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Description of document: Report of Investigation, Closing Memo, Final Report and Issue Alert for several National Labor Relations Board (NLRB) Office of Inspector General (OIG) investigations, 2009-2011, 2009-2011

Requested date: 19-May-2012

Released date: 18-June-2012

Posted date: 06-August-2012

Source of document: NLRB FOIA Officer  
National Labor Relations Board  
1099 14th Street, N.W., Room 10600  
Washington, D.C. 20570  
Fax: (202) 273-FOIA (3642)  
[Online FOIA Request Form](#)

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**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF INSPECTOR GENERAL**  
Washington, DC 20570-0001

June 18, 2012

This letter is in response to your Freedom of Information Act (FOIA) request, dated May 19, 2012, seeking “[a] copy of the Report of Investigation, Closing Memo, Final Report and where applicable, Issue Alert, for the following closed NLRB OIG investigations: OIG-I-442, OIG-I-439, OIG-I-438, OIG-I-436, OIG-I-433, OIG-I-431, OIG-I-430, OIG-I-429, OIG-I-426, OIG-I-425, OIG-I-420, OIG-I-417, OIG-I-419, OIG-I-437.” This request was assigned a FOIA tracking number **OIG-2012-021**.

Our search revealed 26 responsive documents: 13 closing memoranda, 12 investigative reports, and 1 issue alert. The closing memoranda and the issue alert are enclosed. Names and other identifying details have been deleted from these documents pursuant to the policies embodied in Exemptions 6 and 7(C) of the FOIA.

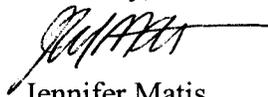
Investigative reports involving completed/closed investigations by the OIG are exempt from disclosure pursuant to Exemptions 6, 7(C), and 7(D) of the FOIA. See 5 U.S.C. §§ 552 (b) (6), (7)(C), and 7(D). In the processing of investigations, the OIG obtains much information from individuals who would be reluctant or who would refuse to supply such information if it were routinely disclosed pursuant to a request under the FOIA. In carrying out his responsibilities, the Inspector General must be able to obtain all potentially relevant information. The protection of the identities of individuals and the substance of the information they provide is an important means of assuring the Inspector General’s continuing ability to obtain such relevant information. Compelled disclosure of the information would substantially deter voluntary cooperation, hinder obtaining information from all potential sources and, consequently, substantially interfere with present and future enforcement proceedings. See, e.g., NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214 (1978); Wellman Industries, Inc., v. NLRB, 490 F. 2d 427 (4th Cir.), cert. denied 419 U.S. 834. Additionally, release of information about individuals referred to in such documents would constitute a clearly unwarranted invasion of their personal privacy, and you have made no showing of public interest in the disclosure of such information that would outweigh those privacy interests. See, e.g., Department of Justice v. Reporters Committee, 489 U.S. 749 (1989); Department of the Air Force v. Rose, 425 U.S. 352 (1976). I conclude that the deletion of names from the investigative reports

would not preserve the interests recognized by these exemptions, since disclosure of the material contained therein would, itself, constitute invasions of personal privacy, reveal confidential sources and, therefore, interfere with enforcement proceedings.

I also conclude that investigative reports involving completed/closed investigations by the OIG are privileged from disclosure by Exemption 5 of the FOIA, 5 U.S.C. § 552 (b) (5), since they are intra-agency memoranda and attorney work-products which would not be available by law to a party other than an agency in litigation with this Agency. The legislative history of Exemption 5 makes it clear that this subsection of the FOIA was designed to protect and promote the objectives of fostering frank deliberation and consultation within the Agency and to prevent premature disclosure of recommendations which could disrupt the decision-making process. Investigative reports from the Inspector General to the Board and/or the General Counsel clearly reflect the deliberative and consultative process of the Agency which Exemption 5 protects from forced disclosure. Cf. NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975). We have chosen not to apply this exemption to the closing memoranda and issue alert and have exercised our discretion to provide these documents without deleting the deliberative material privileged from disclosure by Exemption 5.

I am responsible for the above determination. You may obtain a review thereof under the provisions of Section 102.177(c)(2)(v) of the NLRB Rules and Regulations by filing an appeal with the Chairman, National Labor Relations Board, 1099 14<sup>th</sup> Street, NW, Washington, D.C. 20570, within 28 calendar days from the date of this letter, such period beginning to run on the calendar day after the date of this letter. Thus, the appeal must be received by the close of business (5:00 p.m.) on July 16, 2012. Any appeal should contain a complete statement of the reasons upon which it is based.

