



governmentattic.org

"Rummaging in the government's attic"

Description of document: Closing documents for thirty (30) Department of Commerce (DOC) Inspector General (OIG) investigations, 2014-2017

Requested date: 14-January-2019

Release date: 26-February-2019

Posted date: 18-March-2019

Source of document: FOIA Officer
Office of Inspector General
US Department of Commerce
1401 Constitution Avenue, NW
Room 7898C
Washington, DC 20230
Fax: 202-501-7335
Email: FOIA@oig.doc.gov

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



February 26, 2019

VIA E-MAIL

RE: FOIA Request No. DOC-OIG-2019-000541

This letter is regarding your Freedom of Information Act (FOIA) request, tracking number DOC-OIG-2019-000541. We previously corresponded on February 14 and February 15, 2019 regarding unusual circumstances and estimated fees to process your request. The most recent correspondence was an email that you sent on February 15, 2019, received by our office on February 19, 2019. That February 15 email documented your agreement to pay up to \$140 in estimated fees, and noted two (2) DOC OIG investigative case numbers that you withdrew from the request, in addition to the 23 case numbers that you withdrew on February 14. As revised, your request seeks a copy of the following:

- “I request a copy of the final investigation report for each of the following closed DOC OIG investigations. By final investigation report, I mean the Report of Investigation (RoI), Final Report, Closing Report, Closing Memo, Referral Memo, or other conclusory document,” excluding documents maintained in offsite storage or with another Commerce bureau. Your revised request seeks closing documentation for the following case numbers:

- | | | |
|--------------|-------------|--------------|
| • 13-1077-I | • 15-0445-N | • 15-1324-Z |
| • 13-1292-H | • 15-0458-U | • 15-1401-A |
| • 14-0382-P | • 15-0461-N | • 15-1431-N |
| • 14-0399-I | • 15-0526-Z | • 16-0569-H1 |
| • 14-0479-I | • 15-0670-N | • 16-1032-N |
| • 15-0103-H1 | • 15-0685-O | • 16-1050-N |
| • 15-0299-P | • 15-0706-O | • 16-1370-Z |
| • 15-0308-O | • 15-0962-N | • 16-1510-O |
| • 15-0381-Z | • 15-0969-Z | • 16-1543-O |
| • 15-0387-N | • 15-1094-Z | |
| • 15-0420-U | • 15-1319-N | |

A search of records maintained by the OIG has located seventy-seven (77) pages that are responsive to your request. We have reviewed these pages under the terms of FOIA and, after consulting with NOAA and USPTO over the release of some of them, have determined that the pages may be released to you as follows:

- Three (3) pages may be released to you in full;
- Seventy-four (74) pages must be withheld in part under FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6), which protects information in personnel, medical, or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as FOIA exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C), which protects law enforcement information, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Copies of the pages are enclosed, with the redactions noted.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of 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 FOIA. This is a standard notification to all OIG requesters and should not be taken as an indication that excluded records do, or do not, exist.

We have determined that fees are chargeable for the processing of this FOIA request. As such, a bill for collection is enclosed. Please note that, if the fees are not paid within 30 calendar days of the date of the bill, you will owe interest under federal law; we will use our debt collection authorities, as appropriate, to collect fees; and we may not be able to process other FOIA requests from you.

You have the right to appeal this determination. Any appeal must be received within ninety (90) calendar days of the date of this response letter. Address your appeal to the following office:

Counsel to the Inspector General
U.S. Department of Commerce
Office of Inspector General, Office of Counsel
14th and Constitution Avenue, N.W.
Room 7898C
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIA@oig.doc.gov, by facsimile (fax) to 202-501-7335, or by FOIAonline, if you have an account in FOIAonline, at <https://www.foiaonline.gov/foiaonline/action/public/request>.

The appeal should include a copy of the original request and this letter. In addition, the appeal should include a statement of the reasons why you believe that the determination was in error. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office of Counsel mailbox are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or the Office of Counsel mailbox after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the

next business day will be deemed timely. An appeal received after the 90-day limit will not be considered.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request, Laura Main, by telephone at (202) 482-5992 or by email at foia@oig.doc.gov. You may also contact me, the OIG FOIA Public Liaison at:

Jennifer Piel
U.S. Department of Commerce
Office of Inspector General, Office of Counsel
14th and Constitution Avenue, N.W.
Room 7898C
Washington, D.C. 20230
Telephone at (202) 482-5992; email at foia@oig.doc.gov

In addition, 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, Maryland 20740-6001
E-mail at ogis@nara.gov
Telephone at (202) 741-5770; toll free at 1 (877) 684-6448; facsimile at (202) 741-5769

Sincerely,
**JENNIFER
PIEL**
Jennifer Piel
FOIA Officer

Digitally signed by
JENNIFER PIEL
Date: 2019.02.26
16:30:09 -06'00'

Enclosures



OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:

Retaliation for Raising Issues of Fraud and Mismanagement
National Marine Fisheries Service (NMFS)
National Oceanic and Atmospheric Administration (NOAA)
[REDACTED]
Whistleblower Reprisal Allegation

FILE NUMBER:

14-0479-P

TYPE OF REPORT

☐ Interim ☒ **Final**

INTRODUCTION

1. Basis for Investigation

On March 28, 2014, [REDACTED] a former fisheries observer with NMFS's [REDACTED] Observer Program and former employee of IAP Worldwide Services, Inc. (IAP), submitted a whistleblower retaliation complaint to the Office of Inspector General (OIG). [REDACTED] alleged that IAP terminated [REDACTED] employment because [REDACTED] reported mismanagement and fraud allegedly committed by IAP personnel to NMFS and IAP staff.

On May 15, 2014, in response to an OIG request for additional information, [REDACTED] elaborated on [REDACTED] complaint. First, [REDACTED] alleged that [REDACTED] reported to IAP-1¹ and NMFS-1 in [REDACTED] that IAP-2 had revised [REDACTED] timecard such that [REDACTED] was not paid for attending a two-hour mandatory training session on [REDACTED]. [REDACTED] said [REDACTED] protested, and with NMFS-1's assistance, [REDACTED] obtained payment for attending said training in [REDACTED].

Second, [REDACTED] alleged that, following NOAA's 2012 inquiry into NMFS's Pelagic Observer Program (POP), NMFS began requiring observers to report marine pollution, drug abuse, and

¹ In this report, individuals are designated by employing entity and number (e.g., NMFS-1 or IAP-2). These identifiers are present throughout this report in order to protect the privacy interests of individuals while adhering to statutory reporting requirements.

Distribution: OIG X Bureau/Organization/Agency Management X DOJ: Other (specify):

Signature of Case Agent:

Date:

Signature of Approving Official:

Date:

Name/Title:

Name/Title:

[REDACTED] Investigative Attorney

[REDACTED] Special Investigations

FOR OFFICIAL USE ONLY

This document remains the property of the Office of Inspector General and is provided to you for official use in accordance with your duties. This document may contain law enforcement sensitive information as well as be protected by the Privacy Act. Per DAO 207-10, do not disclose or disseminate this document or the information contained herein, or otherwise incorporate it into any other records system, without prior permission from the Assistant Inspector General for Investigations. Public release to be determined under the Freedom of Information Act, 5 U.S.C. § 552.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

fishery violations observed aboard fishing vessels to NMFS and IAP staff. [REDACTED] said neither NOAA nor IAP provided training or support to observers regarding this new policy, even though it created potential safety problems for observers. [REDACTED] said [REDACTED] expressed [REDACTED] concerns related to this matter to NMFS-1 in person and via email on [REDACTED]

Finally, [REDACTED] reported that [REDACTED] did not have enough time to collect additional data during a [REDACTED] assignment. [REDACTED] said that [REDACTED] notified IAP-3 of this fact during [REDACTED] post-assignment debrief on [REDACTED], to which IAP-3 responded that [REDACTED] should have allowed [REDACTED] of the fishing vessel to collect data on [REDACTED] behalf to save time. [REDACTED] said that [REDACTED] in turn told IAP-3 that doing so would have negatively affected the quality of [REDACTED] data, and [REDACTED] advised IAP-1 of the same on or about [REDACTED]

[REDACTED] told the OIG that [REDACTED] employment was terminated on [REDACTED], reportedly pursuant to a [REDACTED], timekeeping analysis that revealed that [REDACTED] had overcharged hours and mileage in [REDACTED] and [REDACTED]. [REDACTED] alleged that [REDACTED] was in fact terminated because of [REDACTED] aforementioned disclosures.

2. Summary of Investigation

We found that IAP's termination of [REDACTED] employment did not violate the whistleblower protections contained in the Federal Acquisition Streamlining Act or the National Defense Authorization Act. First, we found that [REDACTED] did not make a protected disclosure within the meaning of either law. Second, we found that IAP's stated reasons for [REDACTED] termination – namely, [REDACTED] apparent “violation of company policy and poor performance” – were credible.

3. Background

NMFS has deployed fisheries observers on U.S. commercial fishing and processing vessels to collect “catch and by-catch data” – information about marine animals caught intentionally and unintentionally (e.g., sex, weight, length, and location of take) – since 1972. NMFS's authority to do so is derived from the Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, and many regional fishery management plans. According to NMFS, 47 fisheries are monitored by its six regional observer programs, with fisheries observers logging more than 77,000 days at sea annually.²

The [REDACTED] laboratory was established in [REDACTED] and assimilated into NMFS in the [REDACTED]. It operates the [REDACTED] Observer Program, which primarily covers vessels that land shrimp and reef fish from [REDACTED] and in the [REDACTED] although it engages in special projects related to other species as well, depending on the time of the year. According to NMFS-2, the [REDACTED] Observer Program currently maintains a corps of around 35 fisheries observers, all of whom are employed by IAP pursuant to a NOAA contract. Together, [REDACTED]

² National Observer Program Home Page, <http://www.st.nmfs.noaa.gov/st4/nop>.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

Observer Program observers log approximately 3,000 sea days per year, and each spends anywhere from one to more than 60 days at sea per assignment.³

4. Regulations and Policies at Issue

The whistleblower protections in the Federal Acquisition Streamlining Act (FASA) prohibit reprisal against employees of federal contractors who report certain legal violations. The FASA states that “[a]n employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing” to agency program management “information relating to a substantial violation of law related to a contract”. 41 U.S.C. § 4705(b); *see also* 48 C.F.R. Subpt. 3.9.

The requisite elements of prohibited reprisal under § 4705 are:

1. The individual is an “employee” of a contractor (the entity awarded a contract with an executive agency); and
2. The employee discloses to a Member of Congress, an authorized official of an executive agency or the U.S. Department of Justice, “information relating to a substantial violation of law related to a contract”; and
3. The employee is “discharged, demoted or otherwise discriminated against as a reprisal” for making such a protected disclosure.

The 2013 National Defense Authorization Act (NDAA) authorizes whistleblower protections for employees of federal contractors, subcontractors, and grantees for a four-year pilot program, in effect from July 1, 2013, through January 1, 2017. The NDAA states that “[a]n employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing” to specified individuals “information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.” 41 U.S.C. § 4712(a); *see also* 48 C.F.R. Subpt. 3.9.

The requisite elements of prohibited reprisal under § 4712 are:

1. The individual is an “employee” of a contractor, subcontractor, or grantee; and
2. The employee discloses “information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an

³ [REDACTED] Observer Program Home Page, [http://www.\[REDACTED\].noaa.gov/forms/observer/](http://www.[REDACTED].noaa.gov/forms/observer/).

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant” to a Member of Congress or a representative of a committee of Congress, an Inspector General, the Government Accountability Office, a federal employee responsible for contract or grant oversight or management at the relevant agency, an authorized official of the U.S. Department of Justice or other law enforcement agency, a court or grand jury, or a management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct; and

3. The employee is “discharged, demoted, or otherwise discriminated against as a reprisal” for making such a protected disclosure.

4. Methodology

The OIG requested and reviewed documents, including emails, from [REDACTED] NMFS, and IAP. We also interviewed [REDACTED] and individuals at IAP and the [REDACTED] Observer Program.

FACTS

NOAA entered into Contract No. [REDACTED] with IAP, effective April 21, 2006, for up to 7.5 years, to procure “technical support for research, monitoring, gear development, computer and data management services, and field data collection” for SEFSC. IAP hired [REDACTED] as a Fisheries Observer [REDACTED] effective on or about [REDACTED] to perform work for this contract – specifically, to work as a field employee in support of the [REDACTED] Observer Program.

[REDACTED] told the OIG that during [REDACTED] employment with IAP, [REDACTED] regularly reported fraud and mismanagement allegedly committed by IAP personnel to NMFS and IAP staff. Specifically, [REDACTED] said [REDACTED] reported that IAP personnel unjustifiably reduced [REDACTED] compensation on occasion, provided [REDACTED] insufficient or no training following NMFS and IAP policy changes, and advised [REDACTED] to engage in prohibited data collection practices.

[REDACTED] said that IAP personnel often disallowed [REDACTED] expenses and reimbursements totaling less than \$20.00, as was permitted by IAP policy, without providing [REDACTED] an adequate explanation. For example, [REDACTED] said that IAP-2 removed two hours from [REDACTED] timesheet for [REDACTED] when [REDACTED] attended a NMFS-mandated training session in [REDACTED]. [REDACTED] said [REDACTED] emailed IAP-2 on [REDACTED] to inquire why, and was told that IAP-2 believed that [REDACTED] had attended this training on [REDACTED] own time and, as such, was not entitled to payment. Based on our review of various emails provided to us by [REDACTED] we found that [REDACTED] waited more than one month, until [REDACTED] to respond to IAP-2 and express [REDACTED] complaint. At this point, IAP-1 responded to [REDACTED] by email that IAP would pay [REDACTED] for the [REDACTED] training, so long as [REDACTED] could provide written authorization for such payment from [REDACTED]. [REDACTED] forwarded IAP-1’s email to NMFS-1 on [REDACTED]

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

who emailed IAP-1 on [REDACTED] that [REDACTED] was indeed entitled to payment. IAP-1 confirmed to [REDACTED] and NMFS-1 that same day that [REDACTED] payment had been processed.

[REDACTED] also said that IAP frequently failed to provide sufficient training and support to observers following the implementation of new policies. For example, [REDACTED] said that on [REDACTED] following NOAA's 2012 inquiry into NMFS's Pelagic Observer Program (POP), NMFS-2 emailed observers affiliated with the [REDACTED] laboratory to notify them that NMFS's Southeast Observer Program had established guidelines for reporting marine pollution, drug abuse, and fishery violations observed aboard fishing vessels.⁴ Specifically, NMFS-2 advised observers that they must now complete two forms upon the conclusion of each assignment: the Southeast Fisheries Observer Incident Report Form, concerning drug/alcohol usage, fishery violations, and unsafe conditions witnessed on board; and the Marine Pollution (MARPOL) Incident Report Form, concerning MARPOL violations witnessed on board. [REDACTED] told the OIG that this new policy – and the failure of both NMFS and IAP to adequately train observers in it – created potential safety problems for observers in that it turned them into “snitch[es]” in the eyes of fishing vessel crews. According to [REDACTED] [REDACTED] reported [REDACTED] concerns to NMFS-1 in a [REDACTED] email, and in person soon afterward. [REDACTED] also said [REDACTED] was unsure whether any IAP personnel knew that [REDACTED] reported these concerns to NMFS-1.

Finally, [REDACTED] said that IAP-3 told [REDACTED] on one occasion that [REDACTED] should have engaged in what [REDACTED] believed to be prohibited data collection practices. [REDACTED] said that, in the course of a 21-day assignment in [REDACTED], [REDACTED] faced certain time constraints and therefore was able to fully sample only 26 of the 73 sets laid by the fishing vessel's crew (approximately 35 percent). For the remaining sets, [REDACTED] collected only “metadata,” or time, date, and location information. [REDACTED] said [REDACTED] explained this to IAP-3 during a debrief on [REDACTED] following which IAP-3 advised [REDACTED] that [REDACTED] should have allowed [REDACTED] of the fishing vessel to collect metadata on [REDACTED] behalf for the sets [REDACTED] could not sample, thus freeing [REDACTED] to sample more sets. According to [REDACTED] [REDACTED] responded to IAP-3 that doing so would have “hurt the integrity of the data” and that [REDACTED] was not made aware of this option prior to [REDACTED] assignment. On or about [REDACTED] [REDACTED] also notified IAP-1 of IAP-3's advice via email and repeated that there was no mention of this “policy” in NOAA's Observer Manual or IAP's Observer Guidelines.

On the following day, [REDACTED] IAP terminated [REDACTED] employment. [REDACTED] told the OIG that [REDACTED] believed IAP fired [REDACTED] because [REDACTED] reported fraud and mismanagement allegedly committed by IAP personnel to NMFS and IAP staff (which is described above). According to IAP, however, [REDACTED] was terminated for the “violation of company policy and poor performance,” uncovered as a result of a timekeeping analysis that IAP-1 performed on [REDACTED] IAP-1's review of [REDACTED] timekeeping analyzed three of [REDACTED] assignments and found what IAP asserted were significant issues:

⁴ We note that the NOAA inquiry revealed that NMFS needed to develop and implement a uniform and consistent procedure for collecting and reporting marine resource violations to NOAA's Office of Law Enforcement.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

- First, IAP-1 found that in the course of a [REDACTED] assignment, [REDACTED] reportedly logged and was paid for the following hours: (i) 16 hours on [REDACTED] for driving from [REDACTED] to [REDACTED] a distance of approximately 458 miles at an estimated travel time of approximately six hours and 59 minutes; (ii) 16 hours on [REDACTED] for driving from [REDACTED] to [REDACTED] a distance of approximately 119 miles at an estimated travel time of one hour and 53 minutes; and (iii) 35 additional hours upon the conclusion of the assignment to complete "paperwork," even though [REDACTED] observer logbook stated that [REDACTED] initial data sheets were completed at sea. Following IAP's timekeeping analysis, [REDACTED] admitted to IAP-1 that [REDACTED] overbilled for [REDACTED] travels by mistake and was thus overcompensated. [REDACTED] disputed, however, that [REDACTED] was not entitled to payment for 35 hours upon the completion of [REDACTED] assignment, as [REDACTED] said it took [REDACTED] that long to "triple-check" the data [REDACTED] entered while at sea. [REDACTED] also disputed IAP-1's assertion in the aforementioned analysis that NMFS and/or IAP personnel verbally "cautioned" [REDACTED] at the time for over-billing.
- Similarly, IAP-1 found that, in connection with a [REDACTED] assignment, [REDACTED] reportedly logged and was paid for the following hours: (i) 12 hours on [REDACTED] for driving from [REDACTED] to [REDACTED] a distance of approximately 576 miles at an estimated travel time of eight hours; (ii) 16 hours on [REDACTED] despite that the fishing vessel to which [REDACTED] was assigned returned to the dock for repairs that day; (iii) 14 hours on [REDACTED] despite that the fishing vessel to which [REDACTED] was assigned returned to the dock at 10:45 AM that day, after which [REDACTED] drove from [REDACTED] to [REDACTED] a distance of approximately 168 miles at an estimated travel time of two hours and 40 minutes; and (iv) seven hours on [REDACTED] for driving from [REDACTED] to [REDACTED] a distance of approximately 440 miles at an estimated travel time of six hours. Following the timekeeping analysis, [REDACTED] disputed to IAP-1 that [REDACTED] was not entitled to payment for these hours. For example, [REDACTED] said [REDACTED] encountered traffic, which prolonged [REDACTED] travel time on [REDACTED] completed a full day's work before returning to the dock for repairs on [REDACTED] and worked to assist the fishing vessel's crew with various tasks beginning at 4:00 AM on [REDACTED] as a result of a broken anchor.
- Finally, IAP-1 found that, in connection with the 21-day [REDACTED] assignment (described above), [REDACTED] logged and was paid for the maximum amount of hours payable – 98 hours per week, including up to 16 hours per day – even though [REDACTED] sampled only 35 percent of the sets laid by the fishing vessel's crew. [REDACTED] told the OIG that it took [REDACTED] up to six hours to sample a set, and approximately one hour to gather only metadata. According to [REDACTED] [REDACTED] therefore did not have time to sample more sets and still rest for eight hours, as mandated by NMFS. However, IAP-3 told the OIG that the collection of metadata only should have taken [REDACTED] "30 seconds" per set. IAP-3 said further that [REDACTED] believed it was unlikely that [REDACTED] actually worked the 16 hours [REDACTED] logged most days, unless [REDACTED] used the remaining time to complete paperwork. Upon the conclusion of [REDACTED] assignment, however, [REDACTED] logged and was paid for an additional 32 hours to complete paperwork. IAP-3 said this was "egregious," while [REDACTED] –

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

following the timekeeping analysis – disputed to IAP-1 that [REDACTED] was not entitled to payment for the hours noted above, including the additional 32 hours, which [REDACTED] said [REDACTED] used to copy logbook and data sheets, prepare them for mailing, and mail them; and organize, label, and review photos [REDACTED] took in the course of the assignment.

