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Description of document: Written responses or letters from the Office of Personnel Management (OPM) to a Congressional Committee, 2012-2013

Request date: 20-April-2013

Released date: 10-February-2014

Posted date: 18-August-2014

Source of document: Freedom of Information Act Request
U.S. Office of Personnel Management
FOIA Requester Service Center
1900 E Street, NW
Room 5415
Washington, D.C. 20415-7900
Email: foia@opm.gov
Fax: 202-606-1719

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UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

FEB 10 2014

Congressional and
Legislative Affairs

Re: FOIA # FC201303381

This letter is in response to your April 20, 2013, Freedom of Information Act (FOIA) request a copy of each written response or letter from the Office of Personnel Management (OPM) to a Congressional Committee in calendar years 2012 and 2013 to date. Your letter was received in this office on May 5, 2013.

Because your letter seeks to gain access of correspondence from OPM to Congressional Committees, I am responding to your request as the Acting Director, Congressional, Legislative, and Intergovernmental Affairs (CLIA).

After completing a review of our records and files, I have included documents that fit within the parameters of your request. The information contained within these documents, however, may contain certain personal information which has been redacted, as permitted by the FOIA. Specifically, the FOIA precludes the release of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy of the individual involved (5 U.S.C. § 552(b)(6), and (7)(C)). Please be advised that CLIA only retain records of its correspondence files for a period of three years. After three years, these files are destroyed in accordance with records schedules approved for OPM by the National Archives and Records Administration.

If you are dissatisfied with this response, you may appeal by writing the Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. An appeal should include a copy of the request, a copy of this letter, and a statement explaining why you believe the decision or response is in error. Copies of the FOIA regulations are available to you at www.opm.gov/efoia.

Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS at Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road College Park, MD 20740-6001; e-mail: ogis@nara.gov; web: <https://ogis.archives.gov>; telephone: 202-741-5770.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Tyree".

Jennifer Tyree
Acting Director
Congressional, Legislative,
and Intergovernmental Affairs



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

NOV 25 2013

The Director

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Vitter:

Thank you for your inquiry, dated November 5, 2013, regarding the computation of Mr. John C. Beale's retirement application. In your letter, you informed the Office of Personnel Management (OPM) that Mr. Beale had pled guilty to defrauding the U.S. Government by continuing to collect nearly \$900,000 in unearned salary and benefits from his employing agency (the Environmental Protection Agency, (EPA)) after misrepresenting that he was working for the Central Intelligence Agency on projects that kept him out of the office for almost 2 ½ years.

Additionally, you requested OPM to provide you with information confirming that our computation of Mr. Beale's annuity did not include or reflect the period of time he received wages and benefits illegally, and that our computation of his annuity accurately reflected the amount Mr. Beale was entitled to receive under the law.

Unfortunately, due to restrictions based on the Privacy Act of 1974 (see 5 U.S.C. 552a(b)(9)), we are unable to comment on specific details regarding Mr. Beale's case without a signed waiver from Mr. Beale. Please be assured, however, that OPM is committed to ensuring that every annuitant receives exactly the annuity amount he or she is entitled to receive under the law.

In the ordinary course of business, OPM relies on the certified records of an employing agency to determine whether an applicant is eligible for an annuity and to determine the annuity amount the applicant is entitled to receive. If the information on the agency's certified record is incorrect, the agency must provide OPM with corrected certified records. Once OPM receives corrected records from an agency, we make appropriate adjustments to the affected retiree's annuity. Therefore, if the records the EPA originally certified as correct on Mr. Beale's retirement record were incorrect, or did not accurately reflect Mr. Beale's actual service, we would make adjustments to Mr. Beale's annuity as necessary, upon receipt of corrected retirement records.

If you have any questions, please feel free to contact Tania A. Shand, Director, Congressional, Legislative and Intergovernmental Affairs at (202) 606-1300.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Archuleta".

Katherine Archuleta
Director



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

AUG 30 2013

The Director

The Honorable Darrell E. Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your July 24, 2013, letter regarding outside employment arrangements maintained by employees of Executive Branch departments and agencies. Specifically, you refer to "special government employees" as Executive Branch employees who are allowed to work as a consultant to private clients while continuing to serve in their public capacities.

Unfortunately, OPM is not able to provide Government-wide data related to these employees. There is no requirement for agencies to report outside employment information to OPM's EHRI database, and thus OPM maintains no lists or records of employees designated as "special government employees" across the government. Similarly, agencies are not required to seek permission or notify OPM of any employees that would fall into this category. OPM has no role in designating or certifying these employees.

As you may know, "special government employees" is an ethics concept defined in the ethics statutory provisions, 18 U.S.C. 202. You may wish to contact the Office of Government Ethics (OGE) which promulgates and maintains standards of ethical conduct for Executive Branch employees. In addition, OGE oversees much of the government-wide financial disclosure system.

I appreciate the opportunity to respond to your interest in this matter. If you have any further questions, please feel free to contact Tania A. Shand, Director, Congressional, Legislative and Intergovernmental Affairs at (202) 606-1300.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Kaplan".

