

Glenn P. Harris
September 5, 2008
Page 3

We request that your office initiate a formal investigation into the unauthorized disclosure of BLX's confidential information contained in the unredacted SBA OIG Report. Since only a limited number of government officials within the Small Business Administration should have had access to the unredacted version of the SBA OIG Report, we are very concerned that there has been a serious breach of duty and a violation of federal law. We also request written notice of your receipt of this letter and whether you intend to commence an investigation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ronald C. Machen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ronald C. Machen

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Ronald C. Machen

Integrity Committee
President's Council on Integrity and Efficiency (PCIE)
935 Pennsylvania Avenue, NW
Room 3117
Washington, DC 20535-0001

+1 202 663 6881 (t)
+1 202 663 6363 (f)
ronald.machen@wilmerhale.com

Re: Request for Investigation into Disclosure of Unredacted SBA OIG Audit Report

Dear Integrity Committee:

We are writing on behalf of our client, Business Loan Center, LLC ("BLX"), to request an investigation by the Integrity Committee, pursuant to Executive Order 12993, into the possible public disclosure by a government official of an unredacted copy of the Small Business Administration Office of Inspector General's Audit Report 7-28, "SBA's Oversight of Business Loan Center, LLC," dated July 11, 2008 ("SBA OIG Report"). The unredacted portions of the SBA OIG Report contain BLX's highly confidential and proprietary business and financial information – some of which was taken from confidential audits of BLX made by the Farm Credit Administration ("FCA") – and federal law imposes criminal penalties where an official knowingly discloses such information.

In an August 3, 2008 article, entitled "Fair Game: An S.B.A. Lender, Uncensored," New York Times reporter Gretchen Morgenson asserted that she had obtained "an uncensored version of the [SBA OIG Report] ... from a government official." We have also learned that James Brickman, who is in active litigation with BLX,¹ has obtained an unredacted copy of the SBA OIG Report. In an August 12, 2008 letter to the Board of Allied Capital Corporation, of which BLX is a portfolio company, Mr. Brickman attached a complete and unredacted copy of the SBA OIG Report and quoted from it extensively.

Pursuant to the Trade Secrets Act, 18 U.S.C. §1905, a federal official's disclosure of confidential business information, such as that contained in the unredacted version of the SBA OIG Report, obtained through a government examination or investigation, is punishable by fine

¹ In the lawsuit titled United States, ex rel James R. Brickman and Greenlight Capital, Inc. v. Business Loan Express LLC f/k/a Business Loan Express, Inc.; Business Loan Center LLC f/k/a Business Loan Center, Inc.; Robert Tannenhauser; Matthew McGee; and George Harrigan, 05-CV-3147 (JEC), the United States District Court for the Northern District of Georgia issued an opinion and order on December 18, 2007, granting the defendants' motion to dismiss on the ground that the court lacked subject-matter jurisdiction. In accordance with this order, the clerk of the court entered judgment on December 20, 2007, dismissing the action in its entirety. On January 14, 2008, Mr. Brickman et al. filed a notice of appeal, which is currently pending.

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Page 2

and/or imprisonment up to one year, and removal from office or employment.² *See, e.g., United States v. Wallington*, 889 F.2d 573 (5th Cir. 1989) (affirming conviction of a United States Customs Service official for publicly divulging information obtained within the scope of his official duties in violation of the Trade Secrets Act). Moreover, every FCA audit, many of which are quoted from selectively throughout the unredacted SBA OIG Report, bears the following prohibition, "This report is the property of the Small Business Administration and is furnished to the institution for its confidential use. Under no circumstances shall the institution, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof." Indeed, SBA SOP 51 00 specifically warns that the unauthorized disclosure of the contents of [an FCA audit] Report is subject to the criminal penalties in 18 U.S.C. § 641.³ Not surprisingly, the unauthorized disclosure of the unredacted SBA OIG Report may have also violated 18 U.S.C. § 1832(a), which prohibits the theft of trade secrets.⁴

² *See* 18 U.S.C. § 1905 ("Whoever, being an officer or employee of the United States or of any department or agency thereof . . . publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association . . . to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.").

³ *See, e.g.,* SOP 51 00, Chapter 2, ¶15 ("Each Report must contain the following language on the first page."); *id.* at ¶10; *id.* at Chapter 2, ¶ 19 ("SBA employees and contractors must be mindful of the fact that the information contained in Reports will generally be considered by the lender and borrowers that are identified in the Reports to be confidential and proprietary. Therefore, Reports must not be made available to members of the public unless disclosed in response to a Freedom of Information Act request where it has been determined that the information in the Report is not exempt from disclosure under that Act."); PLP Oversight Process, Audit Report Number 1-19, September 27, 2001, available at <http://www.sba.gov/ig/1-19plp.pdf> ("The reports of [FCA] examination are highly confidential documents and are protected from public disclosure under the Freedom of Information Act. The need for tight controls over their distribution is essential to ensure that this protection is preserved."). *See also*, 18 U.S.C. § 641 ("Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted-- Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.").