ANALYSIS

1. Employment with a Contractor

To be covered by the protections contained in 41 U.S.C. § 4705, [REDACTED] must have been an employee of a federal contractor. Similarly, to be covered by the protections contained in 41 U.S.C. § 4712, [REDACTED] must have been an employee of a federal contractor, subcontractor or grantee. As noted previously, IAP hired [REDACTED] on or about [REDACTED] to perform work as a field employee in support of NMFS's [REDACTED] Observer Program, pursuant to NOAA Contract No. [REDACTED]. We therefore found that [REDACTED] was an employee of a federal contractor within the scope of both § 4705 and § 4712.

2. Protected Disclosures

To be covered by the protections contained in 41 U.S.C. § 4705, [REDACTED] must have disclosed "information relating to a substantial violation of law related to a contract." To be covered by the protections contained in 41 U.S.C. § 4712, [REDACTED] must have disclosed evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract or grant. We analyzed the nature of [REDACTED] disclosures under both § 4705 or § 4712 and found that [REDACTED] did not make a protected disclosure within the meaning of either statute.

For example, with regard to IAP's failure to pay for [REDACTED] two days of training, [REDACTED] told the OIG that IAP's initial failure to pay [REDACTED] for the training session [REDACTED] attended on [REDACTED] did not constitute a refusal to do so on IAP's part. Rather, [REDACTED] told the OIG that IAP personnel were unsure as to whether NOAA had authorized said training. Indeed, [REDACTED] admitted that, as soon as IAP received such authorization, IAP-1 processed [REDACTED] payment. As such, this aspect of [REDACTED] complaint related to a miscommunication that was cleared up relatively quickly, and we therefore found that [REDACTED] complaint did not rise to the level of a substantial violation of law under § 4705 or information covered under § 4712.

Similarly, in reporting to NMFS-1 that [REDACTED] had concerns about documenting drug abuse, fishery violations, and marine pollution [REDACTED] witnessed aboard fishing vessels in writing, [REDACTED] did not disclose information related to a substantial – or, for that matter, any – violation of law under § 4705 or that would implicate § 4712. [REDACTED] told the OIG that observers had always been required to report such information. According to [REDACTED] the new requirement that observers document such abuses in writing merely replaced NMFS's prior "more subtle...

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

approach” to eliciting this information, namely asking them to let NMFS know when they saw something “bad” or that affected their safety.

Finally, in [REDACTED] [REDACTED] response to the OIG’s request for additional information, [REDACTED] suggested that, by telling [REDACTED] [REDACTED] should have allowed the fishing vessel’s [REDACTED] to collect metadata on [REDACTED] behalf in the course of [REDACTED] assignment, IAP-3 may have acted in contravention of the Magnuson-Stevens Fishery Conservation and Management Act, which requires the collection of reliable data so as to ensure the effective conservation, management, and scientific understanding of fishery resources of the United States. *See* 16 U.S.C. § 1801(a)(8). However, when subsequently interviewed by the OIG, [REDACTED] admitted that permitting [REDACTED] to collect metadata on [REDACTED] behalf would not in fact have affected [REDACTED] end results – in effect, the reliability of [REDACTED] fishery data – even if [REDACTED] had made a mistake or purposely lied. As such, we found that here, too, [REDACTED] failed to disclose information that would implicate either § 4705 or § 4712.

3. Employee is Discharged, Demoted, or Otherwise Discriminated against as a Reprisal for Making a Protected Disclosure

Under both 41 U.S.C. § 4705 and 41 U.S.C. § 4712, a federal contractor is prohibited from taking certain personnel actions against an employee in reprisal for the employee’s protected disclosure. As noted in the previous section, we found that [REDACTED] did not make any protected disclosures. Consequently, we determined that there is insufficient evidence to conclude that IAP’s termination of [REDACTED] employment violated § 4705 or § 4712.

Furthermore, pursuant to our review of the evidence, we found that IAP’s stated reasons for [REDACTED] termination – namely, [REDACTED] “violation of company policy and poor performance” – were credible. NMFS-2 told us, for example, that [REDACTED] “regularly collected less data,” and, at times, the data [REDACTED] submitted to NMFS-2 was “some of the lowest quality that [the [REDACTED] laboratory] ha[d] ever received.” Related to [REDACTED] assignment, specifically, NMFS-2 said [REDACTED] did not know how [REDACTED] “could possibly [have] justifi[ed] the number of hours [REDACTED] claimed]... for so little data collected.” NMFS-2 also said “a large number of errors” was found in the data [REDACTED] did manage to collect, calling into question the 32 hours [REDACTED] claimed that [REDACTED] spent on paperwork after [REDACTED] returned to shore.

CONCLUSION

As noted above, we concluded that IAP’s termination of [REDACTED] employment did not violate the whistleblower protections contained in the Federal Acquisition Streamlining Act or the 2013 National Defense Authorization Act. First, we found that [REDACTED] three complaints did not constitute protected disclosures within the meaning of either statute. In addition, we found that IAP’s stated reasons for [REDACTED] termination – namely, [REDACTED] apparent “violation of company policy and poor performance” – were credible.

FOR OFFICIAL USE ONLY



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: Vice Admiral Michael S. Devany
Under Secretary for Operations, NOAA
[REDACTED]

FROM: Todd J. Zinsler
Inspector General

DATE: April 13, 2015

SUBJECT: Results of Investigation Re: DOC OIG Case No. 15-0299-P

This presents the results of an investigation in the above-captioned matter regarding a complaint of sexual harassment and sexual assault filed through the complainant's congressional representative.

Our investigation determined between [REDACTED] and [REDACTED] [REDACTED]
[REDACTED] allegedly, subjected an employee to sexual harassment aboard NOAA vessel [REDACTED]. Complainant alleges [REDACTED] inappropriately touched [REDACTED] on multiple occasions. [REDACTED] Finally, the complainant alleged, [REDACTED] dumped galley waste overboard in the [REDACTED] within three miles of the coast.

The complainant reported [REDACTED] concerns to [REDACTED], and [REDACTED]. In response, on [REDACTED], [REDACTED] NOAA conducted an internal inquiry concerning complainant's allegations of trash disposal at sea, tainted bilge water, inadequate safety drills, berthing, sexual harassment, and misrepresentation of operational practice to sanctuary personnel onboard the [REDACTED].²

¹ All cruises were completed within ¼ mile to 1 mile off the U.S. coast in the [REDACTED]. That is the information provided on the location by complainant.

² DOC-OIG/OI received an allegation on September 7, 2014 regarding the same allegations from complainant (2) through the OIG/OI hotline. In November 2014, an H referral memo was sent to NOAA and as of the date of this memo, OIG/OI has not received a response (14-0964), but is awaiting a response from NOAA.

FOR OFFICIAL USE ONLY

OIG referred an inquiry (15-0964-H) to NOAA regarding the allegation of, "illegal dumping." Additionally, the Department of Labor, has an ongoing investigation regarding complainant's allegations of sexual harassment and complainant reported the allegations of sexual assault to the [REDACTED] Police because the incidents occurred while docked at the [REDACTED] port.

OIG recommends, once NOAA completes its inquiry and if the allegation of illegal dumping is substantiated, it consider whether action against the contractor, such as suspension and debarment, is warranted. Also, provide additional training or information to non-government employees on how to report instances of sexual harassment.

In your official capacity, you have responsibility concerning this matter and the individuals identified in this memorandum and attached documents. Accordingly, you are an officer of the Department with an official need to know the information provided herein in the performance of your duties. These documents are being provided to you in accordance with 5 U.S.C. § 552a (b) (1) of the Privacy Act and as an intra-agency transfer outside of the provisions of the Freedom of Information Act.

Please be advised that these documents remain in a Privacy Act system of records and that the use, dissemination or reproduction of these documents or their contents beyond the purposes necessary for official duties is unlawful. The OIG requests that your office safeguard the information contained in the documents and refrain from releasing them without the express written consent of the Counsel to the Inspector General.

If you have any questions, please contact [REDACTED] Special Agent in Charge at 202-482-[REDACTED] or [REDACTED]@oig.doc.gov.

Attachments

1. IRF Complainant
2. NOAA Trip Report

cc: [REDACTED], National Appeals Office
OIG Case File

FOR OFFICIAL USE ONLY

This document remains the property of the Office of Inspector General and is provided to you for official use in accordance with your duties. This document may contain law enforcement sensitive information as well as be protected by the Privacy Act. Per DAO 207-10, do not disclose or disseminate this document or the information contained herein, or otherwise incorporate it into any other records system, without prior permission from the Assistant Inspector General for Investigations. Public release to be determined under the Freedom of Information Act, 5 U.S.C. § 552.



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

January 26, 2015

MEMORANDUM FOR:

[REDACTED] Performance, Labor and Safety Management
Bureau of the Census (CENSUS)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-0387-N
Re: American Aborigine Classification (Census)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment

cc: [REDACTED]



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

February 4, 2015

MEMORANDUM FOR:

[REDACTED] Office of Strategic Resources
International Trade Administration (ITA)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-0445-N
Re: Lewd Conduct (ITA)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED]

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

February 4, 2015

MEMORANDUM FOR:

[REDACTED] Performance, Labor and Safety Management
Bureau of the Census (CENSUS)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-0461-N
Re: American Community Survey Conduct (Census)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment

cc: [REDACTED]



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

March 18, 2015

MEMORANDUM FOR:

[REDACTED] Office of Strategic Resources
International Trade Administration (ITA)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-0670-N
Re: U.S. Export Assistance Office Issues (ITA)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

May 4, 2015

MEMORANDUM FOR:

[REDACTED]
Patent and Trademark Office (USPTO)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-0962-N
Re: Abandoned Patent Issues (USPTO)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

July 13, 2015

MEMORANDUM FOR:

[REDACTED] Audits, Internal Control and Information Management
National Oceanic & Atmospheric Administration (NOAA)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-1319-N
Re: Storm Chasers (NOAA/NWS)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment

cc: [REDACTED]



**OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS**

REPORT OF INVESTIGATION

CASE TITLE:

█ (Census), U.S. Census Bureau

FILE NUMBER:

15-1401-I

TYPE OF REPORT

☐ Interim

☒ Final

BASIS FOR INVESTIGATION

In October 2015, the Department of Commerce (Department) Office of Inspector General (OIG) began investigating allegations related to senior officials of the U.S. Census Bureau (Census) and █ (█ a Census contractor that provides products and services to Census.¹ Specifically, the OIG learned that █ the president and owner of █ served as a special government employee on the █² The OIG found evidence indicating that █ may have used █ government position to further █ own financial interest in █ or otherwise allowed █ personal business interest in █ to conflict with █ government position.³

The OIG also found evidence indicating that █ who was the █ during the relevant time period,⁴ may have improperly used █ government position to endorse █ products.⁵

¹ CMS Doc. No. 7 (Referral to OIG); Complainant Tr. 27-31.

² █ no longer serves on the █

³ CMS Doc. No. 26 (█ Interview Exhs. 1-3, 5).

⁴ █ has since moved to a different position within Census.

⁵ CMS Doc. No. 11 (█ Video IRF).

Distribution: OIG x Bureau/Organization/Agency Management x DOJ: Other (specify):

Signature of Case Agent: █

Date:

12/7/2017

Signature of Approving Official: █

Date:

Name/Title:

█ Investigative Counsel

Name/Title:

█ of Special Investigations

FOR OFFICIAL USE ONLY

This document remains the property of the Office of Inspector General and is provided to you for official use in accordance with your duties. This document may contain law enforcement sensitive information as well as be protected by the Privacy Act, 5 U.S.C. § 552a. Per DAO 207-10, do not disclose or disseminate this document or the information contained herein, or otherwise incorporate it into any other records system, without prior written permission from the Office of Inspector General. Public release will be determined by the Office of Inspector General under the terms of the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Requests for copies of this report must be referred to the Office of Inspector General in accordance with DAO 207-10.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

METHODOLOGY

The OIG interviewed [REDACTED] then [REDACTED] and other Census employees. The OIG also reviewed emails, ethics documents, contract files, videos posted to [REDACTED] website, and other relevant documents and materials.

RESULTS/SUMMARY OF INVESTIGATION

The evidence developed over the course of the OIG's investigation demonstrated that:

- **Census and the Department were responsible for a series of procedural lapses.** The Department's Office of General Counsel and Census officials who were responsible for providing administrative oversight of the [REDACTED] failed to ensure that the [REDACTED] and Census followed the applicable ethical laws and regulations. Despite [REDACTED] significant financial interest in Census contracts, these individuals apparently failed to even consider the ethical implications of [REDACTED] appointment to the [REDACTED] and failed to ensure other safeguards—including [REDACTED] financial disclosure forms and required ethics training—were in place.
- [REDACTED] **created the appearance of a conflict of interest and misuse of government position.** The OIG found that while [REDACTED] conduct did not rise to the level of a violation of criminal ethics statutes, the evidence demonstrated that it nevertheless violated certain provisions of the Standards of Ethical Conduct for Employees of the Executive Branch. The OIG found that [REDACTED] conduct created the appearance that [REDACTED] misused [REDACTED] position as a special government employee to further [REDACTED] own business interests and also created the appearance of a conflict between that position and [REDACTED] business interests. Specifically, the OIG found that:
 - [REDACTED] regularly brought [REDACTED] employees, including one responsible for managing [REDACTED] account with Census, to [REDACTED] meetings.
 - Following [REDACTED] meetings, [REDACTED] and/or [REDACTED] employees sometimes sent follow-up emails to Census officials. In these emails, [REDACTED] and [REDACTED] employees advocated that Census resolve certain [REDACTED] which could have indirectly benefited [REDACTED]
 - [REDACTED] and [REDACTED] worked together to influence then [REDACTED] to continue some of [REDACTED] programs. The evidence showed that discontinuing these programs would have hurt [REDACTED] business interests.
- [REDACTED] **improperly used government position to endorse [REDACTED] products.** The OIG found that [REDACTED] endorsed [REDACTED] products in two separate videos posted to [REDACTED] website. In both, [REDACTED] was identified as a representative of Census, and [REDACTED] name and logo were featured. [REDACTED] spoke about [REDACTED] and its products and portrayed Census's relationship with [REDACTED] as "positive."

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DETAILS OF INVESTIGATION

A. [REDACTED] *Appointment to the [REDACTED] and Interactions with Senior Census Officials*

1. *Legal Standard*

The [REDACTED] was formed and is governed pursuant to the Federal Advisory Committee Act (FACA).⁶ Prior to the enactment of the FACA, federal agencies utilized a variety of advisory committees, councils, and boards in order to solicit advice from specialists and experts from outside the federal government.⁷ Congress enacted the FACA in 1972 to streamline the operation of these committees and to ensure their transparency.⁸ For example, the FACA requires that FACA committees provide public notice of their meetings and mandates that most FACA committee meetings be open to the public.⁹

Every federal advisory committee established under the FACA is required to have a Designated Federal Officer (DFO).¹⁰ DFOs are responsible for “[e]nsur[ing] compliance with FACA, and any other applicable laws and regulations.”¹¹ They are also responsible for maintaining the committee’s records and ensuring the efficient operation of the committee.¹²

Individuals selected to serve on FACA committees in their individual capacity are appointed as “special government employees” (SGEs).¹³ SGEs who serve on FACA committees are expected to “exercise their own individual best judgment” in advising the relevant federal agency.¹⁴ Moreover, for purposes of the conflict-of-interest laws, SGEs are considered to be federal employees, subject to only limited exceptions.¹⁵

⁶ Senior Official Tr. 31, 57; 5 U.S.C. App. § 1, at 491.

⁷ U.S. General Services Administration (GSA), FACA Management Overview, www.gsa.gov/policy-regulations/policy/federal-advisory-committee-act-faca-management-overview (last visited Oct. 23, 2017).

⁸ 5 U.S.C. App. § 2, at 491.

⁹ 5 U.S.C. App. § 10(a), at 496.

¹⁰ 5 U.S.C. App. § 10(e), at 496.

¹¹ GSA, *The FACA Brochure*, www.gsa.gov/portal/content/101010 (last visited Oct. 23, 2017).

¹² *Id.*

¹³ U.S. Office of Government Ethics (OGE), Advisory Committee Members (Feb. 25, 2016), www.oge.gov/Web/oge.nsf/Resources/Advisory+Committee+Members (last visited Oct. 23, 2017). Conversely, individuals selected to serve on FACA committees to provide the perspective of a particular recognizable group (*e.g.*, an industry sector or labor union) are “representatives” and are not government employees. *Id.*

¹⁴ *Id.*

¹⁵ OGE, Special Government Employees, www.oge.gov/Web/OGE.nsf/Resources/Special+Government+Employees (last visited Oct. 23, 2017). “As defined in 18 U.S.C. § 202, an SGE is an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. The SGE category should be distinguished from other categories of individuals who serve executive branch agencies but who are not employees, such as independent contractors (who are generally not covered by the ethics laws and regulations at all). Also, although many SGEs serve as advisory committee members, not all members of advisory committees are SGEs.” *Id.*

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

There are several criminal conflict-of-interest statutes that apply to government employees. Specifically, pursuant to 18 U.S.C. § 208, all federal employees, including SGEs, are barred from participating personally and substantially in any particular matter that has a direct and predictable effect on their financial interests.¹⁶ SGEs who serve on FACA committees may be granted a waiver from some of Section 208's prohibitions if it is determined that the need for their participation in the FACA outweighs the potential for a conflict of interest posed by the financial interest involved.¹⁷

Likewise, 18 U.S.C. § 205(a) and (c)(2) prohibit SGEs from acting as agents in connection with a particular matter involving specific parties that is pending before the agency in which the SGE serves. However, the statute contains an exception for SGEs that have served less than 60 days at the agency during the prior year. Such individuals may represent a party before the same agency in which the SGE serves in connection with a matter, so long as the SGE has not participated personally and substantially in that matter.¹⁸

In addition, all federal employees, including SGEs, are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct). Section 502 of the Standards of Ethical Conduct provides that, where a government employee knows that a person (including a corporation) with whom he has a covered relationship (including a business relationship) is a party to a particular matter that is likely to have a direct and predictable effect on the financial interest of that person/corporation, the employee should not participate in the matter if the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter.¹⁹

Section 702 of the Standards of Ethical Conduct prohibits federal employees from using their federal positions for private gain.²⁰ Federal employees are also expected to avoid any actions creating the appearance that they are violating the law or the relevant ethical standards, including those pertaining to conflicts of interest and misuse of position.²¹ Whether particular circumstances create an appearance that the law or ethical standards have been violated is determined from the perspective of a reasonable person with knowledge of the relevant facts.²²

¹⁶ See also 5 C.F.R. § 2635.402.

¹⁷ 18 U.S.C. § 208(b)(3). The certification must be in writing from the official responsible for the SGE's appointment. *Id.* SGEs serving on FACA committees are permitted to participate in particular matters of general applicability (e.g., discussions related to general policies or regulations) affecting or potentially affecting their non-federal employer. This exemption, however, applies only to the SGE's non-federal *employment* and not to any ownership interest (e.g., stock) s/he may have in that employer. 5 C.F.R. § 2640.203(g).

¹⁸ 18 U.S.C. § 205(c)(2).

¹⁹ 5 C.F.R. § 2635.502.

²⁰ 5 C.F.R. § 2635.101(b)(7); 5 C.F.R. § 2635.702.

²¹ 5 C.F.R. § 2635.101(b)(14).