Sincerely,



Jennifer Matis  
Counsel to the Inspector General

Enclosures

cc: NLRB FOIA Officer (w/o enclosures)

**UNITED STATES GOVERNMENT**  
***National Labor Relations Board***  
**Office of Inspector General**



**Memorandum**

March 24, 2010

To: File

From: D. Berry *D. Berry*  
Inspector General

Subject: Completed Investigation ICO OIG-I-4<sup>3</sup>76

This investigation was initiated on June 4, 2009. The case involves an allegation that [REDACTED] [REDACTED] Region [REDACTED], used a Government computer to view sexually graphic material. The investigation substantiated the allegation. As discipline, the subject agreed to donate 24 hours of leave in lieu of a suspension. By this memorandum, the case is closed.

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

January 23, 2009

To: File

From: D. Berry  
Inspector General

A handwritten signature in black ink, appearing to read "D. Berry", written over the printed name.

Subject: Completed Investigation ICO OIG-I-425

This investigation was initiated on July 17, 2008. The case involves an allegation that [redacted] (subject), [redacted] Region [redacted] misused the Agency transit subsidy by taking it during a period of time that she was driving her personally owned vehicle to work. During the investigation, evidence was obtained to support the allegation and that the subject provided misleading information when interviewed by the investigator. On August 28, 2008, we issued an investigative report recommending appropriate administrative action. On [redacted], the subject and the Agency entered into an agreement that provided for a 5-day suspension that would be held in abeyance. Because no further investigative steps are necessary, this case is closed.

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



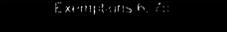
**Memorandum**

August 5, 2009

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-417

This investigation was initiated on December 4, 2007. The case involves an allegation that  made threats to NLRB personnel investigating unfair labor practice cases involving the subject's companies. The U.S. Attorney's Office for Nevada was notified on December 13, 2007. Thereafter, the Federal Bureau of Investigation assisted in the investigation. A grand jury indicted the subject on several counts involving threats against Federal employees, threats in interstate commerce, and witness tampering. On  the subject was convicted of the charges related to the threats against Federal employees and threats in interstate commerce. On  the subject was sentenced to 5 years of confinement and 3 years of probation. Because there is no further action to be taken in this matter, the case is closed.

**UNITED STATES GOVERNMENT  
National Labor Relations Board  
Office of Inspector General**



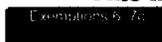
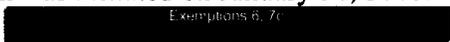
**Memorandum**

January 23, 2009

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-419

This investigation was initiated on January 30, 2008. The case involves an allegation that  (subject),  violated the Antideficiency Act related to unlimited indemnification clauses and engaged in activity to obscure violations of the Federal Acquisition Regulation. The allegations related to the Antideficiency Act were substantiated. The U.S. Attorney's Office for the District of Columbia declined prosecution. The Chairman reported the violations in accordance with the requirement of the Office of Management and Budget. The subject was relieved of his contracting duties at the beginning of Fiscal Year 2009 and the Agency corrected the violations by amending the contracts. Because no further action is necessary, this matter is closed.

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

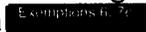
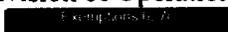
March 6, 2009

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-420

This investigation was initiated on February 8, 2008. The case involves an allegation that  (subject),  Region  removed a computer hard drive from the Regional Office and apparently did something to destroy it. During the course of the investigation, additional information was received regarding allegations that he wrongfully came into possession of personal and official electronic files belonging to the Regional Director, failed to follow the instruction/orders of the Regional Director, routinely took the hard drive from his Government computer home, surreptitiously tape recorded Regional personnel in violation of a directive not to do so, misused the Agency's Internet access, and provided false and/or misleading information to the OIG.

The results of the investigation substantiated the allegations. We issued an Investigative Report on November 21, 2008, and supplemental report on January 6, 2009. On , the Division of Operations-Management issued a Notice of Proposed Removal to the subject. On  the subject retired without responding to the Notice of Proposed Removal. Because there is no further action to be taken in this matter, the case is closed.

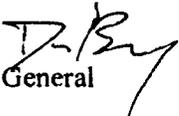
**UNITED STATES GOVERNMENT**  
***National Labor Relations Board***  
**Office of Inspector General**



**Memorandum**

March 24, 2010

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-426

This investigation was initiated on July 28, 2008. The case involves an allegation that    altered a healthcare form to make an employee eligible for retirement with healthcare benefits. The investigation substantiated the allegation. The U.S. Attorney's Office for the District of Columbia declined prosecution. As discipline, the subject received a 5-day suspension and he was removed from his supervisory position. By this memorandum, the case is closed.

