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Description of document: Closing memoranda for twenty-one (21) National Labor Relations Board (NLRB) Office of Inspector General (OIG) investigations, 2015-2016

Requested date: 19-January-2017

Released date: 07-March-2017

Posted date: 08-October-2018

Source of document: FOIA Request
NLRB FOIA Officer
National Labor Relations Board
1015 Half Street, SE
4th Floor
Washington, D.C. 20570
Fax: (202) 273-FOIA (3642)

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

March 7, 2017

This letter is in response to your Freedom of Information Act (FOIA) request, dated January 19, 2017, seeking “[a] digital copy of the final report, report of investigation, closing memo, and any other final dispository [sic] document or closing memo or referral letter” for the following closed investigations: OIG-I-476, OIG-I-497, OIG-I-498, OIG-I-499, OIG-I-500, OIG-I-502, OIG-I-505, OIG-I-506, OIG-I-507, OIG-I-508, OIG-I-509, OIG-I-510, OIG-I-511, OIG-I-512, OIG-I-513, OIG-I-514, OIG-I-515, OIG-I-516, OIG-I-521, OIG-I-524, and OIG-I-525. The request was referred to the Office of Inspector General (OIG) by the National Labor Relations Board (NLRB) on February 6, 2017. This request was assigned FOIA tracking number **OIG-2017-007** by the OIG and **LR-2017-0940** by the NLRB’s FOIA Branch. Our search revealed 38 responsive records: 21 closing memoranda and 17 investigative reports.

Closing memoranda

The closing memoranda are provided as an enclosure. Redactions have been made to portions of the closing memoranda to protect the privacy interests of the individuals named in these records. Those redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (7)(C). Furthermore, information that would disclose techniques and procedures for law enforcement investigations or prosecutions has been redacted from these records pursuant to the policies embodied in FOIA Exemption 7(E). 5 U.S.C. § 552(b)(7)(E). Finally, redactions have been made to portions of these records to protect the material containing deliberative process. Those redactions were made pursuant to FOIA Exemption 5, which protects the decision making processes of government agencies. 5 U.S.C. § 552(b)(5).

Investigative reports

I conclude that any responsive records constituting investigative reports involving a completed and/or closed investigation by the OIG are exempt from disclosure pursuant to Exemptions 6, 7(C) and 7(D) of 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 NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214 (1978). 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. See NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975).

Regarding FOIA processing fees, we determined that our review process resulted in what could be considered de minimis chargeable cost. As such, it is not necessary to determine your fee category.

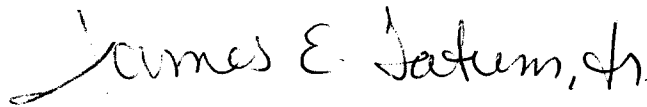
If you need any further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the NLRB FOIA Public Liaison at (202) 273-0902 or by email at FOIAPublicLiason@nrlb.gov. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road- OGIS, College Park, MD, 20740-6001, email at ogis@nara.gov, telephone at (202) 741-5770, toll free at (877) 684-6448, or facsimile at (202) 741-5769.

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March 7, 2017

I am responsible for the above determination. You may obtain a review of this determination under the provisions of the NLRB Rules and Regulations, 29 C.F.R. § 102.177(c)(2)(v), by filing an appeal with the Division of Legal Counsel, National Labor Relations Board, 1015 Half Street, SE, Washington, DC 20570, or by email to DLCFOIAAppeal@nlrb.gov, within 90 calendar days from the date of this letter, such period to run on the calendar day after the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based. Should you have any questions concerning this letter, you may contact me at (202) 273-1961 or by email at james.tatum@nlrb.gov.

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). 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.

Sincerely,

A handwritten signature in black ink that reads "James E. Tatum, Jr." The signature is written in a cursive style with a long, sweeping underline.