²² *Id.*

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

2. *Facts*

a. [REDACTED]

[REDACTED] is a [REDACTED] corporation that provides products and services to Census, other state and federal agencies, and the private sector.²³ The evidence showed that [REDACTED] benefits financially from Census in two different ways. First, [REDACTED] has multiple contracts with Census.²⁴ Between [REDACTED], Census paid [REDACTED] approximately [REDACTED] for the use of its products and services.²⁵ Census witnesses with knowledge of [REDACTED] products told the OIG that they are widely used within Census.²⁶ Second, [REDACTED] markets and sells certain products that either directly incorporate the work of Census or into which end users can incorporate this work themselves.²⁷ This Census work product is publicly available; however, [REDACTED] told the OIG that [REDACTED] relationship with Census is “very important” because Census’s work “feeds our users with content.”²⁸

b. *The Reorganization of the [REDACTED] and [REDACTED] Appointment*

Amongst other things, the [REDACTED] provides guidance to Census on major initiatives, technological advancements, and programmatic direction.²⁹ The evidence showed that [REDACTED] wanted to “modernize” the [REDACTED] to more closely align with Census’s needs.³⁰ As a result, [REDACTED] determined to reconstitute the membership of the [REDACTED].³¹

As part of his effort to modernize the [REDACTED], [REDACTED] solicited prospective member recommendations from senior Census leadership, including [REDACTED].³² [REDACTED] told the OIG that [REDACTED] nominated [REDACTED] (along with several others) for a place on the [REDACTED] but stated that [REDACTED] “had nothing to do with” the ultimate selection of [REDACTED].³³ [REDACTED] explained that [REDACTED] enjoyed a long-standing, professional relationship with [REDACTED] over several decades and that [REDACTED] considered [REDACTED] to be a “professional friend.”³⁴ [REDACTED] further noted that [REDACTED] was one of the [REDACTED] of the particular field in which [REDACTED] operates. In the email in which

²³ [REDACTED] Forbes, [www.forbes.com/profile/\[REDACTED\]](http://www.forbes.com/profile/[REDACTED]); [REDACTED] (last visited Oct. 23, 2017); [REDACTED] Tr. 11-12.

²⁴ CMS Doc. No. 28 (Email from OIG’s Economic and Statistical Program Assessment (ESPA) Team (Aug. 8, 2016)); [REDACTED] Tr. 11-12.

²⁵ CMS Doc. No. 28 (Email from ESPA Team (Aug. 8, 2016)).

²⁶ Complainant Tr. 27-30; [REDACTED] Tr. 4-6.

²⁷ [REDACTED] Tr. 10.

²⁸ *Id.*

²⁹ U.S. Census Bureau, [REDACTED] ([REDACTED] (last visited Oct. 23, 2017).

³⁰ Senior Official Tr. 64.

³¹ *Id.*

³² [REDACTED] Tr. 26-31, 53-54; [REDACTED] Tr. 27-28.

³³ [REDACTED] Tr. 54-55.

³⁴ *Id.* at 27.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

██████████ nominated ██████████ for the ██████████. ██████████ wrote that ██████████ “is a ██████████” and ██████████ would bring ██████████” to the ██████████. 35

Individuals with knowledge of the selection process for the [REDACTED] told the OIG that, once nominations were received, Census employees responsible for overseeing the operations of the [REDACTED] (Committee Branch) reviewed the candidates and evaluated them against the needs of the [REDACTED].³⁶ The Committee Branch then presented its shortlist of potential applicants to representatives from each of Census's divisions, who in turn made recommendations to the [REDACTED].³⁷ [REDACTED] ultimately approved of selections, including [REDACTED] to the [REDACTED] in 2011.³⁸ Unlike [REDACTED] all of the other selectees were academics and researchers, not members of private, for-profit industry.³⁹

c. The Appointment of [REDACTED] to the [REDACTED]

i. Review of [REDACTED] Appointment

Even though [REDACTED] had large contracts with Census and the [REDACTED] was tasked with providing advice to Census regarding topics that were likely to at least indirectly impact [REDACTED] business, it appears that Census failed to consider the potential ethical implications of [REDACTED] appointment. In fact, none of the individuals involved in the review of [REDACTED] nomination to the [REDACTED] could specifically recall any concerns being raised about any potential conflict-of-interest issues regarding [REDACTED] appointment.⁴⁰

One senior Department official who was involved in the restructuring of the [REDACTED] told the OIG that [REDACTED] did not think anyone “rigorously examin[ed] . . . the potential for . . . conflicts of interest among the people who were coming onboard.”⁴¹ Moreover, the Department’s Office of General Counsel (OGC) was unable to locate any records indicating that any advice was sought concerning this appointment.⁴² [REDACTED] of OGC’s Ethics Law and Policy Division, told the

³⁵ CMS Doc. No. 33 (Email and attachments dated Sept. 24, 2010).

³⁶ CMS Doc. No. 19 (Committee Branch Member 1 IRF).

³⁷ *Id.*

38

visited Oct. 23, 2017).

³⁹ *Id.*; Committee Branch Member 2 Tr. 49.

⁴⁰ Committee Branch Member 2 Tr. 50-53; CMS Doc. No. 21 (██████ IRF); CMS Doc. No. 19 (Committee Branch Member 1 IRF).

⁴¹ Senior Official Tr. 71.

⁴² CMS Doc. No. 13 ([REDACTED] Ethics Docs IRF).

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

OIG that OGC typically does not provide advice regarding particular nominees for FACA committees.⁴³

Moreover, even though [REDACTED] may have qualified for a waiver from certain provisions of the federal conflict-of-interest laws and even though [REDACTED] told the OIG that such waivers were “almost always” granted to SGEs serving on Department FACA committees, [REDACTED] never received one.⁴⁴ Indeed, the OIG found, and OGC was able to produce, no evidence indicating that the issue was even considered at the time [REDACTED] was appointed to the [REDACTED]. Rather, only in response to OIG questions during this investigation did OGC provide a justification for the lack of a waiver pertaining to [REDACTED] tenure on the [REDACTED].⁴⁵ Specifically, an OGC representative told the OIG that, despite [REDACTED] extensive contracts with Census, a conflict-of-interest waiver was unnecessary because the [REDACTED] work focused on “broad policy matters that are not focused on a particular industry sector.” Thus, the OGC representative said, the [REDACTED] work was unlikely to have a direct and predictable effect on private-sector entities.⁴⁶ OGC, however, did not provide any further information regarding its basis for making this determination.

According to the OGC representative, to the extent matters arose before the [REDACTED] that could have impacted [REDACTED] business, [REDACTED] could have recused [REDACTED] from those discussions. The OGC representative stated that employees such as [REDACTED] would have been advised “in ethics training, through ethics training materials, and in counseling to disqualify from working on matters that present a conflict of interest.”⁴⁷

However, [REDACTED] [REDACTED] [REDACTED] and at least one other member of the Committee Branch told the OIG that they were not aware of any specific recusal procedures, nor were they aware of any member of the [REDACTED] ever having recused him or herself.⁴⁸ Similarly, [REDACTED] told the OIG that [REDACTED] was never advised of a potential need to recuse [REDACTED] from matters pertaining to [REDACTED] nor does it appear that [REDACTED] was ever advised under what circumstances matters requiring recusal might arise or what to do in the event that they did.⁴⁹

ii. Delayed Training of [REDACTED]

As noted above, the OGC representative told the OIG that SGEs were advised in ethics trainings that they should recuse themselves from matters that presented a potential conflict of interest.⁵⁰ However, the OIG found evidence indicating that Census failed to provide [REDACTED] with live

⁴³ [REDACTED] Tr. 6-7.

⁴⁴ *Id.* at 12; CMS Doc. No. 18 ([REDACTED] Commerce Data Advisory Committee (CDAC) Ethics Docs IRF).

⁴⁵ CMS Doc. No. 18 ([REDACTED] CDAC Ethics Docs IRF).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Committee Branch Member 2 Tr. 24-25; CMS Doc. No. 21 ([REDACTED] IRF).

⁴⁹ [REDACTED] Tr. 57.

⁵⁰ CMS Doc. No. 18 ([REDACTED] CDAC Ethics Docs IRF).

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

ethics training until early 2015—four years after [REDACTED] joined the [REDACTED].⁵¹ Moreover, the evidence showed that this training was related to [REDACTED] participation in a different Department FACA committee.⁵²

During [REDACTED] OIG interview, [REDACTED] stated that, at the time [REDACTED] joined the [REDACTED] “live” ethics training was required only every three years, and thus may not have been offered for some time after [REDACTED] joined the [REDACTED].⁵³ In particular, the evidence showed that, following [REDACTED] appointment [REDACTED] the next offering of live training for [REDACTED] members was at the [REDACTED] meeting.⁵⁴ However, the relevant records pertaining to the [REDACTED] meeting are unclear as to whether [REDACTED] attended. On the one hand, the logs of the meeting indicate [REDACTED] was absent and [REDACTED] had no specific memory of receiving this training.⁵⁵ On the other hand, contemporaneous emails reviewed by the OIG reflect that [REDACTED] did in fact attend.⁵⁶

[REDACTED] told the OIG that, assuming that [REDACTED] did not attend, a determination may have been made that it was not “administratively feasible” to provide [REDACTED] with live training, and [REDACTED] may have instead been provided with written materials.⁵⁷ Indeed, logs of the [REDACTED] meeting reflect that “[a]ll members” received a training handout.⁵⁸ [REDACTED] stated, and the OIG found, that such a determination would have comported with the regulations in place during the relevant time period.⁵⁹ In either case, the evidence showed that nearly three years passed before [REDACTED] received any ethics training at all and that [REDACTED] never received any in-person training with respect to the [REDACTED] despite [REDACTED] substantial financial interest in [REDACTED] contracts with Census.

iii. Failure to Obtain/Timely Review Required Financial Disclosures

Federal regulations required [REDACTED] to complete a confidential financial disclosure form (OGE Form 450) annually.⁶⁰ However, the evidence showed that, while [REDACTED] completed this form immediately following [REDACTED] appointment to the [REDACTED], [REDACTED] did not do so again until [REDACTED].⁶¹ While the OIG found no evidence indicating that [REDACTED] intentionally failed to

⁵¹ *Id.*

⁵² *Id.*; CMS Doc. No. 13 ([REDACTED] Ethics Docs IRF).

⁵³ [REDACTED] Tr. 40; see 5 C.F.R. §§ 2638.705(c)(1) and 703 (2012), which were in force at the time of [REDACTED] Appointment. In November 2016, new regulations requiring “interactive” initial ethics briefings were implemented. 5 C.F.R. § 2638.304.

⁵⁴ CMS Doc. No. 18 ([REDACTED] CDAC Ethics Docs IRF).

⁵⁵ *Id.*

⁵⁶ CMS Doc. No. 26 ([REDACTED] Interview Exh. 1).

⁵⁷ [REDACTED] Tr. 44.

⁵⁸ CMS Doc. No. 18 ([REDACTED] CDAC Ethics Docs).

⁵⁹ [REDACTED] Tr. 44; 5 C.F.R. § 2638.705(d)(1).

⁶⁰ 5 C.F.R. § 2634.904(b); 18 U.S.C. § 202(a); National Institute of Health, *Conflict of Interest and the Special Government Employee*, available at www.ethics.od.nih.gov/topics/oge-sge.pdf at 20-22; see [REDACTED] Tr. 58-59.

⁶¹ CMS Doc. No. 18 ([REDACTED] CDAC Ethics Docs IRF).

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

complete these disclosures, it also found no evidence to suggest that OGC requested them from [REDACTED] per normal OGC procedure.

d. [REDACTED] *Interactions with Census Officials*

i. [REDACTED] *Participation on the [REDACTED]*

During [REDACTED] OIG interview, [REDACTED] denied that [REDACTED] ever made any recommendations to the [REDACTED] in order to benefit [REDACTED].⁶² [REDACTED] statements were supported by [REDACTED] and senior Census leadership.⁶³ Similarly, one member of the Committee Branch told the OIG that they “watch[ed]” [REDACTED] participation in the [REDACTED] for conflicts.⁶⁴ The OIG reviewed documents pertaining to the [REDACTED] meetings during the time period of [REDACTED] tenure and found no evidence that [REDACTED] attempted to expressly steer business to [REDACTED] during those meetings.⁶⁵

Nonetheless, the evidence showed, and [REDACTED] acknowledged to the OIG, that there was some overlap between the topics discussed by the [REDACTED] and the business of [REDACTED].⁶⁶ [REDACTED] told the OIG that this overlap was minimal ([REDACTED] estimated between 3-4%) and stated that [REDACTED] only sought to encourage Census leadership to more effectively utilize [REDACTED] products to which Census already had access. However, [REDACTED] also admitted in [REDACTED] OIG interview that [REDACTED] “promote[d] new tools,” albeit not necessarily [REDACTED].⁶⁷ [REDACTED] also acknowledged that [REDACTED] may have stood to indirectly benefit from some of the recommendations put forth by the [REDACTED].⁶⁸

In addition, the evidence showed that [REDACTED] regularly brought two [REDACTED] employees, including [REDACTED], who was responsible for managing the business relationship between [REDACTED] and Census, to [REDACTED] meetings.⁶⁹ While these meetings were open to the public and thus accessible to any Census contractor or potential contractor, a member of the Committee Branch told the OIG that, had [REDACTED] been aware of it, [REDACTED] would have found it “odd” for these employees to attend the [REDACTED] meetings.⁷⁰ The evidence also showed that [REDACTED] sometimes asked these employees to follow up with Census officials regarding topics that arose during [REDACTED] meetings.⁷¹ [REDACTED] further acknowledged that, in some cases, these

⁶² [REDACTED] Tr. 62-63.

⁶³ CMS Doc. No. 21 ([REDACTED] IRF); [REDACTED] Tr. 8.

⁶⁴ CMS Doc. No. 19 (Committee Branch Member 1 IRF).

⁶⁵ Memorandum from [REDACTED] (last visited Oct. 23, 2017).

⁶⁶ [REDACTED] (last visited Oct. 23, 2017).

⁶⁷ [REDACTED] Tr. 73-76.

⁶⁸ *Id.* at 95-96.

⁶⁹ *Id.* at 63-64.

⁷⁰ Committee Branch Member 2 Tr. 65-66.

⁷¹ CMS Doc. No. 26 ([REDACTED] Interview Exh. 2); [REDACTED] Tr. 68-69.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

topics were related to ██████████⁷² ██████████ told the OIG that, had ██████████ been aware of this conduct, ██████████ would have found it “totally inappropriate.”⁷³

██████████ claimed that ██████████ generally instructed ██████████ employees to contact Census officials in order to help Census better utilize ██████████ products that were already available to Census under its current contracts with ██████████⁷⁴ Nevertheless, ██████████ stated that, in certain instances, these contacts could have potentially resulted in additional business for ██████████⁷⁵

The OIG found no evidence to suggest ██████████ took specific steps to leverage ██████████ government position in order to acquire additional business for ██████████. However, the OIG did identify several instances in which ██████████ one of ██████████ employees, or a Census official referenced ██████████ involvement in the ██████████ in communications that appeared to be related to ██████████ business relationship with Census. Specifically, these communications touched on certain ██████████ that Census was attempting to resolve.⁷⁶ The evidence showed that one of many potential consequences of resolving these issues could have been to make Census’s work more readily accessible to ██████████ and to the public.⁷⁷ Although a number of different events would have needed to occur in order for ██████████ to benefit from the resolution of these issues, as noted previously, ██████████ relies on the work produced by Census to “feed[] [its] users with content.”⁷⁸

The OIG also identified one internal email exchange in which several senior Census officials (including ██████████) discussed obtaining a demonstration of one of ██████████ products from ██████████⁷⁹ During this discussion, ██████████ made specific reference to some of ██████████ statements during ██████████ meetings regarding the ██████████ described above and requested that the presentation specifically address these issues.⁸⁰ In particular, ██████████ noted that, during a recent ██████████ meeting, ██████████ had stated that ██████████ had developed its own workarounds to deal with these issues.⁸¹

The evidence showed that Census ultimately retained additional services from ██████████ to build a product similar to the one discussed in this message.⁸² Contract records reviewed by the OIG demonstrate that these services cost approximately ██████████⁸³ The OIG notes, however, that these

⁷² ██████████ Tr. 70-72.

⁷³ CMS Doc. No. 21 (██████████ IRF).

⁷⁴ ██████████ Tr. 64-66.

⁷⁵ *Id.* at 70-72.

⁷⁶ CMS Doc. No. 26 (██████████ Interview Exhs. 1, 2, 8).

⁷⁷ ██████████ Tr. 10.

⁷⁸ *Id.*

⁷⁹ CMS Doc. No. 30 (██████████ Interview Exhs. (Nov. 28, 2016), Email from ██████████ (Sept. 27, 2014)).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² CMS Doc. No. 32 (██████████ Contract File).

⁸³ *Id.*

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

services were not retained in order to resolve the [REDACTED] described in this section, but were rather for a different purpose.

ii. Senior Census Officials [REDACTED] Trip to [REDACTED]

On [REDACTED], [REDACTED] emailed [REDACTED] with the subject line "CONFIDENTIAL—Census Meeting."⁸⁴ In [REDACTED] email, [REDACTED] wrote that [REDACTED] had recently met with [REDACTED] who had suggested possibly disbanding several of the programs within [REDACTED] department.⁸⁵ The evidence demonstrated that these programs generate much of the Census work product that is incorporated into [REDACTED] products.⁸⁶ These programs, in turn, extensively utilize [REDACTED] products and services.⁸⁷

Later in the email, [REDACTED] recounted [REDACTED] attempt to dissuade [REDACTED] from pursuing this course of action.⁸⁸ [REDACTED] further proposed that [REDACTED] and other senior Census officials visit [REDACTED] "for a few days" in order to "get a deeper dive" into the function of [REDACTED] departments. [REDACTED] also again suggested that Census address the [REDACTED] described above.⁸⁹ In closing [REDACTED] email to [REDACTED], [REDACTED] also wrote that [REDACTED] thought [REDACTED] and [REDACTED] should keep their communications on this topic confidential "in order to avoid the appearance of a conflict of confidence."⁹⁰

When asked about this email in [REDACTED] OIG interview, [REDACTED] denied that [REDACTED] wrote this message or made these proposals specifically to advocate for [REDACTED] own business interests.⁹¹ [REDACTED] stated that [REDACTED] was instead concerned about the broader, public policy implications of eliminating the relevant programs in [REDACTED] area.⁹² While [REDACTED] acknowledged that such an elimination would negatively impact [REDACTED] because its customers used the work of those programs when working with the products sold by [REDACTED], [REDACTED] maintained that others in both the public and private sectors benefited from these programs.⁹³ [REDACTED] further stated that [REDACTED] had asked for confidentiality specifically because [REDACTED] wanted to avoid the appearance that [REDACTED] was advocating for [REDACTED] own business interests.⁹⁴

⁸⁴ CMS Doc. No. 26 ([REDACTED] Interview Exh. 5).

⁸⁵ *Id.*

⁸⁶ [REDACTED] Tr. 10.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ CMS Doc. No. 26 ([REDACTED] Interview Exh. 5).

⁹¹ [REDACTED] Tr. 110.

⁹² *Id.* at 110-111.

⁹³ *Id.* at 110-116.

⁹⁴ *Id.* at 110-111.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

█████ acknowledged in █████'s OIG interview that there was "no question" that █████ "might benefit" from the continuation of █████'s programs.⁹⁵ However, █████ told the OIG that █████ believed that █████ was "on a different plane" from most business owners and thus not acting out of self-interest. █████ stated that █████ wrote this email because █████ was "trying to do the right thing."⁹⁶

In █████ approximately one month after this email was written, █████ and Census's █████ travelled to █████ for the two-day meeting suggested in the █████ email.⁹⁷ Prior to this meeting, █████ wrote to █████ and outlined the topics █████ wanted to cover. Amongst other things, █████ wrote that █████ wished to discuss █████ related to one of Census's core functions and whether Census should "build" or "buy" certain types of products.⁹⁸ █████ also noted that █████ and other senior Census officials were currently "looking at" several of █████ "great products."⁹⁹

The agenda for this meeting included topics such as "Developing [█████ products] for █████ at Census," and "Leveraging [█████ products] with Census █████."¹⁰⁰ █████ presentation materials appeared to consist largely of █████ materials for █████.¹⁰¹ Moreover, while both █████ and █████ maintained that the materials/meetings were largely focused on products already available to Census under the existing contracts, █████ acknowledged that the meetings were █████ in nature.¹⁰² █████ further acknowledged that █████ had also advocated for maintaining █████ program, which would benefit █████.¹⁰³

█████ denied, however, that █████ was acting in █████ capacity as an SGE and member of the █████.¹⁰⁴ The OIG found no evidence to suggest that, in making █████ presentation to Census officials, █████ held █████ out as a government employee or otherwise cited █████ tenure on the █████ as a basis for Census purchasing █████ products.

3. Analysis

a. Department and Census Procedural Lapses

The evidence demonstrated that those tasked with ensuring that the █████ and Census followed all applicable laws, regulations, and policies failed at that task. To that end, the

⁹⁵ █████ Tr. 144.

⁹⁶ *Id.*

⁹⁷ CMS Doc. No. 26 (█████ Interview Exh. 5).

⁹⁸ CMS Doc. No. 33 (Email from █████ (█████)).

⁹⁹ *Id.*

¹⁰⁰ CMS Doc. No. 26 (█████ Interview Exh. 7).

¹⁰¹ CMS Doc. No. 33 (Email and attachments from █████ (█████)).

¹⁰² █████ Tr. 158; █████ Tr. 120-124.

¹⁰³ █████ Tr. 120-124.