Elaine Kaplan
Acting Director



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of the
General Counsel

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

NOV 19 2013

Dear Mr. Chairman:

Director Katherine Archuleta asked me to respond to your correspondence of October 9, 2013, and November 5, 2013, requesting documents related to the Office of Personnel Management's (OPM's) investigation processes in connection with security clearances. We have been working on this request since receiving your first letter, but were somewhat hampered by the fact that the Office of General Counsel was operating with a skeletal staff during the lapse in appropriations.

Nearly all of the documents requested, individually or collectively, contain confidential, sensitive, and privileged information that could, if publicized, reveal investigatory techniques, thereby compromising our interest in sound security clearance decisions. When these materials have been requested by third parties in civil, criminal and administrative litigation, OPM has consistently asserted the investigatory files privilege in order to protect them from disclosures that could forewarn actual or potential subjects of background investigations of such techniques. In addition, the contracts sought contain competitive pricing information that could compromise the integrity of the contracting process, and therefore we typically do not release this information to third parties.

We recognize, however, that the Committee has a legitimate oversight need for the information it has requested. Therefore, OPM will provide the appropriate Committee staff with access to these documents, but in an environment that reflects their highly sensitive nature, and the need to protect these documents from broader disclosure, which could cause grave harm to the integrity of the investigative program. Accordingly, OPM has established a reading room at the agency's 1900 E Street NW location in Washington, DC, in order to provide your staff with access to these documents in a controlled environment that accommodates both your need for this information and the Federal government's interest in maintaining these documents' confidentiality. We would ask that your staff treat this information with the same degree of confidentiality that we would.

When your staff wishes to begin review, I ask that they contact Christopher Medley in OPM's Office of Congressional, Legislative, & Intergovernmental Affairs, at (202) 606-1300 to discuss logistics. OPM is also able to provide you with the attached document, which addresses a portion of point (5) of both your October and November letters. The attached provides a

The Honorable Darrell E. Issa

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personnel breakdown by grade of the individuals who serve as quality reviewers for the security clearance process.

Should you have any legal or policy questions or concerns regarding this correspondence, I ask that you please contact me at (202) 606-1700.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon M. McGowan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Sharon M. McGowan
Acting General Counsel

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member, Committee on Oversight and Government Reform, U.S. House of Representatives



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

JUL 24 2012

The Director

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated July 23, 2012, requesting that Ms. Lena Chang at the Office of Personnel Management (OPM), be detailed to the minority staff of the House Committee on Oversight and Government Reform through the adjournment of the second session of the 112th Congress.

We agree to the terms of the detail, and are pleased to provide assistance to the Committee. Should you need further assistance in this matter, please do not hesitate to contact Mrs. Tania A. Shand, Director of Congressional and Legislative Affairs at 202-606-1300.

Sincerely,



John Berry
Director



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

December 21, 2012

The Director

The Honorable Dianne Feinstein
Chairman
Select Committee on Intelligence
United States Senate
211 Hart Senate Office Building
Washington, DC 20510

The Honorable Mike Rogers
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
HVC-304, The Capitol
Washington, DC 20515

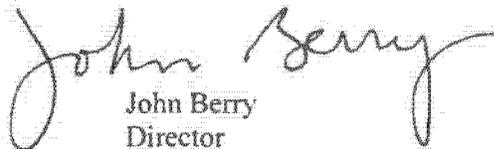
Dear Madam Chairman Feinstein and Chairman Rogers:

This report complies with the provisions of Sec. 310(d) of the Intelligence Authorization Act for Fiscal Year 2012 (the Act), which was enacted on January 3, 2012. The Act directed the Office of Personnel Management, in consultation with the Director of National Intelligence, the Secretary of Labor, and the Secretary of Defense, to submit a report to Congress on the feasibility of legislation providing for burial allowances at a level which both adequately addresses the cost of burials and establishes equitable treatment across the Federal Government, for civilian employees who are killed in the line of duty.

Included with this report is a matrix comparing both death-gratuity and burial-expense payments of U.S. military personnel and Federal civil servants. As summarized in the report's text, it specifically identifies numerous variations among the death-gratuity, funeral-reimbursement allowances, and recognition or honoraria (medals, awards, etc.) of both combat-focused and traditional Federal agencies. Further, it points out substantial concerns about the current direct-offset legislation affecting the \$10,000 agency death-gratuity payments that impact all Federal workers.

Thank you for the opportunity to provide this information and any other supplemental information you may need to most properly recognize the significant and ultimate sacrifice of these Federal employees. If you have any further questions, please feel free to contact Tania A. Shand, Director, Congressional and Legislative Affairs, at (202) 606-1300.

Sincerely,



John Berry
Director

Enclosures

CC: The Honorable Saxby Chambliss
Ranking Member
Select Committee on Intelligence
United States Senate

The Honorable C.A. Ruppertsberger
Ranking Member
Permanent Select Committee on Intelligence
United States House of Representatives



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of the
General Counsel

November 15, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your correspondence of November 14, 2013, regarding the Office of Personnel Management's (OPM) efforts to accommodate your oversight function.