**UNITED STATES GOVERNMENT  
National Labor Relations Board  
Office of Inspector General**



**Memorandum**

August 3, 2009

To: David P. Berry  
Inspector General

From: Jennifer S. Kovachich  
Counsel to the Inspector General

Subject: Completed Investigation OIG-I-429

This investigation was initiated on November 26, 2008. The case involves an allegation that [Exemptions b. 7c] (subject), [Exemptions b. 7c] Region [Exemptions b. 7c] misused the Government - contractor issued travel card.

The results of the investigation substantiated that the subject used her travel card for 10 unofficial charges including eight unofficial charges at casinos. We also substantiated that the subject did not provide accurate information to Regional management when interviewed about her failure to report to work on [Exemptions b. 7c]. On [Exemptions b. 7c] the Division of Operations - Management and the subject entered into a settlement agreement providing that the subject serve a 30 day suspension. Thirty additional days are held in abeyance pending the subject's successful treatment of alcohol or gambling problems that the subject may have.

Because all investigative activity and administrative action have been completed, I recommend that the case be closed.

  
Approved

August 5, 2009  
Date

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

August 7, 2009

To: David P. Berry  
Inspector General

From: Jennifer S. Kovachich  
Counsel to the Inspector General

Subject: Completed Investigation OIG-I-430

This investigation was initiated on November 26, 2008. The case involves an allegation that [redacted] (subject), [redacted] Region [redacted] misused the Government contractor-issued travel card.

The results of the investigation substantiated that the subject used his travel card for 17 unofficial charges at gas stations, failed to pay the amount due on his contractor-issued Government travel card and converted Government funds when he received reimbursement for travel related expenses but failed to make a payment to the travel card account for the associated charges. We also concluded that the subject provided a misleading statement during his interview with the OIG investigator. On [redacted] the Division of Operations-Management and the subject entered into a settlement agreement providing that the subject serve a 4-day suspension with 2 of the 4 days held in abeyance pending the subject's successful treatment of personal and financial problems.

Because all investigative activity and administrative action have been completed, I recommend that the case be closed.

  
Approved

Aug 7, 2009  
Date

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



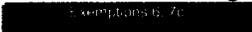
**Memorandum**

March 18, 2010

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-431

This investigation was initiated on December 3, 2008. The case involves an allegation that  was involved in the wrongful disposition of laptop computers. During the investigation,  was added as a subject. The investigation substantiated that both subjects were involved in the wrongful disposition of two laptop computers and that they provide false information to the  regarding the laptop inventory. We issued two investigative reports, one on June 30, 2009, and the other on August 24, 2009. On  received a written reprimand. On  was demoted from his GS- position to a GS- position. By this memorandum, the investigation is closed.

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

March 17, 2010

To: File

From: D. Berry *D-B*  
Inspector General

Subject: Completed Investigation ICO OIG-I-433

This investigation was initiated on February 26, 2009. The case involves an allegation that [redacted] [redacted] created false documents involving a procurement action. The investigation substantiated the allegation. On April 7, 2009, we issued an investigative report. On [redacted] the subject was removed from her employment at the Agency.

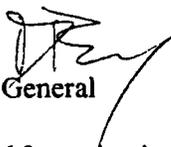
**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

September 8, 2011

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-437

This investigation was initiated on June 8, 2009. The case involves an allegation that personnel in Region [REDACTED] did not exercise due care in processing a ULP matter. The allegation was substantiated, and an investigation report was issued on August 25, 2010. Specifically, we found that [REDACTED] Exemptions 6, 7c failed to read documents that were provided to him and that he did not follow procedures regarding the processing of ULP allegations. On [REDACTED] Exemptions 6, 7c [REDACTED] [REDACTED] was counseled by the Regional Director. Because disciplinary action is complete and further investigative action is not needed, the case is closed.

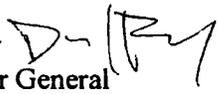
**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

March 24, 2010

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-442

This investigation was initiated on December 4, 2009. The case involves an allegation that   Region  used a Government computer to view sexually graphic material. The investigation substantiated the allegation. On December 31, 2009, we issued an investigative report. As discipline, the subject agreed to donate 24 hours of leave in lieu of a suspension. By this memorandum, the case is closed.