¹⁰⁴ █████ Tr. 118-122.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

OIG identified a number of procedural breakdowns in the appointment, review, and onboarding of [REDACTED] as a [REDACTED] member.

First, the evidence gathered by the OIG demonstrated that those involved in the appointment of [REDACTED] to the [REDACTED] failed to consider, in any meaningful way, the potential ethical implications of [REDACTED] participation. Despite [REDACTED] financial interests in its contracts with Census and the potential overlap between the [REDACTED] work and [REDACTED] business, the OIG found no evidence reflecting that anyone discussed the potential for a conflict of interest or the appearance thereof. One senior official involved in the appointment told the OIG it was not even considered, and OGC has no records of any such discussions. Indeed, [REDACTED] told the OIG that OGC does not typically review such appointments.

Second, even though [REDACTED] may have qualified for a waiver from certain conflict-of-interest provisions, it does not appear that this was ever considered. When the OIG asked OGC why no waiver was required, the answer was apparently derived after the fact; OGC produced no evidence suggesting that it was considered at the time.

Third, the OIG found that even though [REDACTED] was appointed to the [REDACTED], [REDACTED] did not receive written ethics materials until [REDACTED] and did not receive live ethics training until [REDACTED] joined an entirely separate Department FACA committee in [REDACTED]. These delays are especially troubling given the elevated potential for conflicts of interest [REDACTED] participation in the [REDACTED] posed and OGC's apparent reliance on this training as a guard against potential conflicts. Finally, the evidence showed that [REDACTED] neither filed nor was asked to file the required annual financial disclosure forms in [REDACTED].

Taken together, these breakdowns represent a significant lapse in the requisite oversight of [REDACTED] participation on the [REDACTED]. Notably, they constitute missed opportunities for additional ethics guidance to an individual who had a substantial financial interest in Census contracts and who was in a position to influence Census decisions.

b. [REDACTED] Conduct

[REDACTED] relationship with Census and conduct in certain matters implicates multiple federal laws governing real and apparent conflicts of interest. As explained in more detail above, 18 U.S.C. § 208 makes it a crime for any government employee (including SGEs) to participate personally and substantially in any particular matter that will have a direct and predictable effect on the employee's financial interest.¹⁰⁵ Similarly, Section 502 of the Standards of Ethical Conduct generally prohibits government employees from, amongst other things, participating personally and substantially in a matter that is likely to affect, to have a direct and predictable effect, on the financial interests of a person (including a corporation) with whom the government employee has a covered relationship (including a business relationship), if the circumstances would cause a reasonable person with knowledge of the relevant facts to question the government employee's

¹⁰⁵ 18 U.S.C. § 208.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

impartiality in the matter.¹⁰⁶ In addition, 18 U.S.C. § 205 prohibits SGEs who have worked for the relevant agency for more than 60 days in the prior year from appearing before that agency as a representative for a specific party in connection with a particular matter before that agency, regardless of the SGE's participation in that matter.

i. Criminal Conflict-of-Interest Statutes and Section 502 of the Standards of Ethical Conduct

The OIG found that, although troubling, [REDACTED] conduct did not constitute a violation of 18 U.S.C. §§ 208, 205, or Section 502 of the Standards of Ethical Conduct. As a threshold matter, the OIG notes that there was no evidence that [REDACTED] ever attempted to conceal [REDACTED] personal business interest in [REDACTED]. This information was included in [REDACTED] nomination form, was publicly available, and was very well-known throughout Census.

Participation on the [REDACTED] The OIG found that [REDACTED] recommendations to the [REDACTED] and attendant follow-up messages did not constitute a violation of 18 U.S.C. § 208 or Section 502 of the Standards of Ethical Conduct because they did not meet the “direct and predictable effect” test applicable to both of those provisions. The applicable regulations state that “[a] particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.”¹⁰⁷ While an effect may be direct even if it does not occur immediately, the chain of causation may not be attenuated.¹⁰⁸ Similarly, “[a] particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest.”¹⁰⁹

In the instant case, the OIG found that there was an insufficient nexus between [REDACTED] conduct with respect to [REDACTED] role on the [REDACTED] and the potential benefit to [REDACTED] to meet the “direct and predictable effect” standard set forth above. The evidence showed that, although [REDACTED] and/or [REDACTED] employees may have advocated for Census to resolve certain [REDACTED] and the resolution of these issues may have made Census's work more readily accessible to [REDACTED] this benefit was not assured and was only one of many possible outcomes. The OIG's review established that it is unclear whether and to what extent [REDACTED] would have directly benefitted from any changes, and therefore any benefit that inured to [REDACTED] as a result of this resolution would have been inadequately direct and predictable to meet the governing legal standard to rise to the level of a violation of either Section 208 or 502.

Senior Census Officials' [REDACTED] Trip to [REDACTED] Likewise, the OIG found insufficient evidence to demonstrate that [REDACTED] violated 18 U.S.C. § 208 or Section 502 of the Standards of Ethical Conduct with respect to the Census officials' [REDACTED] trip to [REDACTED]

¹⁰⁶ 5 C.F.R. § 2635.502.

¹⁰⁷ 5 C.F.R. § 2635.402(b)(1)(i).

¹⁰⁸ *Id.*

¹⁰⁹ 5 C.F.R. § 2635.402(b)(1)(ii).

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

██████████ and ██████████ email message that preceded it. Specifically, the OIG found insufficient evidence to demonstrate that ██████████ was acting or held ██████████ out as a government employee with respect to these activities.

The OIG also found insufficient evidence to demonstrate that ██████████ violated the other relevant criminal conflict-of-interest provision, 18 U.S.C. § 205, which prohibits SGEs from representing another party before the agency in which the SGE serves.¹¹⁰ While the OIG found that ██████████ ██████████ presentation to senior Census officials would have violated this provision, the statute contains an exemption for SGEs who work for the relevant agency for less than 60 days in the prior year. Thus, although the OIG notes that ██████████ conduct in this regard was troubling and reflected poor judgment, the OIG was unable to substantiate a finding that ██████████ violated this statute because the evidence showed ██████████ worked less than 60 days for Census in the prior year.¹¹¹

ii. Appearance of Conflict of Interest and Misuse of Position

Although the OIG found insufficient evidence to demonstrate that ██████████ violated the criminal statutes and ethical regulations described above, the OIG found that ██████████ repeatedly engaged in conduct that violated other provisions of the Standards of Ethical Conduct. As noted above, federal regulations also provide that employees must avoid any actions creating the appearance that they are violating the law or the relevant ethical standards, including those pertaining to conflicts of interest and Section 702 of the Standards of Ethical Conduct, which prohibits government employees, including SGEs, from using their public office for private gain. Whether particular circumstances create an appearance that the law or ethical standards have been violated is determined from the perspective of a reasonable person with knowledge of the relevant facts.¹¹²

The evidence established that ██████████ engaged in a course of conduct that created an appearance of a conflict between ██████████ role as an SGE on the ██████████ and ██████████ financial interest in ██████████. Further, ██████████ actions created the appearance that ██████████ misused ██████████ government position for personal gain.

For instance, ██████████ regularly brought ██████████ employees to ██████████ meetings, which one Committee Branch member told the OIG was “odd.” In fact, the evidence established that ██████████ ██████████ who was responsible for ██████████ business relationship with Census, attended ██████████ meetings with ██████████ admitted that ██████████ promoted “new tools” during these meetings that ██████████ among others, could have provided, and that ██████████ could have indirectly benefited from some of the ██████████ recommendations.

¹¹⁰ 18 U.S.C. § 205(a)(2) and (c)(2).

¹¹¹ The OIG notes that it consulted with representatives from the Office of Government Ethics (OGE) regarding this analysis. CMS Activity Entry (May 24, 2017).

¹¹² 5 C.F.R §§ 2635.101(b)(14), 2635.702.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

The evidence also established that, following the meetings, [REDACTED] sent and/or instructed [REDACTED] employees to send emails to senior Census officials. In these messages, [REDACTED] and/or [REDACTED] employees discussed issues raised at [REDACTED] meetings and suggested possible further discussions. They also advocated for Census to resolve certain [REDACTED] that could have potentially benefitted [REDACTED] albeit indirectly. Indeed, [REDACTED] specifically referenced these discussions in an internal Census email regarding obtaining the demonstration of an [REDACTED] product. The evidence showed that Census ultimately retained [REDACTED] worth of additional services from [REDACTED] to build a similar product.¹¹³

In addition, the evidence showed that [REDACTED] and [REDACTED] worked together to influence [REDACTED] in an effort ensure the continuation of some of [REDACTED] programs, which potentially benefitted [REDACTED] both as a provider of services to those programs and as a user of the work generated by them. Even accepting [REDACTED] assertion that [REDACTED] concerns were public-policy based, [REDACTED] admitted that there was the potential for a “conflict of confidence” in [REDACTED] doing so. [REDACTED] then hosted senior Census officials for a two-day visit at [REDACTED] [REDACTED] during which [REDACTED] and other [REDACTED] employees touted [REDACTED] products.

In sum, the OIG found that a reasonable person with knowledge of the relevant facts would conclude that [REDACTED] actions created an appearance of a conflict between [REDACTED] role as an SGE on the [REDACTED] and [REDACTED] financial interest in [REDACTED] as well as a misuse of [REDACTED] SGE position for [REDACTED] gain. [REDACTED] conduct further evidenced a significant lack of judgment.

B. Improper Endorsement

The OIG found that, on at least two occasions, [REDACTED] endorsed [REDACTED] products, in violation of the federal ethical regulations.

1. Legal Standard

Section 702 of the Standards of Ethical Conduct states, in pertinent part, that “an employee shall not use his public office for his own private gain [or] for the endorsement of any product, service or enterprise.”¹¹⁴ Moreover, an employee may not use “any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.”¹¹⁵ In particular, employees are prohibited from using “any authority associated with [their] public office to endorse any product, service or enterprise.”¹¹⁶ According to an Office of Government Ethics (OGE) Informal Advisory Letter, in determining whether a reference “could reasonably be construed” to imply agency sanction or endorsement, the totality of the circumstances must be considered to determine whether

¹¹³ CMS Doc. No. 32 ([REDACTED] Contract File).

¹¹⁴ 5 C.F.R. § 2635.702.

¹¹⁵ 5 C.F.R. § 2635.702(b).

¹¹⁶ 5 C.F.R. § 2635.702(c).

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

a reasonable person could construe the reference to imply sanction or endorsement of the organization or the employee's personal activities.¹¹⁷

Employees are also required to act impartially and not give preferential treatment to any private organization or individual.¹¹⁸ Finally, employees are required to avoid any actions that create the appearance that they are violating the Standards of Ethical Conduct.¹¹⁹

2. Facts

The OIG reviewed [REDACTED] website and located two videos that featured [REDACTED]. The first video ran for approximately one and a half minutes.¹²⁰ The caption below the video identified [REDACTED] and Census, and [REDACTED] name, title, and agency appeared at the beginning of the video. [REDACTED] appeared alone in the video and discussed the importance of work done by Census.¹²¹ [REDACTED] then went on to state:

This [the relationship between [REDACTED] and Census] has actually been . . . in a sense a partnership between us and [REDACTED] because there have been developments that we have done that we have shared with [REDACTED] and other vendors, and [REDACTED] has responded to that and . . . that's been a very positive thing.¹²²

Similarly, the OIG reviewed a second video on [REDACTED] website that featured [REDACTED].¹²³ This video, which ran for approximately one minute and forty-five seconds, was captioned with [REDACTED] name and the name of Census.¹²⁴ In it, [REDACTED] appeared with an interviewer who appears to be an [REDACTED] employee.¹²⁵

At the beginning of the interview, the interviewer introduced [REDACTED] as a "Census Chief" and [REDACTED] subsequently described [REDACTED] title and identified Census. During the interview, the interviewer asked [REDACTED] how [REDACTED] products had helped Census, and [REDACTED] responded with positive commentary regarding the functionality and implementation of those products at Census.¹²⁶ Specifically, [REDACTED] described in great detail the complexity and importance of the work done by Census and then stated that Census is "using all aspects of [REDACTED] products to

¹¹⁷ 5 C.F.R. § 2635.101(b)(14); OGE Informal Advisory Letter LA-14-08 (O.G.E.), 2014 WL 6738857 (Nov. 19, 2014).

¹¹⁸ 5 C.F.R. § 2635.101(b)(8).

¹¹⁹ 5 C.F.R. § 2635.101(b)(14).

¹²⁰ CMS Doc. No. 11 ([REDACTED] Video Screenshot ([REDACTED]); [REDACTED] Video ([REDACTED])).

¹²¹ *Id.*

¹²² *Id.*

¹²³ CMS Doc. No. 11 ([REDACTED] Video Screenshot ([REDACTED] [REDACTED] Video ([REDACTED])).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

facilitate Census's work.¹²⁷ The interviewer then asked [REDACTED] whether the type of products produced by [REDACTED] had helped Census to deal with any particular "business challenges."¹²⁸ [REDACTED] replied by again describing the complexity of Census's work and further described Census's challenges in making that work product available to the public.¹²⁹ [REDACTED] stated that prior to the types of products developed by [REDACTED] making that work available to the public had been very cumbersome.¹³⁰ Now, [REDACTED] said, these types of products made that work much more available to the public.¹³¹

[REDACTED] acknowledged in [REDACTED] OIG interview that [REDACTED] believed at the time they were filmed that these videos would be made public on [REDACTED] website.¹³² Despite the content of the two videos, [REDACTED] denied that [REDACTED] statements constituted an endorsement of [REDACTED] products.¹³³ According to [REDACTED] statements did not amount to an endorsement because [REDACTED] did not state that [REDACTED] products were "the best" or "better than" those of its competitors.¹³⁴ In particular, [REDACTED] claimed that in making [REDACTED] statements, [REDACTED] was "just stating facts" (*i.e.*, that Census used [REDACTED] products) and noted that, in the first video, [REDACTED] had mentioned "other vendors."¹³⁵

However, the OIG reviewed several emails that demonstrated [REDACTED] knew or should have known that the central purpose of the videos was to promote and market [REDACTED] and its products. For example, in a [REDACTED] email, an [REDACTED] employee with the title [REDACTED] wrote to several [REDACTED] employees and asked whether they knew of any government officials who would be willing to be interviewed by a government-focused social networking company regarding [REDACTED].¹³⁶ [REDACTED] wrote that the social networking company would be conducting these interviews as "part of [REDACTED] sponsorship package" with the social networking company and that these interviews would be "a great opportunity to highlight a key success story."¹³⁷ The evidence showed that this email was then forwarded to [REDACTED] and another [REDACTED] employee, who then forwarded it to

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² [REDACTED] Tr. 168.

¹³³ *Id.* at 193-195.

¹³⁴ *Id.* at 201-202.

¹³⁵ *Id.* at 195. [REDACTED] also stated that other government officials from outside the Department participated in similar videos with [REDACTED] *Id.* at 168. The fact that other government officials may have violated federal regulations, however, does not relieve [REDACTED] of [REDACTED] obligation to adhere to the Standards of Ethical Conduct.

¹³⁶ CMS Doc. No. 33 (Email Chain from [REDACTED] ([REDACTED])).

¹³⁷ *Id.*

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

█████¹³⁸ ██████ replied that ██████ should “sign ██████ up” and that ██████ would use the interview as an opportunity to “plug” one of Census’s initiatives.¹³⁹

Similarly, in a ██████ email to ██████ from an ██████ employee whose signature line indicated ██████ worked in ██████ requested ██████ participation in an interview, and ██████ accepted.¹⁴⁰ The evidence showed that, in a follow-up calendar invite from another ██████ employee scheduled to conduct the interview, the employee noted that ██████ wanted to use the interview as an opportunity for ██████ to share how Census used the type of software produced by ██████ ██████ also previewed some of the questions ██████ planned to ask, which included the following:

- *Before ██████ what was your biggest business challenge?*
- *How has ██████ made a difference to your organization today? What has changed?*
- *Who is seeing the benefit from this (both internally and externally)?¹⁴¹*

█████ denied having any specific recollection of either of these email messages.¹⁴² Further, notwithstanding (1) the fact that the senders were listed as account managers and/or business development specialists and (2) the ██████ nature of the questions listed in the July 2014 email, ██████ denied holding the subjective belief that ██████ had assisted in the planning or creation of marketing materials.¹⁴³ Indeed, when the OIG asked ██████ to what possible purpose ██████ planned to use these videos other than marketing, ██████ responded that ██████ “c[ould]n’t really answer that question definitively on ██████ behalf,” and was “not going to do that.”¹⁴⁴ Rather, ██████ repeatedly asserted that ██████ had not engaged in any “endorsement” because ██████ had not overtly suggested that ██████ products were superior to others.¹⁴⁵ According to ██████ ██████ used these interviews to promote Census’s own programs and initiatives, not ██████¹⁴⁶ Nonetheless, ██████ admitted that, after seeing the second video during ██████ OIG interview, ██████ was “a little concerned” by the specificity of the questions in the second video vis-à-vis ██████¹⁴⁷

The OIG also found evidence indicating that ██████ knew or should have known that ██████ participation in these videos was potentially problematic. First, the evidence showed that ██████

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ CMS Doc. No. 33 (Email to/from ██████ (█████) (█████)

¹⁴¹ CMS Doc. No. 33 (Calendar Invite from ██████ employee (█████)

¹⁴² ██████ Tr. 170, 187.

¹⁴³ *Id.* at 180-182.

¹⁴⁴ *Id.* at 181.

¹⁴⁵ *Id.* at 190-191, 201-202.

¹⁴⁶ *Id.* at 171-172.

¹⁴⁷ *Id.* at 204.

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

participated in required periodic ethics trainings.¹⁴⁸ Second, the OIG reviewed a [REDACTED] email chain that was sent prior to [REDACTED] participation in the videos and that was ultimately forwarded to [REDACTED] amongst others.¹⁴⁹ In it, various Census employees discussed [REDACTED] request to utilize photographs of several Census employees in its marketing materials.¹⁵⁰ As part of the discussion, an employee of Census's Policy Office noted that [REDACTED] should not be permitted to "imply or impose upon Census any subjective value judgments as to [REDACTED] or the [REDACTED] . . . that could easily be perceived by members of the public as Census recommending [REDACTED] or [REDACTED] over competing products or companies."¹⁵¹

[REDACTED] claimed [REDACTED] generally sought guidance from Census's Policy Office prior to participating in any [REDACTED] videos or interviews.¹⁵² The OIG was, however, unable to locate any documentary evidence to support this claim. Further, the OIG interviewed several individuals who worked in Census's Policy Office during the relevant time period, and none had any memory or record of [REDACTED] seeking such guidance.¹⁵³

3. Analysis

As stated above, pursuant to the Standards of Ethical Conduct, federal employees are generally barred from using their official positions, titles, or authority to endorse any product, service, or enterprise. Federal employees such as [REDACTED] are also expected to act impartially and not give preferential treatment to any private organization or individual, and to avoid even the appearance of violating the applicable ethical standards. The OIG found that [REDACTED] violated these provisions.

According to OGE, a determination as to whether an employee has impermissibly used [REDACTED] official position to endorse a product or service is "necessarily fact-specific" and based on a "totality of the circumstances." Factors that increase the likelihood that a reference could be so construed include, amongst other things:

whether there is a close nexus between the mission and activities of the outside organization and the employee's Federal agency; whether the employee's official duties relate to the activities of the outside organization; whether the employee occupies a senior-level, political or policy-determining position at his or her Federal agency; . . . whether the reference to the employee's title, position, or agency is used to promote or market the outside organization's services, products or policy positions; whether the employee's title, position or agency is prominently or frequently referenced; whether the employee is referred to as a "representative" of

¹⁴⁸ CMS Doc. No. 43 ([REDACTED] Training Records).

¹⁴⁹ CMS Doc. No. 33 (Email from Census employee 2 ([REDACTED])).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² [REDACTED] Tr. 173-175.

¹⁵³ CMS Doc. No. 23 ([REDACTED] employee 1 IRF); CMS Doc. No. 24 ([REDACTED] employee 2 IRF) (Aug. 3, 2016)).

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

his or her agency; and whether there are other circumstances that would lead a reasonable person to conclude that the government sanctioned or endorsed the employee's private activities or the services of the outside organization.¹⁵⁴

The OIG found that ██████ conduct satisfied nearly all of these factors. The undisputed evidence shows that ██████ appeared in at least two separate videos posted on ██████ website. In both, it is clear that ██████ was speaking in ██████ official capacity: ██████ name, title, and agency appeared and ██████ made repeated reference to Census's work. In one, ██████ was introduced as a "Census Chief." The evidence further demonstrated that it was well-known that Census relied heavily on ██████ products for its work.

