



governmentattic.org

"Rummaging in the government's attic"

Description of document:	Copy of each Nuclear Regulatory Commission (NRC) Inspector General (IG) investigation report performed regarding the Defense Nuclear Facilities Safety Board (DNFSB), 2015-2018
Requested date:	2019
Release date:	16-July-2019
Posted date:	21-October-2019
Source of document:	FOIA Request U.S. Nuclear Regulatory Commission FOIA Officer Mailstop: T-2 F43 Washington, DC 20555-0001 Fax: 301-415-5130 Email: FOIA.resource@nrc.gov

The governmentattic.org web site ("the site") is a First Amendment free speech web site, and 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.



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC

2019-000166

RESPONSE NUMBER

1

RESPONSE
TYPE

☐

INTERIM

☒

FINAL

REQUESTER:

DATE:

07/16/2019

DESCRIPTION OF REQUESTED RECORDS:

Copy of each NRC Inspector General (IG) investigation report performed regarding the Defense Nuclear Facilities Safety Board (DNFSB) since January 1, 2015

PART I. -- INFORMATION RELEASED

- ☐ The NRC has made some, or all, of the requested records publicly available through one or more of the following means: (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>.
- ☒ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D -- Comments) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☐ See Part I.D -- Comments.

PART I.A -- FEES

AMOUNT
<input type="text"/>

- ☐ You will be billed by NRC for the amount indicated.
- ☐ You will receive a refund for the amount indicated.
- ☐ Fees waived.

- ☒ Since the minimum fee threshold was not met, you will not be charged fees.
- ☐ Due to our delayed response, you will not be charged search and/or duplication fees that would otherwise be applicable to your request.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☒ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☒ You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-2 F43, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA.resource@nrc.gov. You may fax an appeal to (301) 415-5130. Or you may submit an appeal through FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>. Please be sure to include on your submission that it is a "FOIA Appeal."

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.



**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**

2019-000166

1

RESPONSE
TYPE

☐

INTERIM

☒

FINAL

PART I.D -- COMMENTS

Signature - Assistant Inspector General for Investigations or Designee

Rocco J. Pierri

Digitally signed by Rocco J. Pierri
Date: 2019.07.16 09:26:15 -04'00'

2019-000166

DATE:

07/16/2019



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

PART II.A -- APPLICABLE EXEMPTIONS

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Other:
- ☐ Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege.
- ☐ Attorney work product privilege.
- ☐ Attorney-client privilege.
- ☐ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
- ☒ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☒ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ Other

PART II.B -- DENYING OFFICIAL

In accordance with 10 CFR 9.25(g)(1) of the U.S. Nuclear Regulatory Commission regulations, the official listed below has made the determination to withhold certain information, described below, responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL
Rocco Pierri	Assistant Inspector General for Investigations	PII, techniques	Inspector General

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION
UNITED STATES



NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

January 21, 2015

MEMORANDUM TO: Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General

THRU:

Team Leader, [redacted]

FROM:

(b)(7)(C)

Special Agent, [redacted]

SUBJECT: ALLEGED WASTE COMMITTED BY FORMER [redacted]
[redacted] (OIG CASE NO. CD14-01)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was based on information from Peter WINOKUR, Chairman, Nuclear Facilities Safety Board (DNFSB). WINOKUR alleged that (b)(7)(C), the DNFSB's (b)(7)(C) committed fraud by working during DNFSB business hours on after-hours employment as a university professor.

Findings

OIG did not develop any evidence showing that (b)(7)(C) spent excessive time working as a university professor during business hours.

Basis for Findings

OIG learned that when this allegation was received, WINOKUR stated that he had approved (b)(7)(C) to work after hours at Georgetown University on a non-interference basis. WINOKUR alleged that (b)(7)(C) did more work as a university professor during work hours than he did work for DNFSB. WINOKUR did not provide specific examples of why he believed this. OIG also learned that for reasons outside of this allegation,

~~THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.~~

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

(b)(7)(C) was on (b)(7)(C) at the time of the allegation, and according to a settlement agreement between (b)(7)(C) and DNFSB effective (b)(7)(C) (b)(7)(C) was no longer a DNFSB employee. (b)(7)(C) attorney informed OIG that (b)(7)(C) did not want involvement in any matters concerning DNFSB; therefore, (b)(7)(C) was not interviewed as part of the investigation.

OIG reviewed the content of (b)(7)(C) outlook emails maintained on the DNFSB server. The purpose of the search was to determine if (b)(7)(C) had spent an excessive amount of time on outside employment during regular business hours. OIG conducted a key word search utilizing 5 key words which identified 415 out of 12,208 emails originating between September 12, 2011 and January 13, 2014. A review of the 415 emails did not identify any information indicating (b)(7)(C) expended an excess amount of time on outside employment as a university professor.