James E. Tatum, Jr.
Counsel to the Inspector General

Enclosure

cc: NLRB FOIA Officer (w/o enclosure)

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

March 16, 2015

To: File

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

Subject: Completed Investigation ICO OIG-I-476

Unreleasable
This investigation was initiated on June 15, 2012. The case involved an allegation that Exempt 6, 7(C), (subject), Exemption 6, 7(C), Region [redacted], improperly released official information in a Exemption 6, 7(C) filing. Our investigation substantiated the allegation. On September 2, 2014, we issued an investigative report. Because the subject was a possible 6, 7(C) in a 6, 7(C) matter in 6, 7(C), the report was provided to the Exemption 6, 7(C) that matter. The subject's 6, 7(C) was dismissed and he did not prevail on appeal. The Division of Legal Counsel has information regarding the disposition of the 6, 7(C) matter. The case is closed.

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

March 16, 2015

To: File

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

Subject: Completed Investigation ICO OIG-I-497

This investigation was initiated on February 4, 2014. The case involved an allegation that [redacted] (subject), [redacted] Region [redacted], was biased by improperly releasing information. We found that the allegation was not substantiated. On March 18, 2014, we sent a letter to [redacted] that explained our findings. We issued a memorandum to the Division of Operations-Management, on March 4, 2015, to address what we considered to be [redacted] Exemption 5 by the subject. The subject was counseled. The case is closed.

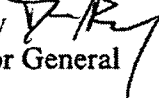
UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



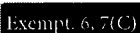
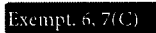
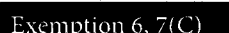
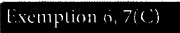
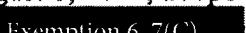

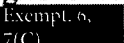
Memorandum

March 2, 2015

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-498

The investigation was initiated on March 7, 2014. The case involved an allegation that  (subject),  in the ,  smoked marijuana in the workplace. When interviewed, the subject denied the allegation. Based upon the information collected during the investigation, we found that the allegation was substantiated and, on August 6, 2014, a report was issued with a recommendation for appropriate disciplinary action. On , a disciplinary decision was issued for a 3-day suspension. On March 2, 2015, the Agency's Special Counsel reported that the subject failed to submit a timely grievance, and that the disciplinary decision was now final. The U.S. Attorney's Office, in ,  declined prosecution. Case closed.

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



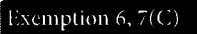



Memorandum

January 28, 2015

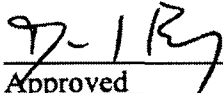
To: David Berry
Inspector General

From: James Tatum, Jr. 
Counsel

Subject: Completed Investigation OIG-I-499

On July 8, 2014, we initiated the investigation. The investigation involved allegations that , , Region , misused the Government-Owned Vehicle, and that he was involved in a hit and run (property damage) while misusing said vehicle. Our investigative efforts substantiated the allegation. On January 14, 2015, we reported our findings to the Division of Operations Mangement. On , the subject resigned his position with the NLRB.

Because no additional investigation is appropriate, I recommend that the case be closed.


Approved

2/10/2016
Date

Exemption 5



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

January 6, 2015

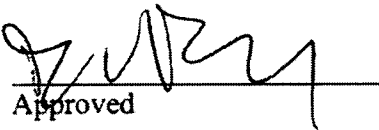
To: David Berry
Inspector General

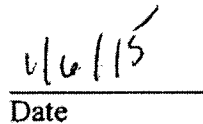
From: James Tatum, Jr. 
Counsel

Subject: Completed Investigation OIG-I-500

On August 25, 2014, we initiated the investigation. The investigation involved allegations that **Exemption 6, 7(C)**, **Exemption 6, 7(C)** (**Exemption 6, 7(C)**) Region **█** misused official time and a Government computer to post derogatory comments on Facebook. Our investigative efforts substantiated the allegation. On August 29, 2014, we reported our findings to the Division of Operations-Mangement. On **Exemption 6, 7(C)**, the subject was removed.