⁴ *See* 18 U.S.C. § 1832(a) ("Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly-- (1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information; (2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information; (3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Page 3

Noticeably, the Inspector General Act does not create any exceptions to the Trade Secrets Act, § 641 or §1832, but rather provides that “[n]othing in this section shall be construed to authorize the public disclosure of information which is ... specifically prohibited from disclosure by any other provision of law.” 5 U.S.C. App. § 5(e)(1)(A).

In short, the unredacted SBA OIG Report which was obtained by Ms. Morgenson and Mr. Brickman from – according to Ms. Morgenson – a “government official” contains BLX’s confidential business information which was provided to Farm Credit Administration auditors under an explicit requirement that the information not be shared publicly. During the course of the audits, BLX made available to the auditors its files and business strategies relating to its participation in the SBA program. This highly sensitive and proprietary information should not have been disclosed to any unauthorized parties. However, that is exactly what occurred in this case and it has caused harm to BLX.

What is so troubling about the dissemination of the SBA OIG Report is that BLX and the SBA Office of General Counsel (OGC) both raised specific concerns with the SBA OIG regarding the proprietary nature of the information contained in a redacted version of the report before it was finalized. These concerns presumably played a significant role in the subsequent decision to redact even more of the report before it was produced publicly. BLX also requested that the SBA OIG take appropriate measures to alert others who may have been provided the report prior to BLX having an opportunity to lodge an objection that the report contained information of a confidential nature and was not to be disseminated. Specifically, on July 17, 2007, BLX learned through written communication with the SBA OIG that a copy of the unredacted report had been requested by and provided to Senator John Kerry, Chair of the Senate Small Business and Entrepreneurship Committee. When BLX asked for confirmation that notice had been provided as to the confidential nature of the contents and the need to protect against disclosure, a senior official of the SBA OIG responded in a written communication that it was not his place to provide such notice to Congress and that he would not do so.

We believe that this initial response from the SBA Inspector General displayed a gross disregard for the confidential and proprietary information contained in the unredacted SBA OIG Report and the clear legal restrictions governing its dissemination. The SBA OIG’s refusal to properly warn the recipients of the report of its confidential nature also raises questions as to whether appropriate precautions were followed within the SBA OIG pertaining to the report’s disclosure.

In fairness, we notified Glenn Harris, Counsel to the SBA OIG, earlier this week of our intention to request an investigation of the SBA OIG. Mr. Harris responded by informing us that

without authorization; (4) attempts to commit any offense described in paragraphs (1) through (3); or (5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.”).

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Page 4

on or about August 23, 2007 -- more than a month after the Inspector General provided an unredacted copy of the report to Senator Kerry and his staff -- the SBA OIG, when transmitting the report to other members of the Committee, noted in a cover letter that the SBA and BLX contended that the report contained confidential information that needed to be properly safeguarded. Surprisingly, the SBA OIG itself did not elaborate on the point and did not directly and plainly inform the recipients of the relevant statutes, including the criminal statutes, that prohibited disclosure of the report. While encouraged to learn that some admonitions were provided to these congressional members, we still believe that the initial disregard and indifference to the confidentiality of the report by the Inspector General provides adequate grounds to request an inquiry into how the report was disseminated and whether members of the SBA OIG improperly provided the report (or failed to take appropriate measures to prevent the report's dissemination) to unauthorized persons. This is especially true when you consider the fact that the SBA OIG initially indicated to BLX that it intended to publish a copy of the report on the SBA's website which would identify BLX as the lender under review-- an action we understand to be contrary to the SBA OIG's general practice of redacting identifying information of subject lenders.

Significantly, we believe that a fairly limited number of government officials -- namely a few members of the SBA (which objected strenuously to the dissemination of the contents of the report and would not seem to have a motive to disclose) and the SBA OIG -- ever had access to the full unredacted copy of the report. We also believe that even if the disclosure of the SBA OIG Report to Ms. Morgenson and eventually the public was not performed directly by the SBA OIG, the SBA OIG's initial failure and delay to alert the Chair of the Senate Small Business and Entrepreneurship Committee to the report's confidential nature may have played a role in its ultimate dissemination. Accordingly, we respectfully request that your office initiate a formal investigation into the potential disclosure of an unredacted copy of the SBA OIG Report by the SBA OIG. We are prepared to provide any additional information you may need in furtherance of that investigation.

Sincerely yours,



Ronald C. Machen

cc:

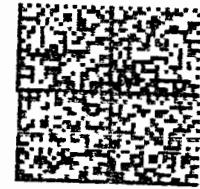
Glenn P. Harris, Esq.