Because no evidence was developed showing (b)(7)(C) spent excessive time working on outside employment during business hours, and because (b)(7)(C) is no longer a DNFSB employee, it is recommended this case be closed to the files of this office.

~~THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.~~

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

File Location: (b)(7)(C), (b)(7)(E)

Distribution

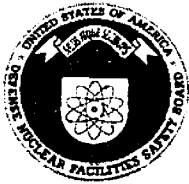
Case File 14-01

Historical File

Magnum

OIG	OIG	(b)(7)(C)	OIG	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)		(b)(7)(C)	J. McMillan	D. Lee	H. Belk
1/15/15	1/15/15	1/1	1/1	1/21/15	2/11/15	2/11/15

Official File Copy

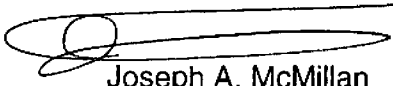


**Defense Nuclear Facilities
Safety Board**
Washington, DC 20004-2901

Office of the
Inspector General

February 10, 2015

MEMORANDUM TO: Jessie Roberson
Acting Chairman
Defense Nuclear Facilities Safety Board

FROM: 
Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL ETHICS VIOLATION BY THE (b)(7)(C)
(b)(7)(C) (OIG CASE NO. CD 14-003)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation (ROI) concerning whether (b)(7)(C) (b)(7)(C) Defense Nuclear Facilities Safety Board (DNFSB), fully disclosed to DNFSB, during his DNFSB hiring process, the reason his previous employer (b)(7)(C) (b)(7)(C) is also currently filling the position of (b)(7)(C)

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those DNFSB managers required for evaluation of this matter.

Attachments: Report of Investigation w/ exhibits

CONTACT: (b)(7)(C) OIG

~~THIS DOCUMENT IS THE PROPERTY OF THE OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.~~

OFFICIAL USE ONLY - OIG INVESTIGATION INFORMATION

OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Potential Ethics Violation
by the (b)(7)(C)

(b)(7)(C)

Case No. CD 14-003

(b)(7)(C)

Senior Special Agent

Team Leader


Joseph A. McMillan, Assistant Inspector General
for Investigations

2/8/15
Date

THIS REPORT IS RELEASABLE ONLY BY THE OFFICE OF THE INSPECTOR GENERAL.

THIS REPORT OR ITS EXHIBITS MAY NOT BE PLACED IN ANY DOCUMENT
MANAGEMENT SYSTEM WITHOUT WRITTEN PERMISSION OF THE OIG.
EXEMPT FROM RELEASE UNDER FREEDOM OF INFORMATION ACT EXEMPTIONS (5),
(6) OR (7) AND PRIVACY ACT EXEMPTIONS (j)(2) OR (k)(1)

~~THIS DOCUMENT IS THE PROPERTY OF THE OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER
AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY
WITHOUT OIG'S PERMISSION.~~

TABLE OF CONTENTS

	<u>PAGE</u>
STATUTES, REGULATIONS, AND POLICY.....	1
SUBJECT	2
ALLEGATION	2
FINDINGS	2
BASIS FOR FINDINGS	4
EXHIBITS	12

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

STATUTES, REGULATIONS, AND POLICY

5 CFR Part 2635 – Standards of Conduct for Employees of the Executive Branch

(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(5) Employees shall put forth honest effort in the performance of their duties.

(7) Employees shall not use public office for private gain.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

5 CFR Part 2635.705 – Use of Official Time

(b) *Use of a subordinate's time.* An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

SUBJECT

(b)(7)(C)

(b)(7)(C)

Defense Nuclear Facilities Safety Board (DNFSB)

ALLEGATION

The Office of Inspector General (OIG) initiated this investigation based on an anonymous allegation that (b)(7)(C) did not fully disclose to DNFSB the reason for which his previous employer, Department of Homeland Security (DHS), OIG (b)(7)(C)

(b)(7)(C)

FINDINGS

OIG found that (b)(7)(C) showed a lack of candor in not disclosing to DNFSB hiring officials the reason why DHS OIG (b)(7)(C). Although (b)(7)(C) disclosed to DNFSB hiring officials that he was on (b)(7)(C) while he was going through the hiring process, he attributed the (b)(7)(C) to retaliation for whistleblowing and not to being under investigation at DHS for ethical violations. Although (b)(7)(C) told OIG he informed Peter WINOKUR, then-DNFSB Chairman, that the DHS allegation against him pertained to misuse of agency resources for personal gain and his involvement in representing his wife in an Equal Employment Opportunity (EEO) complaint, WINOKUR told OIG that (b)(7)(C) had never mentioned this. WINOKUR said that had he been aware, the information would have been factored into the hiring decision. The DNFSB Vice Chairman (now Acting Chairman) was under the impression, based on her conversation with (b)(7)(C) that the (b)(7)(C) was because (b)(7)(C) was a whistleblower at DHS, and she was not aware that (b)(7)(C) had been under investigation by DHS OIG for ethics violations.