Because no additional investigation is appropriate, I recommend that the case be closed.


Approved


Date


UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



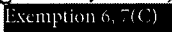



Memorandum

May 4, 2015

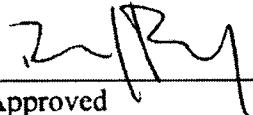
To: David Berry
Inspector General

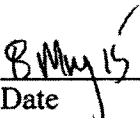
From: James Tatum, Jr. 
Counsel

Subject: Completed Investigation OIG-I-502

On August 19, 2014, we initiated the investigation. The investigation involved an allegation that , , Region , violated the terms and conditions of the Agency's Telework Agreement by leaving his home during his telework hours to run a personal errand. Our investigative efforts substantiated the allegation. On October 24, 2014, we reported our findings to the Division of Operations-Mangement. On , the subject entered into an Alternative Discipline Agreement with the Agency.

Because no additional investigation is appropriate, I recommend that the case be closed.


Approved


Date


UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General




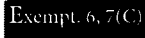
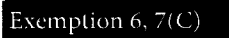

Memorandum




March 16, 2015


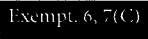
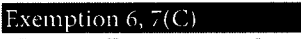
To: David Berry
Inspector General

From: James Tatum, Jr. 
Counsel

Subject: Completed Investigation OIG-I-505

On September 15, 2014, we were notified of the allegation against   (subject), an , Region . Specifically, the allegation was that the subject was entering her arrival time into the sign-in log earlier than her actual arrival time. Our investigative efforts substantiated the allegation.

We were informed by Region  management that it would be difficult to conduct an interview with the subject. Additionally, we were informed by Region  management that they were working with Special Counsel regarding other time and attendance issues involving the subject. Based upon this information, on February 2, 2015, we determined that it would be appropriate to refer this matter back to Region  management for their review and appropriate action.

On March 3, 2015, Region  management informed us that, because of   submitted by the subject, this matter is being handled by the Office of Human Resources, Special Counsel and the Division of Operations, *Management*.

Because no additional investigation is appropriate, I recommend that the case be closed.


Approved

3/16/2015
Date

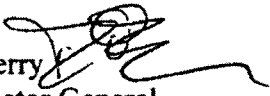
UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

February 9, 2015

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-506

This investigation was initiated on January 6, 2013. The case involved an allegation that Exemption 6, 7(C), (subject), Exemption 6, 7(C), Region [REDACTED], misused the Government travel card. On Exemption 6, 7(C), during the investigative interview, the subject resigned. The case is closed.

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

August 5, 2015

To: David Berry
Inspector General

From: James Tatum, Jr. *(Signature)*
Counsel

Subject: Completed Investigation OIG-I-507

On January 8, 2015, we initiated the investigation. The investigation involved an allegation that *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))*, failed to properly process a tax lien that was received from the Commonwealth of Virginia. The investigation also involved an allegation that *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))*, failed to satisfy a just financial obligation. Finally, the investigation involved an allegation that *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))*, improperly handled a garnishment action involving *(Exemption 6, 7(C))*. Our investigative efforts substantiated all three allegations. On February 18, 2015, we reported our findings on *(Exemption 6, 7(C))* to the Division of Administration. On March 10, 2015, we reported our findings on *(Exemption 6, 7(C))* to the Division of Administration. On *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))* was given a written reprimand by the Agency. On *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))* was given a written reprimand by the Agency. On *(Exemption 6, 7(C))*, *(Exemption 6, 7(C))* was verbally counseled regarding her actions by the Agency.

Because no additional investigation is appropriate, I recommend that the case be closed.