Counsel to the Inspector General


United States Small Business Administration



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US POST

Ronald C. Machen **WILMERHALE** 

Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW, Washington, D.C. 20006

Integrity Committee
President's Council on Integrity and Efficiency
(PCIE)
935 Pennsylvania Avenue, NW
Room 3117
Washington, DC 20535-0001

Integrity Committee



President's Council on Integrity and Efficiency
Executive Council on Integrity and Efficiency

935 Pennsylvania Ave., NW, Room 3973
Washington, D.C. 20535-0001
October 24, 2008

Personal and Confidential

The Honorable Eric Thorson
Inspector General
Small Business Administration
409 3rd Street, SW, 7th Floor
Washington, DC 20416

Re: IC 586

Dear Mr. Thorson:

As you may be aware, pursuant to Executive Order (EO) 12993, the Integrity Committee (IC) is charged with receiving, reviewing, and investigating, where appropriate, administrative allegations against Inspectors General (IG), and in limited cases, members of an IG's staff. As part of these responsibilities, the IC received a complaint against you from Ronald C. Machen of Business Loan Center, LLC. A copy of the complaint is enclosed. The purpose of this letter is to inform you of those allegations and offer you the opportunity to provide a written response. This notice to you and request for response is a customary first step in the IC's review process. It allows an affected IG to provide context to the allegations and gives the IC more information to make a better decision as to the necessity of any further action.

The complaints examined by the IC allege:

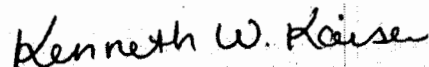
1. That public disclosure by a government official of an un-redacted copy of the SBA, OIG, Audit Report 7-28 which contained highly confidential and proprietary business and financial information.
2. That you displayed gross disregard for the confidential and proprietary information contained in the un-redacted Audit Report and the restrictions governing its dissemination.

The Honorable Eric Thorson

The IC requests that you provide clarification and any additional information, documentation, or written comment that you believe will be relevant and appropriate for consideration by the IC for this matter. After your response, the IC will review the complaint, along with the information you provide, and under its operating policy and procedures, determine whether it can resolve the matter based on the available information or if additional investigation is warranted.

The IC requests that you provide a written response within thirty days to the attention of the Integrity Committee, 935 Pennsylvania Avenue, NW, Room 3973, Washington, DC 20535. If you have questions, please contact the IC Program Manager, Supervisory Special Agent Scott Cheney, telephone (202) 324-5067.

Sincerely,



Kenneth W. Kaiser
Chair, Integrity Committee

Enclosure

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Ronald C. Machen

Integrity Committee
President's Council on Integrity and Efficiency (PCIE)
935 Pennsylvania Avenue, NW
Room 3117
Washington, DC 20535-0001

+1 202 663 6881 (t)
+1 202 663 6363 (f)
ronald.machen@wilmerhale.com

Re: Request for Investigation into Disclosure of Unredacted SBA OIG Audit Report

Dear Integrity Committee:

We are writing on behalf of our client, Business Loan Center, LLC ("BLX"), to request an investigation by the Integrity Committee, pursuant to Executive Order 12993, into the possible public disclosure by a government official of an unredacted copy of the Small Business Administration Office of Inspector General's Audit Report 7-28, "SBA's Oversight of Business Loan Center, LLC," dated July 11, 2008 ("SBA OIG Report"). The unredacted portions of the SBA OIG Report contain BLX's highly confidential and proprietary business and financial information – some of which was taken from confidential audits of BLX made by the Farm Credit Administration ("FCA") – and federal law imposes criminal penalties where an official knowingly discloses such information.

In an August 3, 2008 article, entitled "Fair Game: An S.B.A. Lender, Uncensored," New York Times reporter Gretchen Morgenson asserted that she had obtained "an uncensored version of the [SBA OIG Report] ... from a government official." We have also learned that James Brickman, who is in active litigation with BLX,¹ has obtained an unredacted copy of the SBA OIG Report. In an August 12, 2008 letter to the Board of Allied Capital Corporation, of which BLX is a portfolio company, Mr. Brickman attached a complete and unredacted copy of the SBA OIG Report and quoted from it extensively.

Pursuant to the Trade Secrets Act, 18 U.S.C. §1905, a federal official's disclosure of confidential business information, such as that contained in the unredacted version of the SBA OIG Report, obtained through a government examination or investigation, is punishable by fine

¹ In the lawsuit titled United States, ex rel James R. Brickman and Greenlight Capital, Inc. v. Business Loan Express LLC f/k/a Business Loan Express, Inc.; Business Loan Center LLC f/k/a Business Loan Center, Inc.; Robert Tannenhauser; Matthew McGee; and George Harrigan, 05-CV-3147 (JEC), the United States District Court for the Northern District of Georgia issued an opinion and order on December 18, 2007, granting the defendants' motion to dismiss on the ground that the court lacked subject-matter jurisdiction. In accordance with this order, the clerk of the court entered judgment on December 20, 2007, dismissing the action in its entirety. On January 14, 2008, Mr. Brickman et al. filed a notice of appeal, which is currently pending.