OIG found that although (b)(7)(C) provided a sworn statement to DHS OIG investigators that he was "allowed" to use a reasonable amount of office time in support of the EEO complaint and believed this included the time of lower graded subordinates, he had not received guidance that this was the case. (b)(7)(C) told OIG that while he had sought and received guidance from the (b)(7)(C) as to whether he could represent his wife in the EEO proceeding, the response stated only that he had the authority to represent his wife and did not address use of office resources for this purpose, and (b)(7)(C) did not seek further clarification.

Although (b)(7)(C) told OIG that he received no information from DHS OIG concerning the investigation, OIG found that (b)(7)(C) attorney was included in the distribution of a May 2013 report from the Integrity Committee, Council of Inspectors General on

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Integrity and Efficiency's (CIGIE) to the DHS OIG. The Integrity Committee report concluded that (b)(7)(C) use of law clerks to work on his wife's case was improper and included an attachment from the Office of Government Ethics stating that while (b)(7)(C) could represent his wife in her EEO complaint, there was no authority by which (b)(7)(C) could have lawfully directed his law clerks to perform work to support this representation.

OIG found that the Office of Government Ethics (OGE) concluded that under subsection (e) of 18 U.S.C. 205, it was lawful for (b)(7)(C) to represent his wife in a discrimination case as an authorized personal activity. OIG found that OGE also concluded that (b)(7)(C) could not have lawfully directed law clerks to conduct legal research to support his representation of his wife, consequently, (b)(7)(C) violated 5 C.F.R 2635.705 subsection (b).

BASIS FOR FINDINGS

Summary of Events Reported by the Investigating and Reviewing Offices of Inspector General

OIG reviewed the investigative activities taken by DHS OIG regarding (b)(7)(C) in DHS OIG case I12-OIG-OSI-01017. The investigation was initiated based on an anonymous hotline tip on August 23, 2012, to DHS OIG that alleged (b)(7)(C) was abusing his position as the OIG (b)(7)(C) for DHS OIG by instructing junior staff/interns to research and collect information during office hours on age discrimination. This activity apparently was in support of (b)(7)(C) (b)(7)(C) from the Department of Health and Human Services (HHS) and (b)(7)(C) was representing her in her claim against HHS for age discrimination.) DHS OIG investigators obtained a signed sworn statement from (b)(7)(C). In the statement, (b)(7)(C) stated that (b)(7)(C) EEO complaint alerted him to gaps in his own knowledge of Federal law relating to age discrimination. (b)(7)(C) stated that in his capacity as (b)(7)(C) it was his responsibility to provide legal services to DHS OIG, including on age discrimination matters, and that he asked his law clerks to research age discrimination when they had available time. (b)(7)(C) stated that as an EEO complainant's representative, he was allowed to use a reasonable amount of office time in support of the administrative EEO complaint and believed that this would also permit him to use less of his own time and some time from lower graded subordinates such as law clerks.

During a preliminary investigation into the allegation, DHS OIG conducted multiple interviews of DHS OIG employees who confirmed that they were aware of (b)(7)(C) using his junior staff to conduct research for (b)(7)(C) discrimination case. DHS OIG determined that (b)(7)(C) delegation to provide ethics advice on the behalf of DHS OIG to DHS OIG staff (b)(7)(C) until the investigation was complete. In October 2012, DHS OIG reported this matter to the CIGIE Integrity Committee for review.

(b)(7)(C) received a memorandum dated December 3, 2012, from Carlton MANN, Acting Deputy IG, DHS OIG, stating "that a determination has been made to (b)(7)(C) (b)(7)(C) effective immediately and until further notice. This action is based on the initiation of an investigation of an allegation(s) that, if proven true, could result in your (b)(7)(C)." (b)(7)(C) attorney later informed the CIGIE Integrity Committee that (b)(7)(C) was in retaliation for his involvement in an unrelated Department of Justice (DOJ) investigation involving DHS OIG management.