**UNITED STATES GOVERNMENT**  
***National Labor Relations Board***  
**Office of Inspector General**



**Memorandum**

March 17, 2010

To: File

From: D. Berry   
Inspector General

Subject: Completed Investigation ICO OIG-I-438

This investigation was initiated on August 26, 2009. The case involves an allegation that there was an unlawful preselection for a senior procurement specialist. The investigation did not substantiate the allegation and we found no misconduct. We note certain issues involving the merit system principals by the Human Resources Branch. Those issues were addressed in an Issue Alert that was released on August 27, 2009.

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

August 27, 2009

To: Carol A. Arbogast  
Director of Human Resources Branch

From: David Berry *D. Berry*  
Inspector General

Subject: Issue Alert No. OIG-IA-09-04: Merit System Issue

The Office of Inspector General recently received a Hotline complaint regarding an amendment to Job Announcement Number 09-065, Senior Contract Specialist. The purpose of this Issue Alert is to address concerns that we have regarding that posting and eventual hiring.

The Job Announcement was first posted to the USAJOBS Web site on July 6, 2009, with an Open Period of Monday, July 6, 2009 to Friday, July 10, 2009. Although the posting was for a GS-14 Senior Contract Specialist, it listed the GS-5 through GS-12 basic requirements. The difference in the basic requirements is that the GS-14 level requires a 4-year course of study leading to a bachelor's degree that included or was supplemented by 24 semester hours in any combination of the following: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management. The GS-5 through GS-12 levels require a 4-year course of study leading to a bachelor's degree in any field or 24 semester hours in the courses listed above in any combination.

On Friday, July 10, 2009, the selection official brought the error to the attention of the Chief, Employment and Position Management Section. After reviewing the Job Announcement and verifying the qualification requirements, the Chief, Employment and Position Management Section, directed the Human Resources Specialist responsible for the posting to make an amendment to the Job Announcement to correctly state the positive education requirement at the GS 14-level. Although we do not know the exact time that the amendment was made available on the USAJOBS Web site, an e-mail message was sent to the Agency's employees notifying them of the amendment at 4:16 p.m. The length of time for the Open Period was not extended.

The merit principles require that agencies provide adequate public notice of competitive service vacancies that are being filled. Adequate public notice means that any person who wants to apply for a position will have all the information necessary to apply and will be given an open and fair opportunity to be hired. In this case, the original Job Announcement did not provide adequate public notice of the basic requirements required at the GS-14 level. Therefore when the

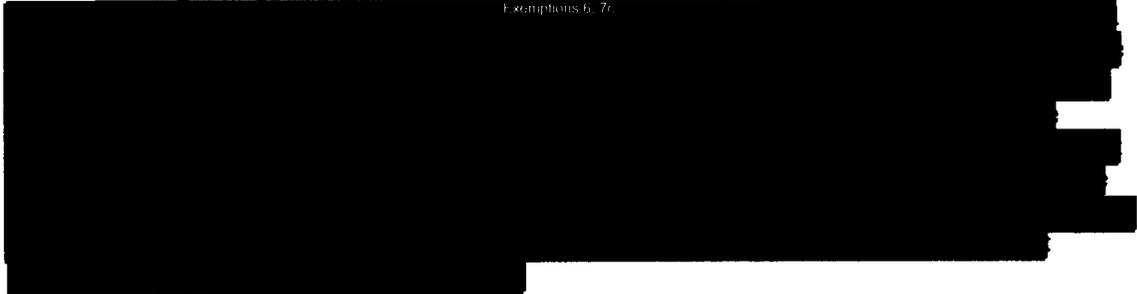
Job Announcement was corrected without an extension of the Open Period, there was little to no opportunity for anyone to apply for the position under the correct basic requirements or to obtain and/or submit additional material to show that he or she met the basic requirements for the position at the GS-14 level.

We discussed our concerns regarding this matter with the Office of Personnel Management's (OPM) Center for Merit System Accountability and its Atlanta Oversight & Accountability Group. Representatives of both of those offices concurred with our assessment that in this instance, the Open Period should have been extended.

Because we found no evidence to suggest that the failure to extend the Open Period was anything other than an administrative oversight, we are not recommending remedial action involving the Job Announcement. Nevertheless, that lack of evidence of wrongdoing is not available to everyone who may have a concern regarding this Job Announcement. In this type of situation, the perception that can often be created is that there was a manipulation of the system involving the "pre-selection" of the hired applicant. That perception can lead to investigations and litigation that consume management's time and can be costly to the Agency. To help avoid that situation in the future, we suggest that you use this Issue Alert as an opportunity to remind your staff of the need to be mindful of the merit principles and that you provide guidance regarding matters to be considered when making amendments to a Job Announcement.

Although not part of the Hotline complaint, we noticed during our investigation that the

Exemptions b, 7c



cc: Director of Administration