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Page 2

and/or imprisonment up to one year, and removal from office or employment.² See, e.g., *United States v. Wallington*, 889 F.2d 573 (5th Cir. 1989) (affirming conviction of a United States Customs Service official for publicly divulging information obtained within the scope of his official duties in violation of the Trade Secrets Act). Moreover, every FCA audit, many of which are quoted from selectively throughout the unredacted SBA OIG Report, bears the following prohibition, "This report is the property of the Small Business Administration and is furnished to the institution for its confidential use. Under no circumstances shall the institution, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof." Indeed, SBA SOP 51 00 specifically warns that the unauthorized disclosure of the contents of [an FCA audit] Report is subject to the criminal penalties in 18 U.S.C. § 641.³ Not surprisingly, the unauthorized disclosure of the unredacted SBA OIG Report may have also violated 18 U.S.C. §1832(a), which prohibits the theft of trade secrets.⁴

² See 18 U.S.C. §1905 ("Whoever, being an officer or employee of the United States or of any department or agency thereof ... publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association ... to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.").

³ See, e.g., SOP 51 00, Chapter 2, ¶15 ("Each Report must contain the following language on the first page."); *id.* at ¶10; *id.* at Chapter 2, ¶19 ("SBA employees and contractors must be mindful of the fact that the information contained in Reports will generally be considered by the lender and borrowers that are identified in the Reports to be confidential and proprietary. Therefore, Reports must not be made available to members of the public unless disclosed in response to a Freedom of Information Act request where it has been determined that the information in the Report is not exempt from disclosure under that Act."); PLP Oversight Process, Audit Report Number 1-19, September 27, 2001, available at <http://www.sba.gov/ig/1-19plp.pdf> ("The reports of [FCA] examination are highly confidential documents and are protected from public disclosure under the Freedom of Information Act. The need for tight controls over their distribution is essential to ensure that this protection is preserved."). See also, 18 U.S.C. § 641 ("Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted-- Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.").

⁴ See 18 U.S.C. § 1832(a) ("Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly-- (1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information; (2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, ~~communicates~~, or conveys such information; (3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Page 3

Noticeably, the Inspector General Act does not create any exceptions to the Trade Secrets Act, § 641 or §1832, but rather provides that “[n]othing in this section shall be construed to authorize the public disclosure of information which is ... specifically prohibited from disclosure by any other provision of law.” 5 U.S.C. App. § 5(e)(1)(A).

In short, the unredacted SBA OIG Report which was obtained by Ms. Morgenson and Mr. Brickman from – according to Ms. Morgenson – a “government official” contains BLX’s confidential business information which was provided to Farm Credit Administration auditors under an explicit requirement that the information not be shared publicly. During the course of the audits, BLX made available to the auditors its files and business strategies relating to its participation in the SBA program. This highly sensitive and proprietary information should not have been disclosed to any unauthorized parties. However, that is exactly what occurred in this case and it has caused harm to BLX.

What is so troubling about the dissemination of the SBA OIG Report is that BLX and the SBA Office of General Counsel (OGC) both raised specific concerns with the SBA OIG regarding the proprietary nature of the information contained in a redacted version of the report before it was finalized. These concerns presumably played a significant role in the subsequent decision to redact even more of the report before it was produced publicly. BLX also requested that the SBA OIG take appropriate measures to alert others who may have been provided the report prior to BLX having an opportunity to lodge an objection that the report contained information of a confidential nature and was not to be disseminated. Specifically, on July 17, 2007, BLX learned through written communication with the SBA OIG that a copy of the unredacted report had been requested by and provided to Senator John Kerry, Chair of the Senate Small Business and Entrepreneurship Committee. When BLX asked for confirmation that notice had been provided as to the confidential nature of the contents and the need to protect against disclosure, a senior official of the SBA OIG responded in a written communication that it was not his place to provide such notice to Congress and that he would not do so.

We believe that this initial response from the SBA Inspector General displayed a gross disregard for the confidential and proprietary information contained in the unredacted SBA OIG Report and the clear legal restrictions governing its dissemination. The SBA OIG’s refusal to properly warn the recipients of the report of its confidential nature also raises questions as to whether appropriate precautions were followed within the SBA OIG pertaining to the report’s disclosure.

In fairness, we notified Glenn Harris, Counsel to the SBA OIG, earlier this week of our intention to request an investigation of the SBA OIG. Mr. Harris responded by informing us that

without authorization; (4) attempts to commit any offense described in paragraphs (1) through (3); or (5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.”).