On May 6, 2013, the CIGIE Integrity Committee sent its response to DHS OIG, and to (b)(7)(C) attorney. The report stated that the committee considered (b)(7)(C) use of

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

DHS OIG law clerks to conduct research and write memoranda relating to his wife's age discrimination matter improper. Attached to the response was a review by the Office of Government Ethics which concluded that (b)(7)(C) could represent his wife in her EEO complaint, but that there was no authority by which (b)(7)(C) could have lawfully directed the summer law clerks to conduct legal research to support this representation. The Integrity Committee response further provided that the Committee considers the review closed and normally would refer it back to DHS OIG for appropriate action but because (b)(7)(C) was claiming retaliation by the Acting Inspector General (IG) for cooperating with DOJ in a previous investigation, the CIGIE Integrity Committee recommended that a neutral OIG review the matter expeditiously and provide a recommendation regarding any appropriate administrative remedy concerning (b)(7)(C). (b)(7)(C) OIG learned that the (b)(7)(C) (b)(7)(C) OIG, was designated to provide the review of the DHS OIG investigation concerning (b)(7)(C), and to provide a recommendation regarding any appropriate remedy.

DIA OIG sent the results of its review, dated June 17, 2013, to Carlton Mann, Chief Operating Officer, DHS OIG. The review went into detail covering the scope of what materials were reviewed and also applied the 12 Douglas Factors as best they could, given the information they had. The DIA OIG recommended that the matter be referred to an official within the DHS OIG, "who can independently and objectively review the investigative materials and decide whether to propose appropriate disciplinary action." An accompanying recommendation stated that regardless of whether there was disciplinary action or removal from the Senior Executive Service, and irrespective of the outcome of the investigation, that (b)(7)(C) be reassigned elsewhere in DHS and not to the DHS OIG.

In the DIA OIG review, it was documented that (b)(7)(C) made it apparent that he was alleging reprisal against Charles EDWARDS, Acting Inspector General, DHS, and it appeared that (b)(7)(C) had entered into protected communications with the Federal Bureau of Investigation and DOJ officials, that EDWARDS was made aware of these communications, and that (b)(7)(C) was subsequently (b)(7)(C). The DIA OIG report advised that there was clear and convincing evidence in this investigation (b)(7)(C). (b)(7)(C) provided that the Douglas Factors are properly considered as well as due process procedures. The review also stated that (b)(7)(C) misconduct was indeed serious. His misconduct was inconsistent with at least four of the general principles of the basic obligations of public service. He violated the public trust, used his official position to determine whether damages and attorneys'

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

fees were available in his wife's case, used government resources for unauthorized purposes, and created the appearance that he was violating ethical standards."

(For further details, see Exhibits 1 and 2.)

Review of (b)(7)(C) Personnel Security File

OIG reviewed (b)(7)(C) Personnel Security File, to include the Electronic Questionnaires for Investigators Processing (e-QIP) documents marked "Investigation Request # (b)(7)(E)" for (b)(7)(C) DNFSB, which are maintained at a Department of Energy (DOE) facility in Germantown, Maryland. OIG learned that when (b)(7)(C) came to DNFSB from DHS, he possessed a Top Secret Clearance, which was converted to a DOE "Q" clearance without further investigation.

The file showed that (b)(7)(C) was undergoing his routine security update clearance investigation for which he completed an e-QIP questionnaire; (b)(7)(C) dated and signed the questionnaire on May 12, 2014. In the employment history section, (b)(7)(C) documented that he had been employed by DHS from (b)(7)(C). In section 13A of the e-QIP, (b)(7)(C) listed DHS as a previous employer. In e-Qip the "reason for leaving section" states, "For this employment, have any of the following happened to you in the last seven years? Fired, quit after being told you would be fired, left by mutual agreement following charges or allegations of misconduct, left by mutual agreement following notice of unsatisfactory performance?" (b)(7)(C) responded "NO" to these questions.

In his security clearance interview with the Office of Personnel Management (OPM), (b)(7)(C) stated that he originally filed a complaint about the DHS Inspector General and, in retaliation, the Acting DHS IG in November 2012 filed a complaint against (b)(7)(C) claiming (b)(7)(C) was misusing office resources and (b)(7)(C) as a result. (b)(7)(C) told the OPM investigator that the claims against him were not true and that a full investigation determined that the allegations against him were unfounded. (b)(7)(C) told OPM that he received a letter in August 2013 vindicating him of any wrongdoing, which was signed by Russell BARBEE, Assistant Inspector General for Management, DHS. (b)(7)(C) told OPM there was no disciplinary action taken against him and that (b)(7)(C) he resigned and accepted his current job at DNFSB. [Investigative Note: (b)(7)(C) received a copy of a letter dated September 3, 2013, from BARBEE which reflected, "Since (b)(7)(C) is no longer employed by this agency, the administrative investigation that was received on August 23, 2012 has been closed without further action." A Notification of Personnel Action, SF 50, reflected that DHS (b)(7)(C) appointment on (b)(7)(C).