██████ asserted that because ██████ had not explicitly stated that ██████ products were superior to those of other companies, because ██████ had obliquely referenced "other vendors," and because ██████ statements were purportedly "factual" in nature, they should not be viewed as "endorsements." However, OGE has made clear that "statements commending the performance of a contractor or a contractor's products generally are not permissible" under Section 702(c) of the Standards of Ethical Conduct. Further, while OGE has indicated that "making a simple factual statement that the contractor's work satisfied the [g]overnment's requirements" does not constitute an endorsement,¹⁵⁵ it is difficult to see how ██████ statements in the videos could be characterized as such.

Specifically, ██████ characterized the relationship between ██████ and Census as a "partnership," described ██████ response as "positive," and responded with praise when asked to describe how ██████ had "helped" Census. The videos were posted to ██████ website, featured ██████ logo on the side, and were recorded by ██████ Under these circumstances, and even accounting for ██████ passing reference to "other vendors," any reasonable viewer would conclude that ██████ was speaking on behalf of Census and offering a positive endorsement of ██████ products. The OIG also notes that ██████ proffered no other instances in which ██████ had recorded similar videos or made similar public statements on behalf of another Census contractor.

Moreover, whatever ██████ subjective beliefs about the videos may have been, ██████ clearly viewed them as ██████ in nature. The evidence showed that members of ██████ marketing team—including ██████ and ██████ made the arrangements for the recordation of the videos. Further, email messages reviewed by the OIG make clear that ██████ employees saw such videos as an opportunity to use ██████ to "highlight" a "key success story." While the OIG notes ██████ testimony that ██████ sought to use these videos as an opportunity to "plug" Census's own initiatives, ██████ was unable to provide a credible explanation as to why ██████ would have asked for ██████ participation, if not for ██████ purposes.

¹⁵⁴ OGE Informal Advisory Letter LA-14-08 (O.G.E.), 2014 WL 6738857 (Nov. 19, 2014).

¹⁵⁵ Memorandum from Robert I. Cusick, Director to Designated Agency Ethics Officials (Aug. 9, 2006), available at [www.oge.gov/Web/OGE.nsf/OGE%20Advisories/295A26EEB6B3FFB185257E96005FBDD5/\\$FILE/do-06-023.pdf?open](http://www.oge.gov/Web/OGE.nsf/OGE%20Advisories/295A26EEB6B3FFB185257E96005FBDD5/$FILE/do-06-023.pdf?open) (last visited Oct. 23, 2017).

FOR OFFICIAL USE ONLY

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

Indeed, after viewing the videos in [REDACTED] OIG interview, [REDACTED] acknowledged that [REDACTED] was “concerned” by the questions asked in one of them.

Finally, the OIG found that [REDACTED] knew or should have known that these videos could violate ethical standards. The OIG was unable to substantiate [REDACTED] assertions that [REDACTED] sought advice from Census’s Policy Office before participating in them. In addition, the evidence showed that [REDACTED] had previously received guidance cautioning against the appearance of an endorsement via the [REDACTED] email chain from the Policy Office and was required to participate in periodic ethics training. Through [REDACTED] conduct, [REDACTED] improperly used [REDACTED] government position to endorse [REDACTED]

CONCLUSION

For the reasons stated above, the OIG determined that Census and the Department were responsible for a series of procedural lapses. The OIG also determined that [REDACTED] created the appearance of a conflict of interest and misuse of [REDACTED] government position. Finally, the OIG found that [REDACTED] improperly used [REDACTED] government position to endorse [REDACTED] products.

The OIG is therefore referring this matter to Census and the Department for its consideration.

FOR OFFICIAL USE ONLY



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

August 3, 2015

MEMORANDUM FOR:

[REDACTED]
Labor and Management Branch
Bureau of the Census (CENSUS)

FROM:

[REDACTED]

SUBJECT:

OIG Complaint Referral No. 15-1431-N
Re: Alleged Survey Harassment (Census)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment

cc:

[REDACTED]



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

May 23, 2016

MEMORANDUM FOR: [REDACTED]
Office of Chief Administrative Officer
Patent and Trademark Office (USPTO)

FROM: [REDACTED]
[REDACTED]

SUBJECT: OIG Complaint Referral No. 16-1050-N
Re: White House Trademark (USPTO)

The Department of Commerce's Office of Inspector General (OIG) received the attached information. We are referring it to your agency for any action you deem appropriate. A response to OIG from your office is not required.

Please note that the attached information is maintained in an OIG Privacy Act system of records and is being provided to your office as a routine use under the terms of the Privacy Act. We request that you be mindful of the privacy considerations and the sensitive nature of this information and disseminate the information only under the terms of the Privacy Act and the Freedom of Information Act, after consultation with OIG.

We further note that under the Inspector General Act, Whistleblower Protection Act, and other applicable statutes, agency officials are prohibited from taking any reprisal against an employee for providing information to OIG. OIG has designated a Whistleblower Protection Ombudsman to educate Department of Commerce employees about prohibitions on retaliation for protected disclosures, as well as the rights and remedies against retaliation for protected disclosures for those who have made or are contemplating making a protected disclosure. In addition, certain employees of agency contractors or grantees may also be protected from reprisal. Employees may contact the Whistleblower Protection Ombudsman with any questions or concerns at 202-482-1099 or at wpo@oig.doc.gov.

If you have any questions, please call me at (202) 482-[REDACTED].

Attachment

cc: [REDACTED]



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

December 22, 2016

Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington, DC 20006

Via U.S. Mail

Dear Sir/Ma'am:

The Department of Commerce Office of Inspector General received the attached information. Our review of this complaint indicates that it does not require the investigative services of this office. We are referring this allegation to your office for any action you deem appropriate.

The Inspector General Act requires that the identity of complainants not be disclosed unless disclosure is unavoidable during the course of an investigation. Please keep this request in mind in connection with any action that you should take regarding this matter.

If you have any questions or would like to discuss further, please contact us at (202) 482-0300.

Thank you.

Compliance and Ethics Staff
Office of Investigations

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

January 10, 2017

U.S. Dept. of Veterans Administration
Inspector General Hotline (53E)
810 Vermont Ave., NW
Washington, DC 20420

Via U.S. Mail

Dear Sir/Ma'am:

The Department of Commerce Office of Inspector General received the attached information. Our review of this complaint indicates that it does not require the investigative services of this office. We are referring this allegation to your office for any action you deem appropriate.

The Inspector General Act requires that the identity of complainants not be disclosed unless disclosure is unavoidable during the course of an investigation. Please keep this request in mind in connection with any action that you should take regarding this matter.

If you have any questions or would like to discuss further, please contact us at (202) 482-0300.

Thank you.

Compliance and Ethics Staff
Office of Investigations

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

DEC - 5 2014

MEMORANDUM FOR: [REDACTED]

FROM: [REDACTED]

SUBJECT: Inspector General Referral 13-1292-H, 14-0243-H, and 14-0418-H
Re: Hawaiian Monk Seal Volunteer Response Network
(NOAA/NMFS)

This memorandum responds to your request for administrative resolution of the above mentioned referrals regarding various allegations for members of the Hawaiian Monk Seal Volunteer Response Network and employees at the National Marine Fisheries Services (NMFS) Pacific Islands Regional office (PIRO).

On behalf of NOAA, [REDACTED] and [REDACTED], NMFS conducted an inquiry into the facts giving rise to the complaints. In the interest of ensuring objectivity, transparency, and accountability for complaints referred to our office, we assert that [REDACTED] and [REDACTED] are independent of individuals and matters that are subject of complaints.

Since OIG referrals 13-1292-H, 14-0243-H, and 14-0418-H were closely related, a combined inquiry was conducted. Also, the following 21 N referrals were incorporated into this response for being closely related:

- Fiscal year 2013: 13-0959-N, 13-1012-N, 13-1094-N, 13-1119-N, 13-1135-N, 13-1141-N, 13-1148-N, 13-1246-N, and 13-1254-N (total of 9).
- Fiscal year 2014: 14-0154-N, 14-0301-N, 14-0320-N, 14-0344-N, 14-0360-N, 14-0373-N, 14-0393-N, 14-0442-N, 14-0508-N, 14-0509-N, 14-0593-N, and 14-0594-N (total 12).

Among the 15 allegations, the inquiry found only one allegation was substantiated. Corrective actions will be administered by PIRO and NOAA's Security Office requiring NOAA volunteers have proper security screening. A copy of our inquiry report is attached.

If you have any questions, please contact [REDACTED] at [REDACTED].

Attachment:
Inquiry Report



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, Maryland 20910

NOV 14 2014

MEMORANDUM To:

[REDACTED]
 [REDACTED]
 [REDACTED]

FROM:

for [REDACTED]
 [REDACTED] for NOAA Fisheries

SUBJECT: Inspector General Referral Nos. 13-1292-H, 14-0243-H, and 14-0418-H¹
 Re: Hawaiian Monk Seal Volunteer Response Network

This is a combined response to your subject referrals from the Department of Commerce (DOC) Office of Inspector General (OIG). These referrals contained various allegations concerning members of the Hawaiian Monk Seal Volunteer Response Network and employees of the National Marine Fisheries Service (NMFS) Pacific Islands Regional Office (PIRO). The National Oceanic and Atmospheric Administration (NOAA) forwarded the complaints to NMFS.

NMFS performed a thorough and impartial inquiry of the captioned referrals. The assigned Inquiry Officials are not in the chain of command of the subject of the OIG referral.

ALLEGATIONS

The complainants allege that:

1. NMFS employees allowed monk seal volunteers to violate applicable laws, regulations, and policies when interacting with monk seals;
2. a culture of racism exists within PIRO and the monk seal volunteer network;
3. PIRO is not adequately reaching out to the local community to get members involved in the protection of monk seals;
4. [REDACTED] falsified financial accounting reports and invoices, diverted grant money from its intended purpose, and directed how the Hawaiian Monk Seal Response Team Oahu (HMSRTO) spent federal grant money;

¹ The following referrals were incorporated into 13-1292-H, 14-0243-H, and 14-0418-H: 13-0959-N, 13-1012-N, 13-1094-N, 13-1119-N, 13-1135-N, 13-1141-N, 13-1148-N, 13-1246-N, 13-1254-N, 14-0154-N, 14-0301-N, 14-0320-N, 14-0344-N, 14-0360-N, 14-0373-N, 14-0393-N, 14-0442-N, 14-0508-N, 14-0509-N, 14-0593-N, 14-0594-N.



5. PIRO is attempting to supplement their personnel and funding sources by recruiting members of the public to volunteer with the Monk Seal Foundation (MSF);
6. PIRO is providing funds and resources to MSF through inappropriate funding mechanisms and personal relationships;
7. NMFS employees and monk seal volunteers are not complying with applicable laws, regulations, and policies when performing their duties, or when responding to monk seal emergencies;
8. monk seal volunteers are not properly performing their duties;
9. NMFS employees and monk seal volunteers are behaving inappropriately when interacting with members of the public;
10. a monk seal volunteer did not show up for duty, and filed false time sheets and reports;
11. PIRO is not properly screening monk seal volunteers;
12. NMFS is not appropriately monitoring incoming calls from the marine mammal hotline numbers listed on monk seal warning signs;
13. [REDACTED] was inappropriately involved in the management of HMSRTO;
14. PIRO has endorsed monk seal products produced by individuals associated with MSF, and blacklisted monk seal products produced by others;
15. PIRO provides exclusive information to MSF.

METHODOLOGY

The Inquiry Officials interviewed the following NMFS personnel:

1. [REDACTED] Pacific Islands Enforcement Division;
2. [REDACTED] Pacific Islands Fisheries Science Center (PIFSC) Protected Species Division (PSD);
3. [REDACTED] PIRO PSD;
4. [REDACTED] NOAA Office of General Counsel (GC);
5. [REDACTED] PIRO Protected Resources Division (PRD);
6. [REDACTED] PSD;
7. [REDACTED]

8. [REDACTED] Operations, Management, and Information Division (OMID);
9. [REDACTED], PRD;
10. [REDACTED];
11. [REDACTED], OMID;
12. [REDACTED], PRD;
13. [REDACTED];
14. [REDACTED], Office of Protected Resources;
15. [REDACTED]; and
16. [REDACTED].

The Inquiry Officials also interviewed the following non-NMFS personnel:

1. [REDACTED];
2. [REDACTED];
3. [REDACTED];
4. [REDACTED], monk seal volunteer;
5. [REDACTED], monk seal volunteer;
6. [REDACTED], monk seal volunteer;
7. [REDACTED], monk seal volunteer;
8. [REDACTED], monk seal volunteer; and
9. two random members of the Hawaiian populace.

In addition to conducting interviews, the Inquiry Officials conducted multiple onsite visits to monk seal haul out events,² and collected the following documentary evidence: email communications, grant documentation, outreach materials, volunteer manuals, volunteer agreements, and photographs. The Inquiry Officials also reviewed applicable laws, regulations, and policies.

² The term "haul out" refers to the process of a seal leaving the water for any reason, but usually for resting, avoidance, and pupping.

FINDINGS

1. The allegation NMFS employees allowed monk seal volunteers to violate applicable laws, regulations, and policies when interacting with monk seals is unsubstantiated.

Pursuant to federal regulations promulgated under the Marine Mammal Protection Act of 1972 (MMPA)³ and the Endangered Species Act of 1973 (ESA),⁴ it is illegal for any person to take a marine mammal or endangered species.⁵ A take, as defined under these authorities, means "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill" a protected animal.⁶ However, NMFS may issue permits authorizing the take and importation of protected animals.⁷

Two anonymous complainants allege NMFS employees allow volunteers to violate federal laws and regulations by instructing them to interact with monk seals. One complainant contends volunteers do not maintain the appropriate distance from the monk seals. This complainant also states NMFS employees, [REDACTED] and [REDACTED], occasionally ask volunteers to harass seals in order to check the seals' overall health.⁸ Another complainant alleges [REDACTED] has chosen a select group of volunteers to remove entanglements and hooks from monk seals. The complainant avers these volunteers wrestle with monk seals and that sometimes the monk seals get hurt.⁹

The evidence collected during the inquiry lends no support to the complainants' allegations. In 2009, NMFS issued Permit No. 932-1905/MA-009526 (Permit) to the NMFS OPR Marine Mammal Health and Stranding Response Program for research and enhancement activities on marine mammals. The [REDACTED] under the Permit is [REDACTED] who has designated [REDACTED] and [REDACTED] as Co-Investigators (CI). As designated CIs, [REDACTED] and [REDACTED] may direct individuals, such as monk seal volunteers, to interact with monk seals when necessary. According to both [REDACTED] and [REDACTED] if they require immediate information about a monk seal's well-being, they will authorize, and often have authorized, volunteers to approach the seal and harass it in order to gauge its response. Although [REDACTED] coordinates the request with the volunteers [REDACTED] must receive prior approval from either [REDACTED] or [REDACTED]. Interviews did not indicate NMFS employees were authorizing volunteers to interact with monk seals for reasons other than those comporting with the Permit. Given the above, it is reasonable to conclude volunteers are harassing monk seals for lawful purposes as instructed by authorized PIRO staff, and that the complainants' allegations are unsubstantiated.

2. The allegation NMFS employees and monk seal volunteers are not complying with applicable laws, regulations, and policies when performing their duties, or when responding to monk seal emergencies is unsubstantiated.

As previously discussed in allegation 1, federal regulations prohibit a person taking a marine mammal or endangered species. A take, as defined under these authorities, means "to harass, hunt, capture, collect,

³ 16 U.S.C. § 1361 *et seq.*

⁴ 16 U.S.C. § 1531 *et seq.*

⁵ 50 C.F.R. §§ 18.11, 216.11 (1974).

⁶ 50 C.F.R. §§ 18.3, 216.3 (1974).

⁷ 50 C.F.R. §§ 18.33, 216.33 (1996).

⁸ 14-0320-N.

⁹ 14-0418-H.

or kill, or attempt to harass, hunt, capture, collect, or kill" a protected animal. However, under the Permit,¹⁰ NMFS has authorized certain Marine Mammal Health and Stranding Response Program personnel to engage in activities these regulations would otherwise prohibit.

Three confidential complainants allege NMFS employees are not complying with applicable laws, regulations, and policies when responding to monk seal emergencies. In support, the complainants identified several instances they claim demonstrate how NMFS employees have mishandled monk seals.

The first complainant contends NMFS responders mishandled a monk seal with a hook in her mouth.¹¹ According to the complainant, the responders forgot essential tools and were unable to sedate the seal so it escaped back into the water with the hook still in her mouth. The second complainant alleges NMFS responders attempted to force a seal and her pup back into the ocean.¹² The complainant states it was getting dark and there were sharks in the water. The complainant indicates the responders ultimately decided not to force the seals back into the water and chose to erect a protective fence around the seals. According to the complainant, this fence, however, kept falling over and did not protect the seals.

The third complainant outlines multiple instances of alleged misconduct by NMFS responders.¹³ The complainant argues NMFS responders failed to take action to protect a monk seal they knew locals were feeding and playing with until after the seal attacked a reporter. According to the complainant, after the attack NMFS responders moved the seal to an aquarium where NMFS personnel discovered the seal had multiple health issues. The complainant also contends NMFS personnel delayed taking action in response to a monk seal they knew local fishermen were feeding and interacting with. The complainant states NMFS personnel only took action after someone reported these events to a local news channel. The complainant also claims NMFS personnel unnecessarily distressed a male monk seal by separating him from a female monk seal they were attempting fit with a crittercam.¹⁴ Finally, the complainant alleges [REDACTED] delayed assisting a monk seal with a hook in its body to allow a documentary film crew to shoot footage. The complainant attests that [REDACTED] waited too long before attempting to intervene and the seal left the beach with the hook still in him.

The Inquiry Officials questioned [REDACTED] about each incident alleged in the complaints. After thoroughly discussing the circumstances surrounding each event, the Inquiry Officials determined NMFS personnel did not violate federal laws or regulations when interacting with monk seals. All of the incidents described by the complainants involved NMFS personnel attempting to either help an injured or distressed monk seal, or conduct vital monk seal research. Consequently, even if the allegations are factually correct, the activities complained of fall under the protections of the Permit.¹⁵ Individuals authorized under the Permit¹⁶, and their designees, may "[c]arry out response, rescue, rehabilitation and release of threatened marine mammals under NMFS jurisdiction," as well as "[c]onduct health-related, bona fide scientific research . . . [and] Level B Harassment on marine mammals under NMFS and U.S. Fish and Wildlife Service (USFWS)

¹⁰ Permit No. 932-1905/MA-009526.

¹¹ 14-0243-H.

¹² 13-1135-N.

¹³ 14-0418-H.

¹⁴ Crittercam is a small package of instruments including a camera that can be attached to a wild animal to study its behavior in the wild.

¹⁵ Permit No. 932-1905/MA-009526.

¹⁶ Permit No. 932-1905/MA-009526.

jurisdiction."¹⁷ While the unidentified complainants may not agree with the tactics employed by NMFS personnel, there is no evidence their actions were improper or illegal.

In addition, several complainants allege volunteers are violating federal regulations, as well as PIRO's recommended monk seal viewing guidelines, by getting too close to monk seals. One confidential complainant avers certain volunteers get too close to the monk seals and do whatever they please.¹⁸ According to this complainant, at least one volunteer has become "fanatical" to the point of praying in front of seals. Another confidential complainant alleges a volunteer was taking pictures and standing too close to a seal that appeared to be making its way to the beach to haul out.¹⁹ This complainant states the seal became disturbed, turned around, and opted to float between some rocks instead of coming up to the beach. An additional confidential complainant states a volunteer was within three feet of a monk seal pup.²⁰ This complainant alleges that no one is supposed to be within 150 feet of seal pups. Similarly, four other complainants contend they have witnessed volunteers enter the SPZs so they can get close-up pictures of monk seals.²¹ One of these complainants states this is an example of how the volunteers "have been breaking the law for years."²² In a similar vein, another anonymous complainant alleges MSF volunteer [REDACTED] got too close while taking pictures of a four-month-old monk seal.²³ As evidence, the complainant points to [REDACTED] blog entry for [REDACTED]. Lastly, two anonymous complainants allege volunteers regularly enter restricted areas on the perimeter of the Honolulu airport to visit a hauled out monk seal and her pup.²⁴ The complainants state these volunteers get too close to the seals.

The anonymous nature of these complaints limited the Inquiry Officials' ability to gather additional details about each allegation. However, no interviewees stated they were aware of instances where volunteers harassed monk seals. Although the volunteers' alleged actions are not activities covered under the Permit, neither praying in front of monk seals nor standing near or next to a monk seal is a take under the MMPA or ESA unless it rises to the level of harassment. The Inquiry Officials uncovered no evidence indicating the actions described above rose to that level.