CONFIDENTIAL TREATMENT REQUESTED

WILMERHALE

September 5, 2008

Page 4

on or about August 23, 2007 – more than a month after the Inspector General provided an unredacted copy of the report to Senator Kerry and his staff – the SBA OIG, when transmitting the report to other members of the Committee, noted in a cover letter that the SBA and BLX contended that the report contained confidential information that needed to be properly safeguarded. Surprisingly, the SBA OIG itself did not elaborate on the point and did not directly and plainly inform the recipients of the relevant statutes, including the criminal statutes, that prohibited disclosure of the report. While encouraged to learn that some admonitions were provided to these congressional members, we still believe that the initial disregard and indifference to the confidentiality of the report by the Inspector General provides adequate grounds to request an inquiry into how the report was disseminated and whether members of the SBA OIG improperly provided the report (or failed to take appropriate measures to prevent the report's dissemination) to unauthorized persons. This is especially true when you consider the fact that the SBA OIG initially indicated to BLX that it intended to publish a copy of the report on the SBA's website which would identify BLX as the lender under review– an action we understand to be contrary to the SBA OIG's general practice of redacting identifying information of subject lenders.

Significantly, we believe that a fairly limited number of government officials – namely a few members of the SBA (which objected strenuously to the dissemination of the contents of the report and would not seem to have a motive to disclose) and the SBA OIG – ever had access to the full unredacted copy of the report. We also believe that even if the disclosure of the SBA OIG Report to Ms. Morgenson and eventually the public was not performed directly by the SBA OIG, the SBA OIG's initial failure and delay to alert the Chair of the Senate Small Business and Entrepreneurship Committee to the report's confidential nature may have played a role in its ultimate dissemination. Accordingly, we respectfully request that your office initiate a formal investigation into the potential disclosure of an unredacted copy of the SBA OIG Report by the SBA OIG. We are prepared to provide any additional information you may need in furtherance of that investigation.

Sincerely yours,



Ronald C. Machen

cc:

Glenn P. Harris, Esq.

Counsel to the Inspector General

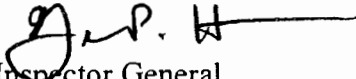
United States Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416

MEMORANDUM

TO: Eric M. Thorson
Inspector General
U.S. Department of the Treasury

FROM: Glenn P. Harris 
Counsel to the Inspector General
U.S. Small Business Administration

DATE: December 29, 2008

SUBJECT: Letter to PCIE Integrity Committee

I have enclosed a copy of the letter that we discussed for your files.



U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416

December 29, 2008

Kenneth W. Kaiser
Chair, Integrity Committee
President's Council on Integrity and Efficiency
935 Pennsylvania Ave., NW
Room 3973
Washington, DC 20535-0001

Re: Your Correspondence of October 24, 2008/Control Number 586

Dear Mr. Kaiser:

This letter is in response to the above-referenced correspondence. Please accept my apologies for not responding sooner.

Your letter addressed a complaint against the Small Business Administration ("SBA") Office of Inspector General ("OIG") filed by Business Loan Center, Inc., also known as Business Loan Express ("BLX"). The complaint concerned the release of an unredacted version of SBA OIG audit report number 7-28, SBA's Oversight of Business Loan Center, LLC (hereinafter "Report 7-28"). We have shared your letter with former SBA Inspector General Eric M. Thorson, who is now the Treasury Inspector General, and this response incorporates his input as well. Thank you for the opportunity to comment.

Your letter requested a response to the following two allegations, which the OIG addresses below:

(1) Public disclosure by a government official of an un-redacted copy of the SBA OIG, Audit Report 7-28, which contained highly confidential and proprietary business and financial information.

(2) That you displayed gross disregard for the confidential and proprietary information contained in the un-redacted Audit Report and the restrictions governing its dissemination.

Background

To further its mission of assisting small businesses, SBA is authorized to guarantee loans made by lenders to certain small businesses under section 7(a) of the Small Business Act. Section 15 of the Act gives SBA additional regulatory authority over certain lenders participating

in SBA's guaranteed loan program known as Small Business Lending Companies ("SBLCs"), which are not subject to regulation by other Federal or state banking agencies. BLX is an SBLC, and is, therefore, subject to on-site examinations which are conducted by the Farm Credit Administration ("FCA") on behalf of SBA.

In Report 7-28, the SBA OIG conducted a review to determine whether SBA's oversight of BLX identified performance or compliance activities that warranted attention, and whether SBA acted appropriately to protect government funds if any deficiencies were identified. The OIG found that SBA had not taken appropriate action to address BLX performance problems and compliance issues that came to the Agency's attention.

The SBA OIG initiated this audit because an earlier OIG investigation of allegations regarding fraudulent loans originated by BLX had resulted in the arrest of a former BLX executive vice president and 18 other individuals, not employed by BLX, for allegedly making over \$76 million in fraudulent loans to unqualified loan applicants. The former BLX executive vice president, Patrick Harrington, was recently sentenced for fraud in a scheme involving 89 loans. (See http://www.usdoj.gov/usao/mie/press/2008/2008-11-13_pharrington.pdf.)