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

BARBEE was interviewed by OPM and said he was aware that (b)(7)(C) had an anonymous allegation against him at DHS OIG claiming (b)(7)(C) had used student interns to do research, which would personally benefit (b)(7)(C) for an EEO complaint that his spouse was making against her supervisor. BARBEE told OPM that (b)(7)(C) did this without prior approval and it was considered to be a misuse of office resources. BARBEE stated that an investigation was conducted into the allegation by the CIGIE Integrity Committee and it found that (b)(7)(C) actions were inappropriate.

However, (b)(7)(C) any disciplinary action being administered. BARBEE told OPM that (b)(7)(C) claimed the complaint against him was orchestrated by the acting DHS IG and was retaliation. BARBEE stated that he feels (b)(7)(C) misrepresented information in an effort to bend the truth in his favor regarding the complaint made against him that led to his (b)(7)(C) in 2012. (b)(7)(C) claimed that he had done nothing wrong and the work he had the interns do provided further understanding of his job. BARBEE also said that (b)(7)(C) claimed the DHS agency ethics official (outside of OIG) had authorized the use of resources; however, (b)(7)(C) had only asked the (b)(7)(C) for advice relating to the matter. According to BARBEE, he was never given approval.

(For further details, see Exhibit 3.)

Interview of Then-DNFSB Chairman

Peter WINOKUR, then-Chairman, DNFSB, told OIG that the position description for (b)(7)(C) was written by (b)(7)(C) DNFSB, and that both WINOKUR and Human Resources agreed with it. An Executive Review Board was established to review all applicants for the position and the top five applicants were referred to (b)(7)(C). WINOKUR said that (b)(7)(C) then narrowed it down to three final candidates and the DNFSB board members each interviewed the final three candidates separately. WINOKUR said that after the Board members had individually interviewed the candidates, they ranked each candidate and (b)(7)(C) was identified as the best for the position. WINOKUR said that Human Resources then checked three references for (b)(7)(C) and all came back positive. WINOKUR stated that he was aware that (b)(7)(C) was on (b)(7)(C) while he was applying for the (b)(7)(C) position, and explained that (b)(7)(C) claimed he was a whistleblower at DHS and that was the reason he had been (b)(7)(C) (b)(7)(C). WINOKUR stated that he had never been made aware and (b)(7)(C) had never mentioned that he was under investigation at DHS OIG for ethical violations. Had he

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

been aware, WINOKUR said, that information would have been factored into the hiring decision.

(For further details, see Exhibit 4.)

Interview of DNFSB Vice Chairman (currently Acting Chairman)

Jessie ROBERSON, Vice Chairman, DNFSB, told OIG that she remembered the hiring process for the (b)(7)(C) position to include the Executive Review Board and the interviewing of the three final candidates by individual Board members.

ROBERSON recalled looking up information on (b)(7)(C) online and was aware that he had been involved in some form of investigation at DHS OIG. ROBERSON also said that she was fully aware that (b)(7)(C) was on (b)(7)(C) while applying at DNFSB. ROBERSON recalled having specific conversations with other Board members as well as (b)(7)(C) regarding the fact that (b)(7)(C) was on (b)(7)(C).

(b)(7)(C) ROBERSON was under the impression, based on her conversation with (b)(7)(C), that the (b)(7)(C) was because (b)(7)(C) was a whistleblower at DHS and said she was not aware that (b)(7)(C) had been under investigation by DHS OIG for ethics violations.

(For further details, see Exhibit 5.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG he joined DHS OIG in 2003. During his time at DHS OIG there were several people that served as the IG. The last person in this position while (b)(7)(C) was there was (b)(7)(C), Acting IG. (b)(7)(C) provided the opinion that (b)(7)(C) did not have much experience in the "OIG world" and had little experience with audits or investigations. Shortly after (b)(7)(C) became the Acting IG, (b)(7)(C) realized that if he provided (b)(7)(C) legal advice that differed from actions that (b)(7)(C) wanted to take, then (b)(7)(C) would exclude (b)(7)(C) from involvement with the IG. (b)(7)(C) explained that this was "the opposite" of any other experiences that he had with prior IGs.