Approved *(Signature)*

August 5, 2015
Date


UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



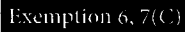
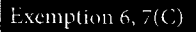

Memorandum

August 12, 2015

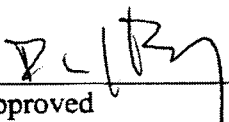
To: David Berry
Inspector General

From: James Tatum, Jr. 
Counsel

Subject: Completed Investigation OIG-I-508

On February 23, 2015, we initiated the investigation. The investigation involved an allegation that  Exemption 6, 7(C)  Exemption 6, 7(C) Region  misused the Government-Owned Vehicle, and that he was involved in an accident while misusing the vehicle. Our investigative efforts did not substantiated the allegation. At the time of the accident, the subject was operating a rental car. The subject did not have a duty to use the rental car only for official business. An employee who is renting a car while on official government travel may use the car for personal business provided the employee does not charge the government for the personal portion of the use. The subject did not attempt to charge the Agency for any part of the rental and has stated that he only intends to seek reimbursement for the time that he used the rental car for official Agency business.

Because no additional investigation is appropriate, I recommend that the case be closed.


Approved

8/12/2015
Date

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

June 4, 2015

To: David Berry
Inspector General

From: James Tatum, Jr. *(JT)*
Counsel

Subject: Completed Investigation OIG-I-509

On February 25, 2015, we initiated the investigation. The investigation involved an allegation that [Exemption 6, 7(C)], [Exemption 6, 7(C)], [Exempt. 6, 7(C)], [Exempt. 6, 7(C)] [Exemption 6, 7(C)], was teaching a Labor law class at the [Exemption 6, 7(C)] [Exemption 6, 7(C)] during work hours without proper authorization. Our investigative efforts did not substantiate the allegation. The subject had proper authorization and was taking appropriate leave for time that he missed during the work day.

Because no additional investigation is appropriate, I recommend that the case be closed.

D-1 R1

Approved

6/5/2015

Date

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

February 16, 2016

To: File

From: D. Berry
Inspector General

Subject: Completed Investigation ICO OIG-I-510

This investigation was initiated on February 25, 2015. The case involved an allegation that [Exemption 6, 7(C)], [Exemption 6, 7(C)], [Exemption 6, 7(C)] misused a Government vehicle. We issued a report that substantiated the allegation. The Division of Operations-Management imposed the statutory minimum discipline of a 1-month suspension. The subject then filed a grievance. In settlement of the grievance the Agency agreed to discipline the subject for negligent performance of her of her duties in lieu of misuse use of a Government vehicle and impose a 15-day suspension. The case is now closed.

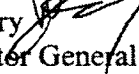
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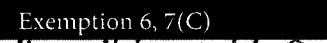


Memorandum

January 15, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-511

This investigation was initiated on April 14, 2015. The case involved an allegation that ,  *Exemption 6, 7(C)* misused the Government computer and internet access by viewing sexually explicit material. On July 14, 2015, we issued a report substantiating the allegation. On  *Exemption 6, 7(C)*, the subject agreed to retire in lieu of disciplinary action. The retirement was effective  *Exemption 6, 7(C)*. Because no further action is necessary, the case is closed.

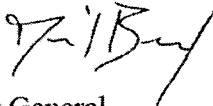
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National Labor Relations Board
Office of Inspector General



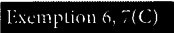


Memorandum

September 30, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-512

This investigation was initiated on June 1, 2015. The case involved an allegation that , , Region , misused a Government owned vehicle. We did not substantiate the allegation. The subject used the GOV to attend training. Additional allegations of the an improper gift to superior were not substantiated in that he manager receiving the gift was not the subject's superior at the time of the gift and the gift was not accepted in a personal capacity by the manager. Because no further action is necessary, the case is closed.

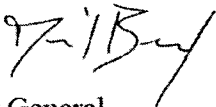
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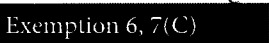


Memorandum

September 30, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-513

This investigation was initiated on June 1, 2015. The case involved an allegation that , , Region , was in possession of a controlled substance. The allegation was substantiated. The subject was placed on an indefinite suspension while she was on trial for the offense. After her conviction, she was given a last chance agreement for a period of 2 years. Because no further action is necessary, the case is closed.