Further, to the extent the complainants contend volunteers should not photograph monk seals while on duty, a review of both PIRO's Hawaiian Monk Seal Response Program Volunteer Responder Manual and the MSF Volunteer Handbook reveal that both organizations encourage volunteers to take pictures of monk seals they are monitoring. NMFS personnel often rely on these photographs to document any changes in a monk seal's appearance or to identify injured monk seals. Regarding [REDACTED] photographs, a volunteer interviewee explained that [REDACTED] uses professional grade photography equipment and, therefore, there would be no need for [REDACTED] to get close to monk seals when taking pictures. The Inquiry Officials reviewed [REDACTED] blog entry from the date in question and found no indication of wrongdoing.²⁵

¹⁷ Permit No. 932-1905/MA-009526.

¹⁸ 14-0418-H.

¹⁹ 14-0373-N.

²⁰ 13-1292-H.

²¹ 13-1119-N, 13-1148-N, 13-1254-N, 14-0393-N.

²² 14-0393-N.

²³ 14-0594-H.

²⁴ 13-1012-N, 13-1292-H.

²⁵ [REDACTED]

Regarding the allegation that volunteers regularly enter restricted areas at the Honolulu airport, [REDACTED] explained that an employee from the Transportation Safety Administration (TSA) advised PIRO that a monk seal and her pup hauled out at the airport, and requested PIRO come out and check on them. Because these monk seals were located in a secure location, they only required periodic spot checks. To accommodate this need, TSA allowed monk seal volunteers supervised access to the airport perimeter for short periods.

Given the above, it is reasonable to conclude the allegation NMFS employees and monk seal volunteers are not complying with applicable laws, regulations, and policies when performing their duties, or when responding to monk seal emergencies is unsubstantiated. However, PIRO should make certain it has appropriate controls in place to ensure marine mammal response personnel are properly equipped prior to responding to marine mammal emergencies.

3. *The allegation a culture of racism exists within PIRO and the monk seal volunteer network is unsubstantiated.*

Federal statutes and regulations ensure that federal agencies do not discriminate against an individual on the basis of race, color, religion, national origin, or sex. Pursuant to Title VI of the Civil Rights Act of 1964, programs and activities receiving federal financial assistance may not discriminate against a person in the United States on the basis of race, color, or national origin.²⁶ Similarly, the DOC's implementing regulations prohibit DOC grantees from participating in discriminatory acts.²⁷

Two confidential complainants contend racism exists within PIRO and the Monk Seal Volunteer Response Network. One complainant avers [REDACTED] and [REDACTED] were on a local beach fishing just outside a seal protection zone²⁸ (SPZ) when a volunteer and [REDACTED] approached them.²⁹ The complainant reported that the two volunteers yelled at them and threatened to call law enforcement if [REDACTED] and [REDACTED] did not leave. According to the complainant, the volunteers reacted this way because [REDACTED] is "Hawaiian and brown skin[ned]." A second complainant suggests a culture of racism exists within both PIRO and the volunteer network.³⁰ This complainant states that most PIRO employees and volunteers are *haoles*—persons not descended from the aboriginal Polynesian inhabitants of Hawaii—and that the volunteer network only accepts native Hawaiians into its ranks as a means to fill a race quota.³¹

There is insufficient evidence to corroborate the complainants' allegations. No interviewees stated they witnessed or were aware of PIRO staff or volunteers treating native Hawaiians disparately based on race, or that the volunteer network only accepts native Hawaiians as a means to fill a race quota. While multiple interviewees acknowledged that cultural tensions exist between native Hawaiians and those they view as outsiders, both PIRO and MSF personnel have attempted to quell these tensions and increase local community involvement in the protection of monk seals by engaging in multiple community outreach events. Additionally, the eligibility criteria for the Federal Funding Opportunity (FFO) for the Hawaiian Monk Seal Recovery Program do not require that applicant organizations maintain a race quota to qualify

²⁶ 42 U.S.C. § 2000d (1964).

²⁷ 15 C.F.R. 8.4 (1973).

²⁸ A temporary safety zone posted around seals that have hauled up on the beaches of Hawaii to rest, molt, or pup.

²⁹ 13-1141-N.

³⁰ The complainant does not identify a specific volunteer organization in [REDACTED] allegation. Therefore, the Inquiry Officials assumed the complainant was referring to MSF.

³¹ 14-0418-H.

for grant funds.³² These facts, along with the Inquiry Officials' inability to interview the unnamed complainants, lead the Inquiry Officials to conclude the allegation is unsubstantiated.

4. The allegation PIRO is not adequately reaching out to the local community to get members involved in the protection of monk seals is unsubstantiated.

A confidential complainant states that when [REDACTED] was a member of HMSRTO [REDACTED] worked with PIRO [REDACTED] and that [REDACTED] has not done a good job reaching out to the local Hawaiian community regarding monk seals.³³ The complainant maintains that monk seal knowledge among the local Hawaiian population has barely increased.

According to [REDACTED] PIRO engages in public outreach and education in several ways. For example, PIRO employees and volunteers periodically set up booths at local civic events, allowing them the opportunity to interact with the public and distribute educational materials regarding monk seals. PIRO personnel also attend town hall meetings with members of the public in order to discuss monk seal related topics. [REDACTED] also provided the Inquiry Officials with examples of some of the outreach materials PIRO produces. The samples included pamphlets, booklets, and brochures focused on educating the public about the history, cultural significance, and protected status of the Hawaiian monk seal.

[REDACTED] stated that PIFSC personnel also attempt to educate the public about monk seals. For example, PIFSC recently collaborated with National Geographic to place crittercams on several monk seals in an effort to increase the public's knowledge of monk seal behavior.³⁴

The Inquiry Officials spoke with two random members of the local population about their knowledge of monk seals. Both stated they understood the Hawaiian monk seal was an endangered species. More importantly, these individuals expressed no animosity towards monk seals or the efforts to save the species.

The evidence reflects that both PIRO and PIFSC perform a significant amount of community outreach and have taken noteworthy steps to educate the Hawaiian population about monk seals. The complainant's allegation is unsubstantiated.

5. The allegations [REDACTED] falsified financial accounting reports and invoices, diverted grant money from its intended purpose, and directed how HMSRTO spent federal grant money are unsubstantiated.

When applying for federal grant funds, a potential grantee must include as part of its application a completed Standard Form 424a detailing its projected expenditures for the grant period.³⁵ After receiving an award, the recipient is responsible for accurately reporting the grantee's financial and program

³² Federal Funding Opportunity Number NOAA-NMFS-PIRO-2014-2003964, *2014 Partnerships for the Hawaiian Monk Seal Recovery Program*, available at <http://www.grants.gov/view-opportunity.html?oppld=248773>.

³³ 14-0418-H.

³⁴ See National Geographic Daily News, *Crittercams and Crowdsourcing to Solve Mystery of Hawaiian Monk Seals?*, (August 19, 2013) available at <http://news.nationalgeographic.com/news/2013/08/130819-hawaiian-monk-seal-crittercam-conservation-ocean-science/>.

³⁵ 15 C.F.R. § 14.11 (1998).

performance to the awarding agency.³⁶ The awarding agency reviews these reports to ensure the grantee is complying with the terms of the grant.³⁷

An anonymous complainant contends [REDACTED] was complicit in HMSRTO³⁸ diverting grant money from its intended purpose and falsifying periodic financial reports and invoices submitted to NMFS.³⁹ In addition, the complainant alleges [REDACTED] directed HMSRTO to use a portion of its grant money to purchase a seal cage that PIRO management would not fund.

The anonymous nature of these complaints, and the lack of specificity in the allegations regarding diverting grant money from its intended purpose and falsifying financial reports and invoices, limited the Inquiry Officials' ability to gather details on these claims.

The evidence does not support the complainant's allegation that [REDACTED] assisted HMSRTO in diverting grant money and falsifying periodic reports and invoices. As with any grant applicant, HMSRTO was required to submit a detailed grant proposal outlining its anticipated financial needs. In addition, after receiving grant funds, HMSRTO was required to submit periodic reports to PIRO documenting its expenditure of grant funds. [REDACTED], PIRO's [REDACTED], stated that a designated technical monitor at PIRO reviews these periodic reports to ensure the activities reported are in concert with the original grant proposal. If the designated technical monitor finds significant concerns when [REDACTED] reviews the periodic reports [REDACTED] will alert [REDACTED], and [REDACTED] will more closely examine the grantee's financial records.

The Inquiry Officials independently reviewed HMSRTO's grant documents and found no reason to doubt their veracity. Moreover, according to HMSRTO's [REDACTED], as well as the [REDACTED] [REDACTED] HMSRTO had to outline its expenditures in its grant proposal prior to receiving federal grant funds. Both volunteers stated that neither [REDACTED], nor any other NMFS employee, helped them prepare the proposal or dictated how HMSRTO spent the grant money it received. Further, according to [REDACTED], HMSRTO's periodic expenditure reports never contained information raising concerns that a closer examination of the reports was necessary. Finally, no interviewees stated that the periodic reports HMSTRO submitted to PIRO contained false information.

Regarding the allegation that [REDACTED] falsified invoices, the Inquiry Officials determined PIRO did not require HMSTRO submit invoices with their periodic reports, or for any other reason; and HMSTRO never submitted invoices to PIRO. Consequently, there were no invoices to falsify.

Regarding the allegation that HMSRTO purchased a seal cage at [REDACTED] behest, the Inquiry Officials questioned multiple NMFS personnel and monk seal volunteers and found no evidence supporting the complainant's assertion. None of the interviewees indicated they had knowledge of HMSRTO purchasing a monk seal cage at [REDACTED] request. According to [REDACTED] had no recollection of requesting HMSRTO use a portion of its grant money to purchase a seal cage, or that HMSTRO ever owned a seal cage. Likewise, a key volunteer confirmed that [REDACTED] never requested HMSRTO purchase a monk seal cage, and that HMSRTO never owned a monk seal cage.

³⁶ 15 C.F.R. §§ 14.50 – 14.53 (1998).

³⁷ 15 C.F.R. § 14.50 (1998).

³⁸ HMSRTO was the primary Hawaiian monk seal volunteer response organization until merging with MSF in 2013.

³⁹ 14-0418-H.

Although the evidence does not support the specific allegations raised by the complainant, the Inquiry Officials identified a potential area of concern. Evidence reflects that [REDACTED] in [REDACTED] capacity as PIRO's [REDACTED], works closely with volunteer response and recovery organizations currently receiving grants from PIRO. In addition, [REDACTED] routinely serves as a reviewer on PIRO's grant evaluation panel. Although a [REDACTED] serving as a reviewer on PIRO's grant evaluation panel may not constitute an inherent conflict of interest under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct),⁴⁰ a reasonable person could perceive [REDACTED] service in both these functions leads [REDACTED] to favor existing grantee organizations over new applicant organizations. Consequently, PIRO should ensure adequate internal controls are in place to safeguard the real and perceived neutrality of its grant evaluation panel.

6. The allegation PIRO is attempting to supplement its personnel and funding sources by recruiting members of the public to volunteer with MSF is unsubstantiated.

Pursuant to 16 U.S.C. § 742(c)(1), the Secretary of Commerce may recruit volunteers "for, or in aid of programs conducted by . . . [NOAA]." Relying on this authority, DAO 202-311 permits NOAA to "recruit, train, and accept the services of volunteer workers for or in aid of programs related to fish and wildlife programs or activities."

The complainant attests PIRO urges people to join MSF in order to increase its membership, which complainant contends increases the amount of grant money available to MSF.⁴¹ According to the complainant, PIRO uses volunteers to counter NMFS' reduced budget. Specifically, the complainant claims PIRO hosts "day out events" where it advertises MSF and informs people the only way to help the monk seals is to volunteer. The complainant argues PIRO should not ask individuals to join a NGO.

The evidence does not support the complainant's allegation. As an initial matter, PIRO's [REDACTED] [REDACTED] indicated that the number of volunteers in MSF has no effect on the amount of federal grant money MSF receives under the FFO. The Inquiry Officials reviewed the FFO and found no correlation between the number of volunteers in an organization and the amount of grant money PIRO may award to that organization.

Further, in accordance with the terms of the FFO, PIRO and MSF operate under a cooperative agreement outlining each entity's responsibilities in their coordinated effort to protect and manage monk seals. According to the FFO, projects funded through a cooperative agreement are subject to substantial involvement by the Federal Government. Under the cooperative agreement, PIRO agreed to acknowledge MSF as an essential partner in its monk seal conservation efforts, and MSF agreed to participate in NOAA led programs. Given PIRO's and MSF's mutual responsibilities under the cooperative agreement, it is reasonable to expect that PIRO and MSF would participate jointly in community outreach programs such as its "day out events."

According to PIRO management, volunteers are essential to the success of NMFS monk seal conservation efforts. As previously indicated, DAO 202-311 authorizes NMFS, as a line service of NOAA, to recruit volunteers to assist in its mission to protect monk seals. In addition, PIRO has a strong interest in ensuring

⁴⁰ Pursuant to the Standards of Conduct, executive branch employees should endeavor to avoid any actions that create even the appearance of bias towards a private organization. 5 C.F.R. § 2635.101(b)(8), (14) (1997).

⁴¹ 14-0418-H.

the continued success of one of its essential partners in monk seal conservation efforts. Given the above, it is reasonable to conclude the allegation that PIRO is attempting to supplement its personnel and funding sources by recruiting members of the public to volunteer with MSF is unsubstantiated.

7. *The allegation PIRO is providing funds and resources to MSF through inappropriate funding mechanisms and personal relationships is unsubstantiated.*

Pursuant to federal regulation, DOC operating units must award funds through either a grant or a cooperative agreement when the principal purpose of the award is to accomplish a public purpose of support.⁴² However, when there will be substantial involvement between the agency and the recipient in carrying out the contemplated activity, the operating unit must award the funds through a cooperative agreement.⁴³

Two anonymous complainants allege PIRO is providing extra funding and resources to MSF in addition to the grant funds it receives. The first complainant alleges PIRO is providing and funding all MSF volunteer training.⁴⁴ The complainant contends MSF is getting extra help from PIRO because "management has personal relationships and personal interests in pursuing more grants to sponsor their egos further." According to the complainant, the relationship creates a disadvantage for other organizations because they do not have "friendly contacts" with the Federal Government.

Similarly, the second complainant states that PIRO facilitates MSF volunteer training; including the training venue, materials, and presentations.⁴⁵ The complainant further alleges that PIRO not only provides all of the training, it also provides MSF with all of its informational brochures and signage despite the fact MSF receives federal grant funds.

The evidence does not support the complainants' allegations. As previously discussed in allegation 5, according to the FFO under which MSF receives funds, projects funded through a cooperative agreement are subject to substantial involvement by the Federal Government. Such substantial involvement may include "NMFS staff assisting in the development of outreach materials[,] . . . conduct and facilitation of meetings[,] and . . . training . . . of volunteers."⁴⁶ Consequently, the extra funding from PIRO to MSF alleged by the complainants does not stem from an improper relationship between PIRO and MSF. Instead, it is the result of PIRO providing funds to MSF through a proper cooperative agreement that allows PIRO to be substantially involved in the development of outreach materials and training of MSF volunteers. In addition, no evidence was discovered through interviews supporting the notion that improper relationships exist between PIRO and MSF personnel resulting in a disadvantage for other organizations. Given the above, the allegation PIRO is providing funds and resources to MSF through inappropriate funding mechanisms and personal relationships is unsubstantiated.

⁴² 15 C.F.R. § 14.11(a) (2000).

⁴³ 15 C.F.R. § 14.11(a) (2000).

⁴⁴ 13-1094-N.

⁴⁵ 13-1246-N.

⁴⁶ Federal Funding Opportunity Number NOAA-NMFS-PIRO-2014-2003964, 2014 Partnerships for the Hawaiian Monk Seal Recovery Program, available at <http://www.grants.gov/view-opportunity.html?opId=248773>.

8. *The allegation monk seal volunteers are not properly performing their duties is unsubstantiated.*

Multiple unidentified complainants allege volunteers failed to take actions to protect monk seals, such as placing warning signs or erecting SPZs. Two complainants aver they told volunteers about monk seals hauled out nearby, but the volunteers failed to take any measures to protect the seals.⁴⁷ Another complainant alleges volunteers failed to protect a monk seal hauled out on a dirt road used by hikers and vehicles.⁴⁸ The complainant contends volunteers knew about the monk seal, but did nothing to protect it.

Additional complainants contend monk seal volunteers have not followed proper procedures when performing their duties. First, a complainant states volunteers left a SPZ set up for months. According to the complainant, volunteers originally erected the SPZ after a monk seal gave birth.⁴⁹ The complainant reports [REDACTED] visits this site a couple times a week and the SPZ has grown "ridiculously large" despite the fact [REDACTED] has not seen a monk seal or volunteers. Next, another complainant alleges a volunteer was smoking, possibly drinking, and parked illegally while on duty.⁵⁰ Last, an anonymous complainant submitted a link to a captioned YouTube video that purportedly shows a monk seal volunteer failing to protect a monk seal.⁵¹

Regarding the allegations that volunteers failed to take actions to protect hauled out monk seals, both complainants indicate the volunteers in question were already tending to monk seal pups when the complainants informed them of other possible hauled out adult monk seals. According to [REDACTED], the PIRO [REDACTED], monk seals are increasingly hauling out on Hawaii's heavily populated main islands. As a result, NMFS scientists have learned that monk seals have a higher threshold for disturbance than previously believed. Given this knowledge, along with the limited number of volunteers available at any given time, the Inquiry Officials find it is reasonable that volunteers would opt to provide protection and education at known pupping sites rather than respond to an unverified report of a hauled out adult monk seal.

Concerning the allegations that volunteers are not following proper procedures when performing their duties, the Inquiry Officials found no evidence supporting the complainants' claims. A SPZ is not a legal boundary, but a protection mechanism developed by NMFS personnel. As explained in the Seal Protection Zone Guidelines (Guidelines) PIRO provides to volunteers, simply entering a SPZ, or even approaching a monk seal, is not a violation of the ESA or MMPA unless doing so disturbs or harasses the monk seal. According to the Guidelines, circumstances surrounding a haul out event dictate the parameters of a SPZ. Although SPZs are not normally erected for longer than a day, there are special cases where SPZs may need to be left unattended for greater periods. The pupping event described by the complainant would be an example of a prolonged use of a SPZ. Further, the fact the complainant noticed that the SPZ's boundaries changed over time indicates that monk seal response personnel were monitoring it and altering it as needed.

Regarding the allegation that a MSF volunteer was smoking and possibly drinking while on duty, the MSF Volunteer Handbook clearly prohibits MSF volunteers from engaging in such behavior while on duty. The

⁴⁷ 14-0301-N, 14-0509-N.

⁴⁸ 14-0360-N.

⁴⁹ 14-0442-N.

⁵⁰ 14-0593-N.

⁵¹ 14-0154-N.

Inquiry Officials confirmed the [REDACTED] pictured in the photograph attached to the complaint is a current MSF volunteer. However, the anonymous complainant's picture does not show where the subject was when the complainant photographed [REDACTED]; nor does it evidence [REDACTED] was on-duty at the time. The picture simply shows the subject is smoking [REDACTED] is not wearing a MSF volunteer t-shirt, and there is no visible evidence [REDACTED] is located near a SPZ or a public beach. Based on this limited information, the Inquiry Officials are unable to substantiate the complainant's allegations. Regarding the allegation that this same MSF volunteer was illegally parked while on duty, the Inquiry Officials were unable to corroborate through interviews that any MSF volunteers had parked their vehicles illegally while on duty.

Finally, the YouTube video referenced by the complainant shows a MSF volunteer taking down the complainant's makeshift SPZ, which it seems is constructed out of driftwood. According to several NMFS personnel, makeshift SPZs fabricated with driftwood stakes or rocks can be dangerous and may result in injury to a monk seal. Further, to the extent the complainant alleges the volunteer failed to erect a replacement SPZ to protect the seals, the video reflects the seals hauled out on a remote rocky beach. The video also shows two individuals taking pictures of monk seals; however, there is no indication the seals were being harassed or disturbed. According to [REDACTED], SPZs are not always necessary and should be the exception, not the rule. Similarly, PIRO's Guidelines state volunteers should not construct a SPZ if a monk seal hauls out on a beach where a SPZ would not be practical. The Guidelines instruct volunteers to consider the behavior of the hauled out monk seal, the nature of the beach, and the number of people on the beach. Given the conditions and remote location of the beach in the video, the Inquiry Officials find it was reasonable for the volunteer to take down a dangerous makeshift SPZ to protect the monk seal from potential injury and not erect an unnecessary replacement SPZ.