As a result of the SBA OIG Audit, the Senate Committee on Small Business and Entrepreneurship ("Senate Committee") held a hearing in November of 2007. A number of senators at the hearing expressed their concern regarding SBA's lender oversight and problems with BLX' lending practices. BLX filed for bankruptcy in late September of 2008.

Response to Complaints:

The SBA OIG takes very seriously the obligation to prevent the disclosure of information that is properly considered to be confidential business or trade secret information. OIG employees are well aware of the restrictions on the dissemination of such information under SBA regulations. Consistent with the OIG Auditing Division's Standard Operating Procedure ("SOP") on Audits, all audit reports are carefully screened by SBA OIG attorneys before they are made publicly available to ensure that appropriate information is redacted.

SBA OIG attorneys undertook such a review with respect to Report 7-28. The version of this report that was posted on the SBA OIG website contained extensive redactions requested by the SBA Office of General Counsel. (See <http://www.sba.gov/ig/7-28.pdf>.) (As noted on the cover page of the publicly-posted version of the report, these redactions were generally based on the SBA General Counsel's assertion that information in the report was subject to the deliberative and bank examiner privileges.)

The OIG issued Report 7-28 on July 11, 2007. Shortly thereafter, at the request of the Senate Committee Chair, the OIG provided unredacted copies of the report for the Chair and Ranking Member at a meeting with committee staff. The following week, on July 17, 2007, the SBA OIG received a letter from an attorney for BLX raising concerns that the report might contain proprietary information. After the Chair requested that a copy of the report be provided to the members of the Committee, SBA OIG provided an unredacted copy of the report to each

committee member with a cover letter stating that “the report contained confidential information that needed to be properly safeguarded.” A copy of this letter was provided to BLX’ attorney, as acknowledged on page four of the complaint letter. In addition, SBA OIG records show that the cover page of the report that was provided to the Committee members contained the following advisory:

This report may contain proprietary information subject to the provisions of 18 U.S.C. 1905 and other sensitive and/or confidential information and therefore should be appropriately safeguarded to preclude its inappropriate release to the public.

Subsequently, in connection with official Federal investigations, unredacted copies of Report 7-28 also believed to contain this advisory were provided to a few employees in other Federal agencies, including the Department of Justice.

It should be noted that the OIG questions BLX’ description of the nature of the information in Report 7-28 that BLX claims is proprietary. On page 1 of the complaint letter, BLX states that Report 7-28 contained “highly confidential and proprietary business and financial information – some of which was obtained from confidential audits of BLX made by the [FCA].” On page 3, BLX clarifies this assertion, stating:

During the course of the [FCA] audits, BLX made available to the auditors its files and business strategies relating to its participation in the SBA program. This highly sensitive and proprietary information should not have been disclosed to any unauthorized parties. However, that is exactly what occurred in this case and it has caused harm to BLX.

This statement gives the impression that Report 7-28 disclosed sensitive BLX “business strategies” and financial or other confidential information that FCA examiners obtained from BLX’ files.

However, this assertion is incorrect; Report 7-28 did not disclose any information that would constitute a BLX business strategy or confidential financial information obtained by FCA examiners. Instead, on approximately one page of 39 total pages, the report discussed the findings that the FCA presented to SBA from its examinations of BLX’ lending practices. The OIG questions whether the findings of Federal examiners, although certainly sensitive, constitute proprietary information, as that term has been defined. Generally, only information generated by a business itself is considered to be proprietary, not findings of government officials.¹ To the extent that the FCA findings are considered proprietary, however, it is worth noting that although BLX vaguely claims that it has suffered “harm” as a result of the disclosure of the unredacted report, the company provides no information to substantiate this alleged injury.

The BLX complaint cites an article by Gretchen Morgenson that appeared in the New York Times on August 3, 2008, more than a year after the OIG issued Report 7-28. Ms.

¹ For example, Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), applies to trade secrets and commercial or financial information obtained from a person” (emphasis added).

Morgenson wrote that she had obtained “an [unredacted] version of [the SBA OIG Report] ... from a government official.” She did not, however, narrow this to a particular agency or office. The term “government official” presumably encompasses congressional staff as well as employees of Federal agencies.

In the complaint letter, BLX expresses its belief that “a fairly limited number of government officials – namely a few members of the SBA ... and the SBA OIG – ever had access to the full unredacted copy of the report.” Based on this assumption, BLX suggests that the release of the unredacted version of the report most likely came from the SBA OIG in requesting that the Integrity Committee conduct an investigation.

The OIG respectfully responds that the premise underlying this request, i.e., that only a few government officials in the SBA and SBA OIG had access to the unredacted version of the report, is invalid. Although the OIG undertook appropriate precautions by clearly advising report recipients that the report might contain proprietary information and should be appropriately safeguarded, and disseminated less than 30 unredacted versions of the report outside of the OIG, as discussed more fully below, it is estimated that more than 400 government officials had potential access to an unredacted version of the report. This includes numerous officials within SBA, congressional staff, and officials in certain Federal agencies.