(b)(7)(C) explained that there was an ongoing DOJ investigation at DHS that caused (b)(7)(C) to put the Assistant Inspector General for Investigations (AIGI) on (b)(7)(C). (b)(7)(C) informed (b)(7)(C) a couple of days in advance that the AIGI and his deputy would be placed on (b)(7)(C). (b)(7)(C) said that he advised against (b)(7)(C) giving the two individuals advanced notice of the action; however, (b)(7)(C) gave the two individuals advance notice of their (b)(7)(C) and subsequently the individuals attempted to destroy official documents related to the ongoing DOJ investigation. (b)(7)(C) explained that (b)(7)(C) intended to

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

praise the two people placed on (b)(7)(C) in a press release, and that (b)(7)(C) advised against it and informed DOJ of (b)(7)(C) intentions. (b)(7)(C) said the press release was never issued, and that (b)(7)(C) was "quite upset" with him after this.

During the fall of 2012, DHS OIG was involved in a tasking from Congress to look into the allegations involving the Secret Service and prostitution. (b)(7)(C) described this task as a massive undertaking that involved up to half of the OIG investigators. (b)(7)(C) stated that his office (the (b)(7)(C) office) started receiving calls from investigators claiming the investigation was being "whitewashed" and that things were being taken out of the report and concealed. (b)(7)(C) said he responded by having one of his subordinates follow up with the investigators. (b)(7)(C) said that when (b)(7)(C) heard about this, both the subordinate and (b)(7)(C) were directed to stop contacting the investigators regarding the Secret Service investigation. (b)(7)(C) said that he objected and claimed that it was within his role as (b)(7)(C) to do so. (b)(7)(C) said that his objection was not well received and that, at the same time, other subordinates were reporting to him allegations of misconduct by (b)(7)(C).

(b)(7)(C) said that he brought the concerns regarding (b)(7)(C) to the attention of the Acting AIGI and that the Acting AIGI said (b)(7)(C) was aware of the allegations and intended to self-report to CIGIE. (b)(7)(C) stated that it was around this time that he was informed there was an allegation against him regarding misuse of agency resources by assigning one or more law clerks to do personal legal work for him.

(b)(7)(C) said that he sat down with DHS OIG investigators during a voluntary interview and explained to them that he had represented (b)(7)(C) in an EEO complaint after seeking guidance from the (b)(7)(C) at DHS. (b)(7)(C) claimed to have sought guidance as to whether it was ethically proper to represent the family member and was advised in an email from a DHS ethics attorney outside of OIG that it was. (b)(7)(C) said that he denied to the DHS OIG investigators that he had misused law clerks by having them conduct personal business. (b)(7)(C) said that shortly after his interview, possibly (b)(7)(C), he was informed he was being

(b)(7)(C)
(b)(7)(C) explained that he remained on (b)(7)(C) DHS OIG and began employment with DNFSB. (b)(7)(C) said that he was not encouraged or forced (b)(7)(C) recalled the hiring process at DNFSB and that he had separate interviews with each Board member all in one day. (b)(7)(C) said that when he interviewed with ROBERSON within 5 minutes he had, "fully disclosed" that he was (b)(7)(C) and that he believed it was unjust. (b)(7)(C) said that he also offered ROBERSON a copy of a letter showing that EDWARDS was under investigation for allegations that he had used (b)(7)(C) as a form of retaliation for subordinates. When asked if he

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

explained to any of the interviewing Board members details of the allegations against him at DHS OIG. (b)(7)(C) said that after disclosing what was going on, he left it up to each Board member to the extent they wanted to probe more. (b)(7)(C) said that he informed WINOKUR that there was an allegation against him of misuse of agency resources for personal gain and that it had to do with an EEO complaint and (b)(7)(C) involvement in representation of a (b)(7)(C) and that he believed the allegations were retaliation for whistleblowing. (b)(7)(C) said that this was the extent of their conversation. When asked if he believed he had a responsibility to provide Board members more information on the situation during the job interviews, (b)(7)(C) answered, "No. My recollection is that I came in and I was completely forthcoming about why I was (b)(7)(C) and what it was about and answered whatever questions they wanted. My impression was that they weren't that interested in it."

(b)(7)(C) said that he was aware the investigation was still ongoing at DHS OIG while interviewing at DNFSB because of the fact that he was still on (b)(7)(C) but that he was not being provided any information. (b)(7)(C) stated that he had virtually no communication with DHS OIG from (b)(7)(C) until he started at DNFSB. (b)(7)(C) said he retained a private attorney to approach DHS OIG to see what was going on but got stonewalled. (b)(7)(C) said that because he received no information, he felt he could likely be on (b)(7)(C) indefinitely so he started applying for jobs. After being offered the position at DNFSB, (b)(7)(C) said he informed DHS OIG of his (b)(7)(C) and in early September, (b)(7)(C) received a letter from Russell BARBEE stating that he acknowledged that (b)(7)(C) had (b)(7)(C) and that the investigation against him was closed with no further action. (b)(7)(C) said that he never claimed to anyone that he had a letter clearing him of any wrongdoing, just that he had been provided a letter stating the investigation was closed for the matter against him.