Given the above, the allegation monk seal volunteers are not properly performing their duties is unsubstantiated.

9. *The allegation NMFS employees and monk seal volunteers are behaving inappropriately when interacting with members of the public is unsubstantiated.*

The Standards of Conduct mandate that executive branch employees adhere to the ethical standards established by their employing agency.⁵² For DOC employees, the use of improper or obscene language is an offense punishable under DAO 202-751.

According to an anonymous complainant [REDACTED] and a group of friends were on Oahu's North Shore when they encountered a NOAA employee named [REDACTED] standing very close to a monk seal.⁵³ The complainant states [REDACTED] asked [REDACTED] questions about monk seals when [REDACTED] "suddenly started screaming at us . . . and telling me with the f-word to get out of there and not molest the seals." The complainant indicated [REDACTED] became very upset and left the area.

There is insufficient evidence to corroborate the complainant's allegation [REDACTED] is no longer a federal employee and the Inquiry Officials were unable to interview [REDACTED]. Additionally, according to multiple NMFS employees and monk seal volunteers [REDACTED] was a very personable employee and it is highly unlikely [REDACTED] would have acted in the manner alleged. These facts, along with the Inquiry Officials' inability to

⁵² 5 C.F.R. § 2635.101(a) (1992).

⁵³ 13-0959-N.

interview the anonymous complainant, lead the Inquiry Officials to conclude this allegation is unsubstantiated.

Next, three unidentified complainants allege monk seal volunteers behave inappropriately when interacting with the public. One complainant alleges [REDACTED] was jogging when a volunteer "appeared from some bushes" and asked [REDACTED] to stop and get back.⁵⁴ The complainant states another volunteer approached [REDACTED] and abruptly asked why [REDACTED] had not respected the monk seal warning signs. A second complainant avers [REDACTED] and [REDACTED] were fishing with a net just outside a SPZ set up to protect a monk seal and her newborn pup.⁵⁵ According to the complainant, a volunteer and [REDACTED] yelled at [REDACTED] and [REDACTED] to leave because they were disturbing the monk seals. The complainant states the volunteers threatened to call law enforcement despite the fact the monk seals were far away and did not seem to notice [REDACTED] and [REDACTED] were nearby. A third complainant states [REDACTED] parked [REDACTED] car four feet from cones and ropes on a beach.⁵⁶ The complainant avers a volunteer there gave her a "bad look," did not say hello, and told [REDACTED] had to remove [REDACTED] car from the area because it was disturbing a sleeping baby seal.

Multiple NMFS employees stated they had never observed monk seal volunteers exhibit inappropriate behavior towards members of the public. According to [REDACTED], the monk seal volunteers are generally "passionate, but pleasant." [REDACTED] clarified, however, that it is common for some members of the public to curse at volunteers or even refer to them as a "[f]-jing haolie" when they erect SPZs. These situations can be sources of great stress for volunteers.

To assist the volunteers, PIRO PRD developed and distributed a guide titled "*Hawaiian Monk Seal Response Volunteer Guidelines on Dealing with Difficult People*." This guide offers volunteers advice on how to behave should they encounter a hostile person while performing their duties. In addition, the guide provides information on actions volunteers should take if they witness a blatant or extreme take of a monk seal, i.e., they should safely gather as much information as possible and report the incident to law enforcement. MSF has also incorporated this guide into its Volunteer Handbook.

The Inquiry Officials discretely visited multiple haul out sites and found no evidence of inappropriate behavior by monk seal volunteers. The Inquiry Officials did not reveal themselves until they had spent a considerable amount of time interacting with each volunteer and observing how the volunteer interacted with the public. In each case, the volunteers were pleasant and offered to educate the Inquiry Officials about the Hawaiian monk seal. These observations, coupled with [REDACTED] statements regarding monk seal volunteers, lead the Inquiry Officials to conclude the allegations are unsubstantiated.

However, given the potential for contentious situations to arise at haul out sites, especially those that occur on heavily populated beaches, the Inquiry Officials recommend PIRO ensure all monk seal response volunteers receive regular training in how to communicate effectively with members of the public. The Inquiry Officials further recommend PIRO employees conduct random and unannounced onsite observations to ensure volunteers are following volunteer guidelines.

⁵⁴ 14-0344-N.

⁵⁵ 13-1141-N.

⁵⁶ 13-1292-H

10. The allegations a monk seal volunteer did not show up for duty, and filed false time sheets and reports are unsubstantiated.

An anonymous complainant alleges a monk seal volunteer filed false time sheets and reports with PIRO.⁵⁷ The complainant reports this volunteer signed up to look after a young monk seal for three hours, but never showed up. The complainant further states this volunteer has filed similar false time sheets and reports in the past.

Regarding the allegation that a volunteer signed up to look after a monk seal for three hours, but never showed up, the Inquiry Officials were unable to corroborate through interviews that any volunteers had not shown up for duty. Regarding the allegation that this same volunteer filed false time sheets and reports, the Inquiry Officials determined the complainant's allegation is factually incorrect. According to [REDACTED], PIRO does not require that volunteers submit time sheets or reports regarding shifts they cover. Likewise, [REDACTED] MSF [REDACTED] indicated volunteers are not required to submit official time sheets, and volunteers receive no financial compensation from the organization.

Given the above, the allegations a monk seal volunteer did not show up for duty, and filed false time sheets and reports are unsubstantiated.

11. The allegation PIRO is not properly screening monk seal volunteers is substantiated.

Chapter 11 of the DOC Manual of Security Policies and Procedures states, "every position in the [DOC] requires some level of investigative processing for suitability and/or security." For volunteers with an official association with a DOC operating unit, the type of investigation depends on the risk associated with the volunteer work and the anticipated period of association. At a minimum, the operating unit should conduct a Special Agreement Check on all low-risk volunteers.

A confidential complainant alleges PIRO has not properly screened its volunteers.⁵⁸ The complainant maintains "there is no recruiting policy applied to those who officially represent [NOAA] on the beach."

The evidence collected during the course of the inquiry supports the complainant's allegation. Interviewees revealed that many monk seal volunteers have signed both NOAA and MSF volunteer agreements. However, the evidence demonstrates none of the official NOAA monk seal volunteers underwent security screening prior to entering a volunteer agreement with NOAA.

To determine the appropriate security requirements for NOAA volunteers, the Inquiry Officials consulted two security experts, [REDACTED] NOAA [REDACTED], and [REDACTED] DOC Western [REDACTED]. According to both [REDACTED] and [REDACTED] operating non-student volunteers affiliated with NOAA who interact with the public should have a fingerprint and name check. These two checks will serve to provide NOAA personnel with the potential volunteer's criminal history.

Based on the evidence, the Inquiry Officials conclude PIRO has not adequately screened its official monk seal volunteers. PIRO management should coordinate with NOAA's Security Office to ensure that its volunteers undergo appropriate security investigations.

⁵⁷ 14-0508-N.

⁵⁸ 14-0418-H

12. The allegation NMFS is not appropriately monitoring incoming calls from the marine mammal hotline numbers listed on monk seal warning signs is unsubstantiated.

A confidential complainant contends [REDACTED] was fishing at Turtle Bay, Oahu where [REDACTED] noticed a monk seal hauled out on the beach.⁵⁹ According to the complainant, tourists gathered around the monk seal to take pictures of him. The complainant allegedly approached two volunteers in the area and asked them to put signs around the monk seal. The complainant states the volunteers did not comply with [REDACTED] request, and [REDACTED] subsequently "called the hotline number on the signs, but nobody answered."

The Inquiry Officials uncovered no evidence corroborating the complainant's allegation. As a practical matter, due to the complainant's desire to remain confidential, the Inquiry Officials could not determine whether the volunteers had access to monk seal signs at the time in question, or that the circumstances warranted placing signs around the reported monk seal.

Further, the complainant did not identify the specific sign to which [REDACTED] refers in his complaint, what number [REDACTED] attempted to call, or when [REDACTED] attempted to call the number. However, the Inquiry Officials presume the complainant is referring to the yellow monk seal signs supplied by PIRO. Evidence reveals that two phone numbers typically appear on monk seal signs—a printed number (1-888-256-9840) and a handwritten number (1-808-220-7802). The printed number (1-888-256-9840) is a national marine stranding network number. The signs instruct individuals wishing to report marine mammal emergencies and monk seal sightings to call this number. NMFS engineered the national hotline to route calls directly to the region from which it originated. In the instant case, the hotline routes calls made from Hawaii directly to PIRO, which is responsible for handling the calls. In contrast, the handwritten number (1-808-220-7802) is for the local monk seal sightings hotline. Interviewees report the individual island marine mammal [REDACTED] [REDACTED] handwrite their island's monk seal sighting hotline number directly on the monk seal signs.⁶⁰

According to [REDACTED], a mix of island coordinators, federal contractors, PIRO personnel, and monk seal volunteers monitor both hotline numbers. In the event the individual on duty is unable to answer the call, a voice message directs callers to leave a message and their contact information. If the caller leaves their contact information, the individual staffing the hotline that day will return their call as soon as possible to gather details about the monk seal sighting. [REDACTED] indicated that hotline personnel strive to return all phone calls within 15 minutes, and the only time a hotline monitor would not return a call would be if he or she is already aware of a particular monk seal event. [REDACTED] further stated monk seal response personnel take calls constantly throughout the day, and, therefore, he believes the hotlines function properly.

Although the allegation unsubstantiated, the evidence reveals some hotline calls may go unanswered if the individual monitoring the hotline is already aware of the reported monk seal event. To ensure hotline callers receive a high level of customer service, the Inquiry Officials recommend PIRO leadership adopt a policy that all hotline monitors timely respond to hotline callers; regardless of whether the hotline monitor is aware of the reported event.

⁵⁹ 14-0301-N.

⁶⁰ The island coordinators are comprised of a mix of federal employees, state employees, and volunteers.

13. The allegation [REDACTED] was inappropriately involved in the management of HMSRTO is unsubstantiated.

An anonymous complainant contends [REDACTED] "took charge" of HMSRTO and "forced [REDACTED] desires" on the organization.⁶¹ According to the complainant, [REDACTED] placed [REDACTED] close friends on HMSRTO's board of directors and gave them increasing importance within the organization. The complainant further alleges [REDACTED] ensured only those volunteers with whom [REDACTED] had personal relationships received advanced monk seal response training.

Regarding the allegation that [REDACTED] took charge of, and forced [REDACTED] desires on, HMSRTO, [REDACTED] recounted that HMSRTO began as a group of community members who, after being involved with a monk seal molting event, wanted to start a NGO. [REDACTED] indicated [REDACTED] encouraged the idea, but insisted [REDACTED] was not a part of HMSTRO's development or involved in writing their grant applications. While [REDACTED] described [REDACTED] relationship with HMSTRO's leadership as "friendly," [REDACTED] stated [REDACTED] did not socialize with them outside of work. Similarly, [REDACTED] PIRO PRD Marine Mammal [REDACTED], explained that because PIRO wants to encourage individuals and organizations to join the monk seal response network, whenever PIRO personnel encounter individuals wishing to get involved they explain the process of forming a NGO and provide them with a model to follow. According to a founding member of HMSRTO, they modeled the organization after the existing Sea Turtle Response Network. This same individual also wrote HMSRTO's original grant proposal and confirmed that [REDACTED] did not assist [REDACTED] in preparing the document. As previously explained, HMSRTO received its funds through a FFO and operated under a cooperative agreement with PIRO. According to the FFO, NMFS anticipated being substantially involved in the management and operation of programs operating under a cooperative agreement. This substantial involvement included "training and management of volunteers." Consequently, there is insufficient evidence for the Inquiry Officials to conclude [REDACTED] involvement with HMSRTO went beyond the limits of the substantial involvement statement.

Regarding the allegation that [REDACTED] placed [REDACTED] close friends on HMSRTO's board of directors, none of the volunteer interviewees indicated [REDACTED] influenced the selection of HMSRTO's board of directors.

Regarding the allegation that [REDACTED] ensured only certain individuals received advanced training, the Inquiry Officials first note that the complainant has not identified the advanced training these individuals purportedly received. Nonetheless, several interviewees reported a small number of volunteers have received training at the Marine Mammal Center (MMC) in California. According to HMSRTO's former [REDACTED] while the organization would consider input from PIRO PRD personnel, HMSRTO's board decided which volunteers would go to MMC. The board based this decision primarily on the experience, availability, and ability of the candidates.

Given the above, the allegation [REDACTED] was inappropriately involved in the management of HMSRTO is unsubstantiated.

⁶¹ 14-0418-H.

14. The allegation PIRO has endorsed monk seal products produced by individuals associated with MSF and blacklisted monk seal products produced by others is unsubstantiated.

Federal employees must perform their duties impartially and not give preferential treatment to any private organization or individual.⁶² Specifically, the Standards of Conduct prohibit executive branch employees from using their official positions to suggest the agency endorses an organization, product, service, or person.⁶³

According to an anonymous complainant, PIRO personnel abuse their positions by attempting to control merchandising of monk seal products.⁶⁴ The complainant avers [REDACTED] and other NMFS personnel support unfair competition by endorsing products produced by individuals or groups they support, i.e., MMC and MSF, while boycotting the merchandise of others. As an example, the complainant states [REDACTED] is a nature photographer who, prior to departing HMSRTO, was developing a book that NOAA and the MMC were prepared to endorse. However, the complainant indicates that after leaving HMSRTO neither organization would endorse [REDACTED] book. The complainant states it soon became apparent that NOAA was using its influence to boycott [REDACTED] work.

In a similar vein, another anonymous complainant alleges NOAA endorsed the work of MSF volunteer, [REDACTED].⁶⁵ The complainant avows that [REDACTED] used pictures of monk seals to create a NOAA-endorsed monk seal calendar for MSF to advertise and sell.

None of the evidence collected during the course of the inquiry supports the anonymous complainants' allegations. First, the Inquiry Officials found no indication PIRO was involved in the merchandising of monk seal products. According to multiple interviewees, PIRO neither endorses nor sells monk seal merchandise. Additionally, a review of both the PIRO and PIFSC websites revealed no monk seal products were available for purchase.

Second, the evidence reflects [REDACTED] calendar was solely a MSF project. According to the MSF [REDACTED] is a professional photographer who assembled a calendar for MSF. NOAA did not endorse the calendar and a portion of the proceeds went directly to MSF. The Inquiry Officials independently reviewed the website [REDACTED] uses to sell [REDACTED] photographs and calendars and found no mention of NOAA, NMFS, PIRO, or PIFSC.⁶⁶ The front cover of [REDACTED] calendar, however, did state that a portion of the proceeds would go directly to MSF.

Given the above, the allegation PIRO has endorsed monk seal products produced by individuals associated with MSF and blacklisted monk seal products produced by others is unsubstantiated.

⁶² 5 C.F.R. § 2635.102(b)(8) (1997).

⁶³ 5 C.F.R. § 2635.702(c) (1997).

⁶⁴ 14-0418-H.

⁶⁵ 14-0594-H.

⁶⁶ [REDACTED].

15. The allegation PIRO provides exclusive information to MSF is unsubstantiated.

A confidential complainant alleges that PIRO provides "exclusive information" to MSF, which MSF then shares with volunteers and donors.⁶⁷ The complainant contends PIRO should not provide this information to anyone or, alternatively, should publish it in a manner that allows all interested parties to access it.

Because the complainant did not describe what kind of exclusive information PIRO is allegedly providing to MSF, the Inquiry Officials were not able to inquire into a specific transfer of information. The only source of information provided from PIRO to MSF that the Inquiry Officials were able to identify is the Oahu MMRN Weekly Updates, a weekly newsletter PIRO publishes and emails to active volunteers. The newsletter's purpose is to provide the volunteers with updates and information about monk seal related issues, such as changes in protocols and policies, updates on particular monk seals, or future volunteer opportunities. [REDACTED] stated the newsletter does not contain sensitive information or confidential information. The Inquiry Officials independently reviewed a weekly newsletter and found no evidence PIRO is providing the volunteers with sensitive or confidential information. As noted previously, PIRO and MSF operate under a cooperative agreement. Given this relationship, it is reasonable that PIRO provide MSF with information concerning monk seal preservation efforts.

Although the allegation unsubstantiated, the Inquiry Officials conclude some members of the public may have an interest in the information contained in the Oahu MMRN Weekly Updates. The Inquiry Officials recommend PIRO leadership consider publishing the newsletter on their website.

RECOMMENDATION FOR CORRECTIVE ACTION

Allegations 1, 3, 4, 6, 7, 8, 10, 13, and 14 are unsubstantiated.

Allegation 2 is unsubstantiated. However, PIRO should make certain it has appropriate controls in place to ensure marine mammal response personnel are properly equipped prior to responding to marine mammal emergencies.

Allegation 5 is unsubstantiated. However, the Inquiry Officials recommend PIRO leadership ensure adequate internal controls are in place to guard against real and perceived bias in its grant evaluation process.

Allegation 9 is unsubstantiated. However, the Inquiry Officials recommend PIRO leadership ensure all monk seal response volunteers receive regular training centered on communicating with members of the public. The Inquiry Officials further recommend PIRO and PIFSC conduct random and unannounced onsite observations to ensure monk seal response volunteers are conducting themselves appropriately.

Allegation 11 is substantiated. The Inquiry Officials recommend PIRO leadership coordinate with NOAA's security office to ensure all NOAA volunteers undergo the proper security screening. At a minimum, these security screening should include fingerprinting and name checks.

⁶⁷ 14-0418-H.

Allegation 12 is unsubstantiated. However, the Inquiry Officials recommend PIRO leadership adopt a policy that all hotline callers receive a timely response; regardless of whether the hotline monitor is aware of the reported event.

Allegation 15 is unsubstantiated. However, the Inquiry Officials recommend PIRO leadership consider publishing the Oahu MMRN Weekly Updates newsletter on the PIRO website.

Forward any additional request for information to [REDACTED] or [REDACTED]
[REDACTED] will maintain the case file for all record purposes.

DECLARATION OF INDEPENDENCE

Assignment Title: MONK Seals (24)

Assignment Number: _____

I hereby certify that I am aware that in all matters related to this administrative inquiry, I must be free, both in fact and appearance, for the duration of this administrative inquiry, from all personal and external impairments arising from my interaction with any organizations, programs, and individuals involved in this inquiry.

I understand that if any such impairments exist, or arise, they can affect my impartiality in performing the administrative inquiry and reporting the results, and I must therefore withdraw from performing the inquiry.


I hereby certify that to the best of my knowledge and belief, I am free from any such impairments to independence and that if any impairment should arise during this inquiry, I will cease performing the inquiry and immediately bring the matter to the attention of my supervisor.

Printed Name

Title and Grade

Signature

Date


5/5/14

DECLARATION OF INDEPENDENCE

Assignment Title:

Monk Seals

Assignment Number:

13-1292-N, 14-0243-H, and 14-0418-FC 13-0008-N, 13-1012-N, 13-1094-N, 13-1119-N, 13-1135-N, 13-1141-N, 13-1148-N, 13-1246-N, 13-1254-N, 14-

I hereby certify that I am aware that in all matters related to this administrative inquiry, I must be free, both in fact and appearance, for the duration of this administrative inquiry, from all personal and external impairments arising from my interaction with any organizations, programs, and individuals involved in this inquiry.

I understand that if any such impairments exist, or arise, they can affect my impartiality in performing the administrative inquiry and reporting the results, and I must therefore withdraw from performing the inquiry.

I hereby certify that to the best of my knowledge and belief, I am free from any such impairments to independence and that if any impairment should arise during this inquiry, I will cease performing the inquiry and immediately bring the matter to the attention of my supervisor.

Printed Name

Title and Grade

Signature

Date

09/04/2014

**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

MEMORANDUM FOR: [REDACTED]

FROM: [REDACTED]

SUBJECT: Inspector General Referral No. 16-0569-H
Re: Super Bowl Weather Prediction (NOAA/NWS)

This memorandum responds to your request for administrative resolution of the subject referral. The referral is based on an allegation that NWS senior managers in Seattle attended the Super Bowl in San Francisco to support weather predictions and this was a waste of resources as the Northern California office was capable of handling the work.

On behalf of NOAA, [REDACTED], National Weather Service, conducted an inquiry to ascertain the facts pertaining to the complaint. In the interest of ensuring objectivity, transparency, and accountability for complaints referred to our office, we assert that [REDACTED] is independent of individuals and matters that are the subject of this complaint.

During the course of the inquiry, [REDACTED] interviewed NOAA employees and reviewed documents and found there was no evidence to support the allegations. We believe this referral matter should be closed.

A copy of our inquiry report is attached. If you have questions, please contact [REDACTED] on [REDACTED].