Our estimate of the large number of government officials with potential access to an unredacted version of the report is based upon the following analysis. First, we estimate that more than 60 current and former OIG employees had access to the unredacted report during the time period in question (July 2007 through August 2008). All auditors in the SBA OIG had access to an unredacted copy of the report because unredacted versions of all SBA OIG audit reports issued in the past five years are available on an OIG intranet site. Only OIG auditors can access this site, not other OIG divisions or SBA employees. However, the attorneys and paralegal in the Counsel Division also had access to an unredacted copy of the report. In addition, a number of OIG criminal investigators had access to the unredacted report because they were conducting various criminal investigations relating to loans made by this particular lender.

In addition, normal distribution of audit reports under the Audit SOP, referenced above, includes the provision of copies to: the SBA Administrator, Deputy Administrator, the Office of General Counsel, the Office of the Chief Financial Officer, and relevant program offices. For Report 7-28, relevant program offices included: the Office of Capital Access and the Office of Credit Risk Management. Further, because this report was the subject of a hearing before the Senate Committee, it is our understanding that the SBA Office of Congressional and Legislative Affairs may also have received an unredacted copy of the report, although not from the SBA OIG. It is unclear how many government officials in all of these various offices reviewed or had potential access to the unredacted report, but these offices collectively employ over 150 people in the Washington, DC headquarters office (this calculation excludes personnel in field offices).

Furthermore, in response to a request from the Chair of the Senate Committee, individual copies of the unredacted version of the audit report were also provided to each Senator that sits

on that Committee with an advisory that the report might contain proprietary information and should be appropriately safeguarded. Although the exact number of staff members on the Senate Committee and on the personal staffs of these Senators is unknown, there are 19 Senators on the Committee. Thus, in excess of an estimated 200 additional government officials also had potential access to an unredacted version of the report.

Finally, unredacted versions of the report were also provided to certain government officials in a few other Federal agencies, including the Department of Justice, in connection with official Federal investigations, with an advisory that the report might contain proprietary or confidential information and should be appropriately safeguarded. It is uncertain how many government officials in these agencies also had access to the unredacted report.

In sum, a total of 400 or more government officials had potential access to an unredacted version of the report. Therefore, the central premise underlying BLX' request for an investigation of "whether members of the SBA OIG improperly provided the report ... to unauthorized persons" is quite dubious.

The OIG also respectfully disagrees with the second complaint in the BLX letter, that the SBA OIG exhibited a "gross disregard for the confidential and proprietary information" in Report 7-28. As discussed above, the OIG did, in fact, take appropriate steps by advising report recipients that the report might contain proprietary information and should be appropriately safeguarded, a point which BLX acknowledges on page four of its letter.

Although BLX does not specify the exact basis for this allegation, page three of the complaint letter indicates that this alleged "gross disregard" was contained in a "written communication." Based upon previous discussions with BLX' attorneys, this reference is apparently to an email sent from the SBA OIG in response to an email from BLX' attorney. However, this email, a copy of which is attached, does not support BLX' contention that the SBA OIG showed a gross disregard for the allegedly confidential information in the report.

As reflected in the attachment, the email from BLX' attorney requested that a cover letter be sent with the report advising as to the alleged confidential nature of the audit report. However, BLX' email was sent on July 17, after the OIG has already provided a copy for the Senate Committee Chair and Ranking Member in a meeting with committee staff. At the time of this meeting, BLX had not advised the SBA OIG of its belief that the report contained confidential information so there would have been no basis for such a request. Thus, in response, the SBA OIG email reasonably noted that "[s]ince the reports were provided in person there was no such statement made to the Committee regarding potential violation of 'Federal law.'" In other words, no cover letter -- similar to the one requested by BLX -- had been sent to the Senate because the report had been already been provided in a meeting.

The email from the BLX attorney further requested that the cover letter to the Senate contain the following statement: "The information contained herein is confidential in nature and not releasable to unauthorized parties." Had the SBA OIG made such a statement, it would have been tantamount to the imposition of a mandate that the report is "not releasable" by a United

States Senator without the SBA OIG's authorization. Not only would such an attempted prohibition surely have been viewed as overly presumptuous, there is no legal authority for the SBA OIG to require a Senator to take a particular course of action regarding the disclosure of a government report.

Accordingly, the SBA OIG email to BLX' attorney advised that "[i]rregardless of any SOP to the contrary, it is not my place, and in fact would be highly improper for me to instruct the Congress in any way what their disclosure rights are, or are not, and I will not do so." Although this statement accurately advised that an Inspector General lacks authority to prohibit a United States Senator from disclosing a government report, as noted above, subsequent communications with the members of the Senate Committee did include an advisory that the report might contain proprietary information and that appropriate safeguards should be employed.

In sum, there does not appear to be any basis to BLX' assertion that the SBA OIG displayed a gross disregard for the allegedly confidential nature of the audit report and, in fact, it appears that BLX may have misinterpreted the SBA OIG email discussed above.