(b)(7)(C) said that he was aware that the DIA OIG was asked to conduct an independent review of his DHS investigation. (b)(7)(C) said that he never saw that final review/report and that he was informed that he would have an opportunity to make a presentation to the DIA OIG and respond to their questions, but that never happened. (b)(7)(C) said his attorney learned the report was sent directly to (b)(7)(C). (b)(7)(C) said that he and his attorney attempted to get a copy of the DIA OIG review, but the request was denied.

OIG informed (b)(7)(C) that the DIA OIG review noted that although (b)(7)(C) sought advice from a DHS ethics official regarding how to handle representing a (b)(7)(C), he was never granted permission to do so. (b)(7)(C) claimed that he believed he had been given permission. (b)(7)(C) explained that when he was initially interviewed by DHS OIG investigators, he explained to them that "he was representing a (b)(7)(C)", that he had gone to DHS agency ethics, they said it was appropriate

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

under these circumstances, there's an exception." (b)(7)(C) said that he also told the DHS OIG investigators that he had not misused any law clerk time or any other agency resources.

OIG asked (b)(7)(C) for his interpretation of the email he received from the DHS ethics official and he stated that he read the email as saying that he had authority to represent (b)(7)(C) in an EEO proceeding. (b)(7)(C) said that the email did not address his ability to use office resources or subordinates. (b)(7)(C) said that he did not recall whether or not he had looked up the statutes that were referenced in the email, but restated that he read the email as saying there was no problem with him representing (b)(7)(C). (b)(7)(C) said that his attorney filed a brief with the CIGIE Integrity Committee stating that if (b)(7)(C) was authorized to represent his wife, then logically he would be entitled to use his authority to use resources under him. (b)(7)(C) said that was posed only "as a hypothetical." (b)(7)(C) said again that he had given a sworn statement to DHS OIG and that he continued to say that he did not improperly use resources or staff to work on the matter. (b)(7)(C) stated that he never sought further approval or clarification on the matter after receiving the email.

(For further details, see Exhibit 6.)

Review of Human Resources Reference Checks for (b)(7)(C)

OIG reviewed the reference check worksheets provided by DNFSB Human Resources that were completed prior to hiring (b)(7)(C). Three references were checked; one person was a former peer and the two others were former supervisors at DHS OIG. All three highly recommended (b)(7)(C) and marked him as above average or superior in all categories listed on the worksheet. Each reference also added additional written comments, all of which were positive. There were no questions or comments regarding misconduct.

(For further details, see Exhibit 7.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

EXHIBITS

1. Memorandum to File, Review of DHS/DIA Documentation regarding previous investigation of (b)(7)(C), dated August 13, 2014, with attachments.
2. Memorandum to File, Receipt of Information from (b)(7)(C) DNFSB, (b)(7)(C) (b)(7)(C) dated July 9, 2014.
3. Memorandum to File, Review of (b)(7)(C) Personnel Security File, dated December 16, 2014.
4. Transcript of Interview, Peter WINOKUR, dated December 23, 2014.
5. Memorandum of Interview, Jessie ROBERSON, dated September 4, 2014.
6. Transcript of Interview, (b)(7)(C), dated December 5, 2014.
7. Memorandum to File, Review of HR Documentation, dated September 14, 2014.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

MEMORANDUM TO: Jessie Roberson
Acting Chairman
Defense Nuclear Facilities Safety Board

FROM: Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: POTENTIAL ETHICS VIOLATION BY THE (b)(7)(C)
(b)(7)(C) (OIG CASE NO. CD 14-003)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC) Report of Investigation (ROI) concerning whether (b)(7)(C), (b)(7)(C) Defense Nuclear Facilities Safety Board (DNFSB), fully disclosed to DNFSB, during his DNFSB hiring process, the reason his previous employer (b)(7)(C) (b)(7)(C) is also currently filling the position of (b)(7)(C)

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those DNFSB managers required for evaluation of this matter.