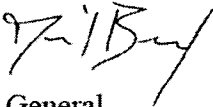
UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

September 30, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-514

This investigation was initiated on June 1, 2015. The case involved an allegation that Exemption 6, 7(C), Exemption 6, 7(C), Region ■, misused the Government Travel Card. The allegation was substantiated, and we issued a report on October 2, 2015. The subject received a 10-day suspension that was later settled as part of an agreement for a resignation in lieu of removal. Because no further action is necessary, the case is closed.


UNITED STATES GOVERNMENT
National Labor Relations Board
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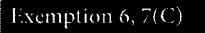
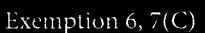



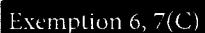
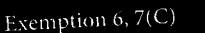
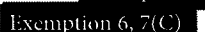
Memorandum

February 18, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-515

This investigation was initiated on June 8, 2015. The case involved an allegation that , , Region , accessed the  database for an unauthorized purpose. The investigation substantiated the allegation and that subject improperly provided the report to his . On August 27, 2015, we issued an investigative report. On , the subject was removed. On , an arbitrator ordered that the subject be reinstated in the position of a . The case is now closed.


UNITED STATES GOVERNMENT
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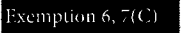
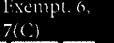
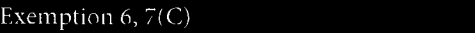
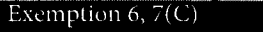
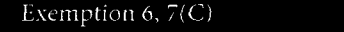

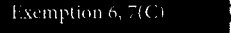
Memorandum

February 17, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-516

This investigation was initiated on August 11, 2015. The case involved an allegation that , Region , had a conflict of interest in the performance of his official duties because he was also the . Our investigation found that, although the allegation was not substantiated, the subject violated the Government ethics regulations by soliciting donations from prohibited sources and by misusing the Government computer and time for activities related to the . On November 11, 2015, we issued an investigative report. The report was provided to  . On , the Board voted to suspend the subject for 30 days and provided for period of his recusal from certain cases. The Board also recouped 51.5 hours of annual leave at a rate of \$81.05. The total recovery was \$4,174.07. The case is now closed.


Exemption 7(E)

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

September 30, 2016

To: File

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

Subject: Completed Investigation ICO OIG-I-5257

From corrected 2/15/2017

This investigation was initiated on December 16, 2016. The case involved an allegation that **Exemption 6, 7(C)**, **Exemption 6, 7(C)**, **6, 7(C)**, used the Agency resources to view sexually explicit material. During the investigation that he has a learning disability. A summary report was issued to the **Exemption 6, 7(C)**. Thereafter, the subject was counseled and his Internet access was restricted. Because no further action is necessary, the case is closed.

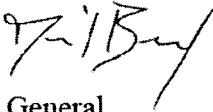
UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



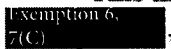

Memorandum

September 30, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-524

This investigation was initiated on April 21, 2016. The case involved an allegation that , Exemption 6, 7(C), Region , made a false statement regarding her time and attendance. Our investigative efforts substantiated the allegation. Prosecution was declined. The subject agreed to retire in lieu of disciplinary action. Because no further action is necessary, the case is closed.

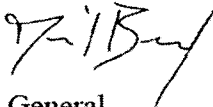
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National Labor Relations Board
Office of Inspector General



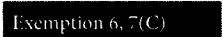
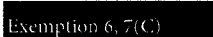
Memorandum

September 30, 2016

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-525

This investigation was initiated on May 23, 2016. The case involved an allegation that , an , used official resources to harass people on the Internet and that he may have violated the Hatch Act. After we initiated the investigation, the subject was removed as a probationary employee. Because no further action is necessary, the case is closed.