Thank you again for the opportunity to comment on this Complaint and we hope that these responses have adequately responded to your request for information. Please do not hesitate to contact me if there are any further questions or if you require any more information.

Sincerely,



Peter L. McClintock
Acting Inspector General

Enclosure

Attachment to Letter of December 29, 2008
to Kenneth W. Kaiser

From: Thorson, Eric M.
Sent: Wednesday, July 18, 2007 8:29 AM
To: Harris, Glenn P. (Off. Inspector Gen.)
Cc: 'Machen, Ronald'; Mcclintock, Peter L.; Ritt, Debra S.; 'Tom.Connell@wilmerhale.com'
Subject: RE: OIG Report

Glenn,

Since the reports were provided in person there was no such statement made to the Committee regarding potential violation of "Federal law." Irregardless of any SOP to the contrary, it is not my place, and in fact would be highly improper for me to instruct the Congress in any way what their disclosure rights are, or are not, and I will not do so.

I can assure you they will get an "open dialogue."

Eric M. Thorson
Inspector General
U.S. Small Business Administration
202-205-6581

-----Original Message-----

From: Harris, Glenn P. (Off. Inspector Gen.)
Sent: Wednesday, July 18, 2007 8:14 AM
To: Thorson, Eric M.
Subject: Fw: OIG Report

FYI
Glenn Harris (sent from my Blackberry)

----- Original Message -----

From: Machen, Ronald <Ronald.Machen@wilmerhale.com>
To: Harris, Glenn P. (Off. Inspector Gen.)
Cc: Connell, Tom <Tom.Connell@wilmerhale.com>
Sent: Tue Jul 17 20:39:46 2007
Subject: RE: OIG Report

Glenn: We received Mr. Thorson's email and had a few questions that we were hoping you could answer. First, for disclosures in response to Congressional requests, we understand that there are special rules for transmitting such information. More specifically, SOP 40 03, requires the cover letter to caution that "disclosure may violate Federal law" and suggests that a statement along the following lines be included in the transmittal:

The information contained herein is confidential in nature and not releasable to unauthorized parties. Disclosure of this information may violate Federal law. Exercise utmost discretion. ch.7(1)(e)

We would appreciate if you could confirm for us that a warning along these lines was included along with the report that was sent to Senator Kerry.

Second, we would request that we receive an unredacted copy of the IG report given that an unredacted copy of the report was provided to Senator Kerry's Staff and you expect an unredacted copy will soon be provided to other Congressional members. As you might understand, we need a complete copy of the report to provide you with a comprehensive list of our objections to any confidential business information that might be included therein.

Please let Mr. Thorson know that we appreciate your office's prompt response to our earlier letter and your consideration of this email. We hope to maintain an open dialogue with you regarding this matter.

Regards, Ron

Harris, Glenn P. (Off. Inspector Gen.)

From: Harris, Glenn P. (Off. Inspector Gen.)
Sent: Monday, March 16, 2009 12:22 PM
To: 'Thorson, Eric M'
Subject: Conclusion of PCIE Integrity Committee Inquiry into Release of Unredacted BLX Audit Report

Eric:

I hope you are well. I am sure that you have a full plate at Treasury with everything that is going on with the economy.

I wanted to send you a copy of the PCIE Integrity Committee's letter closing out this inquiry.

Please let me know if there any questions.

Glenn P. Harris
Counsel to the Inspector General
U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416
glenn.harris@sba.gov
Direct Dial: (202) 205-6862
Fax: (202) 481-2122



PCIE Int Comm
Letter.pdf

Integrity Committee



President's Council on Integrity and Efficiency
Executive Council on Integrity and Efficiency

935 Pennsylvania Ave., NW, Room 3973
Washington, D.C. 20535-0001

February 27, 2009

Personal and Confidential

Peter L. McClintock
Acting Inspector General
Small Business Administration
409 3rd Street, SW, 7th Floor
Washington, DC 20416

Re: IC 586

Dear Mr. McClintock:

Pursuant to Executive Order 12993, the Integrity Committee (IC) is charged with receiving, reviewing, and investigating, where appropriate, administrative allegations against Inspectors General (IGs), and in limited cases, members of an IG's staff.

In September 2008, the IC received a complaint from Ronald C. Machen, Attorney representing Business Loan Center. The complaint alleges that unredacted portions of an Office of Inspector General audit report containing confidential and proprietary business and financial information was disclosed by a government official.

The IC reviewed the complaint at our October 2008 meeting and recommended that you respond to the allegations. On December 29, 2008, you provided a response. The IC reviewed your response during our January 2009 meeting and concluded that your response to the allegation was sufficient; therefore, the complaint was closed.

The IC appreciates your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Kenneth W. Kaiser". The signature is written in a cursive style.

Kenneth W. Kaiser
Chair, Integrity Committee