In your correspondence, you stated that "[d]espite your Acting General Counsel's statement that the documents [produced for *in camera* inspection] were 'confidential, sensitive, and privileged,' staff did not find a single document labeled as confidential, sensitive, or privileged of the thousands of pages identified by OPM. Nor did the documents appear to contain confidential, sensitive, or privileged information."

OPM produced all responsive documents to Committee staff for *in camera* inspection. As we explained to Committee staff, in both written and oral communications, the documents contain information that, if publicly disclosed, would compromise OPM's civil law enforcement techniques and procedures for conducting background investigations, including background investigations of legislative branch personnel, thereby compromising the integrity of the security clearance process. Specifically we have concluded that this information could be used by the subjects of OPM background investigations as a roadmap to falsifying case papers and interviews and compromising references and other sources. OPM consistently asserts the investigative files privilege to withhold these materials in litigation, and consistently asserts Freedom of Information Act (FOIA) exemption 7E to withhold them in response to public document requests. Further, we explained to Committee staff that the contract documents include proprietary material that is protected under the Trade Secrets Act and therefore exempt from disclosure under the FOIA, including unit prices that, if disclosed, could damage the private companies that supplied the information and prejudice future procurement competitions.

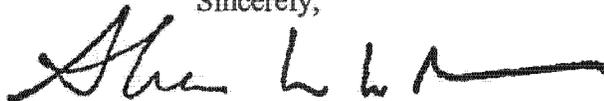
Despite the sensitivity of these materials, OPM recognizes that Congress, through Committee chairmen, has a strong interest in reviewing relevant executive branch material when exercising legitimate oversight of an agency. Therefore, as an expression of comity with a coordinate and coequal branch of Government, OPM provided access to the documents for *in camera* inspection *in toto*, without portion markings and redactions, rather than producing redacted copies of the documents. Committee staff lodged no objection to this procedure, even after we reiterated our conditions orally and the reasons therefore, at the outset of the inspection. Indeed, as you mention in your letter, Committee staff collectively spent over 12 hours

Honorable Darrell E. Issa

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We remain committed to working with the Committee to provide you with the access that you need to perform your oversight function. Please advise me if your staff would like to visit OPM's headquarters again in order to continue their *in camera* document inspection. Should your staff have any questions about legal or policy concerns contained in this correspondence, they may contact me at (202) 606-1700. For logistical questions about visiting the reading room at OPM's headquarters, your staff may contact Christopher Medley of the Office of Congressional, Legislative, & Intergovernmental Affairs at (202) 606-1300.

Sincerely,

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

Sharon M. McGowan
Acting General Counsel



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of the
General Counsel

November 21, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your correspondence of November 20, 2013, regarding access to documents pertaining to the Office of Personnel Management's (OPM) investigations program.

In your correspondence, you suggest that OPM has withheld the documents you have requested (in follow-up to a briefing we provided to your staff). However, OPM has simply sought to impose reasonable controls on how they are released. As we explained to you in our letter dated November 15, 2013, OPM has established a reading room where your staff may conduct *in camera* document inspection of the documents you requested in your correspondence on any days the Committee wishes. We cannot, however, provide you with copies of these documents by other means due to the serious sensitivities that we described in detail in our prior correspondence.

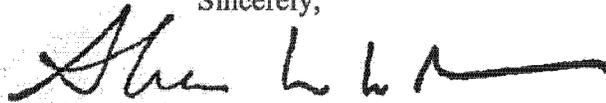
OPM has consistently placed significant restrictions on access to these documents, even by those employees and contractors who rely on these documents to perform investigative work for OPM. For example, we inform investigators who use our handbook how the materials may be used; we direct them not to disseminate copies without prior permission; and we inform them that they must return all copies, printed and electronic, when directed by OPM. The documents in use are numbered and controlled. Any copies not being used by an investigator in connection with official duties are returned or destroyed. The fieldwork contracts you requested contain material previously made available only in a reading room environment, when we were soliciting offers for the statement of work. These stringent restrictions upon their use were in place because the contracts contain descriptions of investigative processes, and OPM needs to ensure that the information regarding investigative techniques is not compromised. Additional steps to protect these documents are also in place, such as restricting access to materials made available electronically to secure, password-protected portals. Similar controls attach to derivative training materials, because they also disclose investigative techniques.

Honorable Darrell E. Issa

-2-

We remain committed to working with the Committee to provide you with the access that you need to perform your oversight function. Please advise me if your staff would like to visit OPM's headquarters again in order to continue their *in camera* document inspection. Should your staff have any questions about legal or policy concerns contained in this correspondence, they may contact me at (202) 606-1700. For logistical questions about visiting the reading room at OPM's headquarters, your staff may contact Christopher Medley of the Office of Congressional, Legislative, & Intergovernmental Affairs at (202) 606-1300.

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Sharon M. McGowan
Acting General Counsel