Attachments





U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration
NATIONAL WEATHER SERVICE
1325 East-West Highway
Silver Spring, Maryland 20910-3283

MAR 28 2016

MEMORANDUM FOR:

[REDACTED]
[REDACTED]
Audit Internal Control & Information Management

FROM:

[REDACTED]
[REDACTED] Management & Organization Division

SUBJECT:

Inspector General Action Referral No. 16-0569-H
Re: Super Bowl Weather Prediction (NOAA/NWS)

The above subject Office of Inspector General (OIG) referral was provided to NOAA's National Weather Service (NWS) with the recommendation to perform an administrative inquiry, report findings, as appropriate, and propose any corrective actions. [REDACTED]
[REDACTED] NWS, Team, performed the attached inquiry.

If you have any questions, please contact [REDACTED] on [REDACTED] or at
[REDACTED]@noaa.gov.





UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration
 National Weather Service
 1325 East West Highway
 Silver Spring, Maryland 20910-3283

MEMORANDUM FOR:

[REDACTED]
 [REDACTED]
 National Oceanic and Atmospheric Administration

FROM:

[REDACTED]
 [REDACTED], NWS

SUBJECT:

OIG Complaint Referral 16-0569-H
 Re: Super Bowl Weather Prediction (NOAA/NWS)

DATE:

March 14, 2016

This memorandum responds to your request for administrative resolution of the above mentioned subject referral. Specifically, the complaint alleges that deployment of [REDACTED] to "support the weather prediction for the Super Bowl" was a wasteful expense.

Investigation Process: On behalf of NWS, [REDACTED] initiated an inquiry into the particulars giving rise to the complaint. During the course of the inquiry, phone interviews were conducted and the following documents were examined:

1. Travel Voucher – The travel voucher reflects all expenses incurred by Seattle [REDACTED] on assignment of coordinating Decision Support Services for Emergency Management and Public Safety agencies related to activities during the time of Super Bowl 50.
2. Executive Summaries – These summaries represent a daily summary that [REDACTED] generated and sent out internally within NOAA. Summarized daily were: standard briefings/conference calls, specific requests for support or media interviews, significant issues, and other items of interest related to support for Emergency Management and Public Safety agencies.
3. Super Bowl 50 Support Log – This log was of entries made by participants who were part of the support assignment. Entries cover daily occurrences at NWS WFO Monterey, CWSU Fremont, and a host of deployed resources at various area Emergency Operations Centers.
4. Media/Public Affairs – These are two stories which were publicly available that involved [REDACTED] work.
5. Communications and DSS Coordination Documents – Internal NWS documents [REDACTED] prepared for all involved to ensure that a consistent message was communicated



about our role for supporting EM/Public Safety partners during this time.

6. NWS Schedule – A schedule reflecting the deployed resources to NWS WFO, CWSU, and remote locations at area EOCs during the event for support of EM partners. [REDACTED] was responsible for creating this schedule.

The inquiry did not find any evidence to support the allegations. Further information follows in this report.

Interviewees: Two interviews were conducted for this review:

1. [REDACTED], was interviewed on [REDACTED] via telephone.
2. [REDACTED], was interviewed on [REDACTED].

Findings: The evidence collected for this review collectively showed an impressive effort to provide weather forecasts and warning decision support for a high impact event. During the days leading up to the Super Bowl in San Jose, CA on February 7, 2016, approximately 300,000 visitors entered the region. There were over one hundred major events, many of them outdoors, held during that timeframe. To support public safety, approximately 30 Emergency Operations Centers (EOCs) opened at the various levels of government to support the visitors and events associated with the Super Bowl.

Based on requests from EOCs for NWS staff support, the NWS Western Region identified the Super Bowl and its associated events as a tier 1 event for which to deploy decision support personnel in order to support emergency management activities in the region. The local Weather Forecast in Monterey, CA was short staffed, particularly in its management ranks. A new [REDACTED] [REDACTED] the week of the Super Bowl. Given both the staffing shortage and the increased workload associated with providing the needed weather decision support to the events associated with the Super Bowl, the NWS Western Region selected [REDACTED] to lead their event decision support efforts utilizing a team of NWS personnel from around the region. [REDACTED] selection was based on [REDACTED] previous experience as the [REDACTED] in the [REDACTED] Weather Forecast Office and the extensive network of emergency managers and stakeholders [REDACTED] had developed. [REDACTED] had only recently left [REDACTED] for [REDACTED] position in [REDACTED] so those connections were still very much relevant.

During [REDACTED] deployment to California [REDACTED] orchestrated the forecast and decision support activities for both the Monterey Weather Forecast Office and the 16 other NWS staff detailed from remote locations. [REDACTED] held daily coordination meetings and documented the interviews, briefings, and forecast activities of the entire team.

This effort is clearly consistent with the NWS mission and the agency responsibilities to provide decision support to emergency management partners during major events.

The inquiry official conducted interviews with [REDACTED] and [REDACTED] and analyzed the documentation provided and did not find evidence to support the allegations. The inquiry did not provide [REDACTED] with any evidence indicating that the allegation of waste is true.

Recommended Corrective Actions:

There are not corrective actions recommended.

DECLARATION OF INDEPENDENCE

Assignment Title: Super Bowl Weather Prediction

Assignment Number: 16-0569-14

I hereby certify that I am aware that in all matters related to this administrative inquiry, I must be free, both in fact and appearance, for the duration of this administrative inquiry, from all personal and external impairments arising from my interaction with any organizations, programs, and individuals involved in this inquiry.

I understand that if any such impairments exist, or arise, they can affect my impartiality in performing the administrative inquiry and reporting the results, and I must therefore withdraw from performing the inquiry.

I hereby certify that to the best of my knowledge and belief, I am free from any such impairments to independence and that if any impairment should arise during this inquiry, I will cease performing the inquiry and immediately bring the matter to the attention of my supervisor.

Printed Name

Title and Grade

Signature

Date

3/14/16



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF GENERAL LAW

INTERNAL ADMINISTRATIVE INQUIRY REPORT

TO: [REDACTED] Office of Planning and Budget
United States Patent and Trademark Office

THROUGH: [REDACTED] Office of the General Counsel
United States Patent and Trademark Office

FROM: [REDACTED] General Counsel
United States Patent and Trademark Office

CC: [REDACTED], Office of the General Counsel
United States Patent and Trademark Office

DATE: January 14, 2015

SUBJECT: Inspector General Referral No. 15-0103-H: Handling of OIG Referral

This Administrative Inquiry Report summarizes the response drafted by [REDACTED], GS-[REDACTED], [REDACTED] in the United States Patent and Trademark Office (USPTO or the Agency), Office of the General Counsel, Office of General Law, at the written request of the United States Department of Commerce's (DOC) Office of the Inspector General (OIG) dated November 14, 2014. *See* Exhibit (Ex.) 1. This response addresses allegations identified in DOC OIG Referral 15-0103-H, that USPTO personnel knowingly provided false or slanderous statements against [REDACTED] (Complainant) during an EEOC investigation and that the USPTO improperly investigated Complainant's initial complaints of assault and harassment against patent examiners [REDACTED] and [REDACTED].¹

Exhibits

- Exhibit 1 – OIG Referral No. 15-0103-H
- Exhibit 2 – Summary of Interview with [REDACTED]
[REDACTED] November 13, 2014 and January 5, 2015

¹ The OIG Referral incorrectly or mistakenly characterizes the Complainant's allegation as relating to the "handling of OIG Referral," when in fact the Complainant's issue is with [REDACTED] EEO case, particularly, an affidavit submitted by a witness during EEO investigation. Ex. 1.

- Exhibit 3 – [REDACTED] Notification of Termination During Probationary Period, [REDACTED]
- Exhibit 4 – Email from Complainant to [REDACTED] August 10, 2014
- Exhibit 5 – Email chain from [REDACTED] regarding Complainant's harassment or hostile work environment inquiry, July 16, 2014
- Exhibit 6 – Statement from [REDACTED] regarding Complainant, July 17, 2014
- Exhibit 7 – Declaration of Independence, December 1, 2014
- Exhibit 8 – USPTO Agency Administrative Order (AAO) 202-955, Anti-Harassment Policy and Complaint Procedure, November 21, 2009
- Exhibit 9 – DOC's Department Administrative Order (DAO) 207-10, Inspector General Investigations, December 12, 2013

Consultations

- [REDACTED] consulted with [REDACTED] on November 13, 2014 and January 5, 2015, regarding Complainant's harassment allegations and the inquiry conducted by [REDACTED]
- [REDACTED] consulted with [REDACTED] on January 6, 2015, regarding Complainant's allegations regarding [REDACTED] EEO affidavit.

Allegations

On October 30, 2014, Complainant, a former USPTO probationary patent examiner, filed a complaint with the OIG and others regarding 1.) allegations of harassment and physical assaults by other probationary examiners, [REDACTED] and [REDACTED] and 2.) allegations that a statement given by [REDACTED] in an EEO investigation regarding Complainant's allegations of harassment and discrimination contain false statements. Ex. 1.

As background, on [REDACTED], Complainant was hired as a patent examiner on a Career-Conditional Appointment. Ex. 3. This appointment required Complainant to serve a probationary period of one year. *Id.* All new patent examiners are required to attend the Patent Training Academy for training in patent examination. While in the Patent Training Academy, Complainant alleged that [REDACTED] another patent examiner attending the Academy, singled [REDACTED] out as the only [REDACTED] and that [REDACTED] bullied [REDACTED]. *Id.* [REDACTED] also alleged that [REDACTED] another examiner attending the Academy, assaulted [REDACTED] by hitting [REDACTED] in the back of the head while in class at the Patent Training Academy. Ex.1. As will be discussed below, the Agency previously investigated these allegations and found no evidence of assault or prohibited harassment. Ex. 2.

On [REDACTED] while still in [REDACTED] probationary period, Complainant was terminated for poor performance. Ex. 3. The Agency found, among other things, that Complainant's performance had not progressed at the rate expected of a new examiner. *Id.* Complainant subsequently filed an EEO complaint. Ex. 1, p. 12. During investigation of [REDACTED] EEO complaint, [REDACTED] was interviewed, as [REDACTED] is the [REDACTED] and had knowledge about Complainant's harassment complaint and termination. *Id.* After [REDACTED] gave [REDACTED] statement, Complainant was sent [REDACTED] affidavit to review and rebut, if necessary. *Id.*

In [REDACTED] complaint to OIG, Complainant complains that [REDACTED] was assaulted and harassed. Ex. 1 [REDACTED] also challenges a number of statements [REDACTED] made in [REDACTED] affidavit during the EEO investigation, alleging that [REDACTED] made slanderous statements about [REDACTED] in [REDACTED] affidavit and that such is evidence of [REDACTED] racial animus and prejudice against Complainant. *Id.*

First, such allegations of individual discrimination or personnel matters where personal relief is sought are outside the purview of an OIG-related inquiry. Second, Complainant's allegations are currently being addressed through the EEOC process and any further investigation would constitute an impermissible collateral attack on other final proceedings and be a duplicative use of government resources. Finally, as will be discussed below, all of Complainant's allegations are **UNSUBSTANTIATED**. The Agency has found no evidence that Complainant was assaulted or subjected to prohibited harassment. Further, the allegation that [REDACTED] made false or slanderous statements against Complainant or exhibited racial animus or prejudice in [REDACTED] statement is also **UNSUBSTANTIATED**.

Findings

1. The allegations made by Complainant are outside the purview of an OIG-related inquiry and are otherwise not appropriate for further investigation.

Complainant complains of discrimination and harassment by two patent examiners. Ex. 1. DOC's DAO on Inspector General Investigations states that in light of other avenues of redress, the OIG does not normally investigate individual discrimination complaints or personnel matters where personal relief is sought. Ex. 9 at 2. Here, all of the discrete allegations discussed in the complaint relate to Complainant's claims of discrimination. Ex. 1. Moreover, Complainant's allegations of harassment have already been addressed through the USPTO's OHR. Ex. 5. After receiving complainant's allegations of harassment, [REDACTED], conducted an inquiry into complainant's allegations pursuant to AAO 202-955, the Agency's Anti-Harassment Policy and Complaint Procedure, and did not find that complainant was subjected to prohibited harassment. *Id.*; see also Ex. 8.

Furthermore, the complaints contained in the above referenced referral relate to personnel matters that should be handled in other, more appropriate forums such as the EEOC, and not as part of any OIG-related investigation. Ex. 9. Indeed, Complainant has already availed [REDACTED] of a more appropriate forum election and is in the midst of pursuing [REDACTED] allegations through the EEO process. Ex. 1, p. 12; Ex. 2. Therefore, any further investigation into [REDACTED] discrimination and harassment or hostile work environment allegations would present the potential for an impermissible collateral attack on judicial or other final proceedings, be a duplicative use of government resources, and be unwarranted. Furthermore, with respect to [REDACTED] allegation that [REDACTED] EEO affidavit contains misrepresentations and false statements, Complainant has stated that [REDACTED] intends to move the Administrative Judge in [REDACTED] EEO case to issue punitive damages against the USPTO for its conduct and that [REDACTED] will also rebut [REDACTED] affidavit. Ex. 1, p. 10.

2. Complainant's allegations of harassment are unsubstantiated.²

On December 14, 2013, Complainant contacted OHR to complain about [REDACTED] behavior in the Patent Training Academy. Ex. 2. Complainant complained that [REDACTED] did not respect [REDACTED] knowledge of patent law. *Id.* Complainant reported that [REDACTED] had knives in [REDACTED] desk (one butter knife and two meat knives); that [REDACTED] would turn around during class and tell [REDACTED] to shut up when [REDACTED] was asking a question; and that [REDACTED] was physically confrontational. *Id.* [REDACTED] reported that on one occasion, [REDACTED] came up and stood closely, face to face. *Id.* [REDACTED] also reported that [REDACTED] "physically assaulted [REDACTED]." Ex. 2. Specifically, Complainant reported that [REDACTED] interrupted class and [REDACTED] came from the back of the room, flailing [REDACTED] arms and knocked a pen out of [REDACTED] hand. *Id.* After conducting an inquiry pursuant to the Agency's internal harassment procedures, the HR specialist, [REDACTED] determined that this did not constitute a physical assault. *Id.*; see also Ex. 8. [REDACTED] also concluded that there was no misconduct on [REDACTED] part that required disciplinary or other administrative action and that [REDACTED] did not see evidence of discriminatory intent or severe or pervasive conduct. *Id.*

[REDACTED] reported that [REDACTED] in turn complained that [REDACTED] felt Complainant was being rude and hostile to [REDACTED] and felt singled out by [REDACTED]. Ex. 2. [REDACTED] reported that [REDACTED] saw this as a case of "two adults acting like children or a personality conflict," but did not see any evidence of discriminatory intent or severe or pervasive conduct by either party. *Id.* However, [REDACTED] reported that [REDACTED] was moved out of Complainant's class due to the personality conflict and disruptions. *Id.*

In addition to [REDACTED] complaints about [REDACTED], Complainant also complained that on July 9, 2014, [REDACTED] hit [REDACTED] in the back of the head. Ex. 4. Pursuant to AAO 202-955, the Agency's Anti-Harassment Policy and Complaint Procedure, the Agency also conducted an inquiry into Complainant's allegations about [REDACTED] reported that on the day in question, they were in class and [REDACTED] attempted to get [REDACTED] attention to say hello by tapping [REDACTED] on the back of [REDACTED] neck. Ex. 5; Ex. 6. [REDACTED] reported that [REDACTED] then started cursing at [REDACTED] and stated "[REDACTED]" Ex. 6. Ultimately, the Agency determined that [REDACTED] allegations of assault and hostile work environment were unsubstantiated. Ex. 2.

In the present OIG complaint, Complainant reiterates [REDACTED] allegations that [REDACTED] was harassed by [REDACTED] and [REDACTED] and that [REDACTED] felt [REDACTED] worked in a hostile working environment. Ex. 1. The Agency found that the evidence did not support [REDACTED] allegations that [REDACTED] had been subjected to a hostile work environment in violation of Title VII of the Civil Rights Act. Ex. 2. A hostile environment exists when: (1) the complainant was a member of a statutorily protected class, (2) complainant was subjected to unwelcome verbal or physical conduct related to his/her membership in that class, (3) the harassment complained of was based on his/her membership in that class, (4) the harassment had the purpose or effect of unreasonably interfering with his/her work performance and/or creating an intimidating, hostile, or offensive work environment, and (5) there is a basis for imputing liability to the employer. To be actionable, the alleged harassing conduct must be both objectively and subjectively offensive, creating an environment that a

² The Agency addresses allegations of harassment and false statement without waiving the Agency's position that these issues are outside the purview of an OIG inquiry, as stated in section 1 above.

reasonable person would find hostile or abusive, and one that the victim perceived to be so. The conduct must be sufficiently severe or pervasive to alter the conditions of the complainant's employment and create an abusive work environment.

The behavior about which [REDACTED] complains³ was not sufficiently severe or pervasive to rise to the level of a hostile work environment under Title VII of the Civil Rights Act. Ex. 2. EEOC regulations are not to be used as a "general civility code." Rather, they forbid "only behavior so objectively offensive as to alter the 'conditions' of the victim's employment." Ex. 2; *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998); *Vore v. Indiana Bell Telephone Co.*, 32 F.3d 1161 (7th Cir. 1994) (noting that Title VII does not create a right to work in a pleasant environment, merely one that is free from discrimination). Additionally, the Agency found that there was no evidence that the conduct [REDACTED] complains of was related to [REDACTED] membership in a statutorily protected class. Ex. 2. Accordingly, the Agency properly concluded that [REDACTED] was not the victim of a hostile work environment created by [REDACTED] or [REDACTED]. Ex. 2. The investigator concludes that the evidence does not support a finding of hostile work environment or harassment and there is no indication that any Agency employee acted improperly during their investigation or inquiry into Complainant's allegations of harassment or hostile work environment. Complainant's allegations of assault, harassment or hostile work environment are **UNSUBSTANTIATED**.

3. Complainant's allegations that [REDACTED] made false statements in [REDACTED] EEO affidavit are unsubstantiated.

Complainant was terminated for poor performance on [REDACTED] Ex. 2; Ex. 3. Complainant filed a formal EEO complaint regarding [REDACTED] termination, which is currently being investigated through the EEO process. Ex. 1. Through the regular course of investigation, the EEO investigator interviewed [REDACTED] regarding Complainant's EEO complaint. Ex. 1, p. 12. Subsequently, Complainant received [REDACTED] affidavit from the investigator for review and rebuttal. *Id.* Complainant initially alleges that a number of the statements [REDACTED] made in [REDACTED] affidavit are false and that [REDACTED] knowingly misrepresented the truth in [REDACTED] affidavit. Ex. 1. However, upon further examination of the complaint, Complainant has not pointed to any statements which [REDACTED] made which [REDACTED] alleges are false. Rather, Complainant merely disagrees with a number of statements [REDACTED] made in [REDACTED] affidavit. Ex. 1. For example, [REDACTED] states that "[REDACTED] again gives full faith and credit to only what [REDACTED] said. [REDACTED] does not give credibility to my statements..." Ex. 1, p. 10. [REDACTED] further states, "Moreover, [REDACTED] has intentionally failed to give any credit to SecTek, Inc.'s PTO Security Report on December 13, 2013..." *Id.* Complainant has not made a credible allegation of fraud or misrepresentation. Instead, [REDACTED] disagrees with statements made by [REDACTED], and has not provided any evidence, besides [REDACTED] own speculation, that [REDACTED] statements were false. Therefore, Complainant's allegation that [REDACTED] made false statements during an EEO investigation is **UNSUBSTANTIATED**.

³ Complainant also alleges that [REDACTED] another examiner, made derogatory statements and mockery of [REDACTED] and the [REDACTED] faith and lists "[REDACTED] and [REDACTED]." Ex. 1, p. 11. However, OHR has investigated these allegations and found no prohibited harassment. Ex. 2. The individuals listed were contacted and reported that they did not feel harassed. Ex. 2.

Conclusion

The complaints contained in the above-referenced OIG referral relate to personnel matters that should be handled in other, more appropriate forums such as the EEOC, and not as part of any OIG-related investigation. Indeed, Complainant has already availed [REDACTED] of more appropriate forum elections and is in the midst of pursuing his allegations through the EEO process. Therefore, any further investigation would present the potential for an impermissible collateral attack on judicial or other final proceedings, be a duplicative use of government resources, and be unwarranted. Nonetheless, a review of Complainant's allegations of assault and prohibited harassment on the merits are unsubstantiated. Complainant's allegation that [REDACTED] made false and slanderous statements is also unsubstantiated. For the foregoing reasons, no further investigation or action need be taken with respect to the complaint.