Attachments: Report of Investigation w/ exhibits

CONTACT: (b)(7)(C), OIG

DISTRIBUTION:

File location: (b)(7)(C), (b)(7)(E)

Case File 14-03 Historical File MAGNUM

OIG (b)(7)(C)	OIG (b)(7)(C)	(b)(7)(C)	OIG (b)(7)(C)	OIG J. McMillan	OIG D. Lee	OIG H. Bell
(b)(7)(C)	(b)(7)(C)		(b)(7)(C)			
2/9/15	2/9/15	2/9/15	2/9/15	2/10/15	1/15	2/10/15

Official File Copy

13

~~THIS DOCUMENT IS THE PROPERTY OF THE OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.~~

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION



**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**
WASHINGTON, D.C. 20004-2901

OFFICE OF THE
INSPECTOR GENERAL

December 16, 2016

(b)(7)(C)

White House
1650 Pennsylvania Ave., NW
Washington, DC 20502

Dear (b)(7)(C)

This letter accompanies the results of an Office of the Inspector General investigation pertaining to the conduct of a Defense Nuclear Facilities Safety Board Member. Although the report references exhibits, the exhibits are not enclosed and will be provided upon request.

Please note that this report is marked "Official Use Only" and, consequently, all persons having access to this report should be made aware that it must not be publicly released and must be distributed only to those who have a need-to-know to conduct official business. Also, this report will be provided to the Federal Bureau of Investigation.

If you have any questions, please contact me at 301-415-5930, or Joseph A. McMillan, Assistant Inspector General for Investigations, at 301-415-5929.

Sincerely,

A handwritten signature in black ink, appearing to read "Hubert T. Bell".

Hubert T. Bell
Inspector General

Enclosure: As stated

~~THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR-
GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR
DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.~~

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Threat Made to Defense Nuclear Facilities Safety Board Chairman

(b)(7)(C) Case No. CD 16-002 (b)(7)(C)
(b)(7)(C) Special Agent (b)(7)(C) Team Leader
(b)(7)(C) 12/16/16
Joseph A. McMillan, Assistant Inspector General Date
for Investigations

THIS REPORT IS RELEASABLE ONLY BY THE U.S. NUCLEAR REGULATORY
COMMISSION, OFFICE OF THE INSPECTOR GENERAL.

THIS REPORT OR ITS EXHIBITS MAY NOT BE PLACED IN ADAMS WITHOUT WRITTEN
PERMISSION OF THE NRC OIG.
EXEMPT FROM RELEASE UNDER FREEDOM OF INFORMATION ACT EXEMPTIONS (5),
(6) OR (7) AND PRIVACY ACT EXEMPTIONS (j)(2) OR (k)(1)
TABLE OF CONTENTS

THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR
GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR
DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.

TABLE OF CONTENTS

	<u>PAGE</u>
STATUTES, REGULATIONS, AND POLICY	1
SUBJECT	2
ALLEGATION	2
FINDINGS	3
BASIS FOR FINDINGS	6
LIST OF EXHIBITS	37

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

STATUTES, REGULATIONS, AND POLICY

5 CFR 735.203 – Conduct Prejudicial to the Government

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

Elements of Proof

- (a) Government Employee.
- (b) Misconduct of any type.
- (c) Not specifically spelled out in another regulation or section.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

SUBJECT

Sean Patrick SULLIVAN
Board Member
Defense Nuclear Facilities Safety Board (DNFSB)

ALLEGATION

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based upon information that on October 5, 2015, Sean SULLIVAN, Board Member, DNFSB, had written and provided a letter to Joyce CONNERY, Chairman, DNFSB, which she believed communicated a veiled threat to her position as Chairman. The letter detailed points of contention and disagreement that SULLIVAN had with CONNERY, how he had disagreed with and sought to force Dr. Peter WINOKUR, former Chairman, DNFSB, to resign his position, and how he had attempted to influence Congress to remove WINOKUR from his position. CONNERY also alleged that SULLIVAN treats the DNFSB staff disrespectfully and bullies them when they have policy, legal, or technical opinions that do not align with his.

Based on the initial allegation and information provided by other Board Members and staff during the course of this investigation, OIG's investigation addressed the following allegations:

1. SULLIVAN authored and provided a letter to CONNERY in which he communicated a veiled threat to her position as Chairman, DNFSB.
2. SULLIVAN intimidated staff members – by criticizing, berating, denigrating, and aggressively questioning professional staff in Board gatherings, Board meetings, private meetings, and Notational Vote Comment Sheets – and by so doing caused a hostile and chilled work environment.
3. SULLIVAN sought and misused Senior Executive Service (SES) employee annual performance appraisals and undermined the employee/supervisor relationship.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

FINDINGS

Issue 1: SULLIVAN authored and provided a letter to CONNERY in which he communicated a veiled threat to her position as Chairman, DNFSB.

OIG found that SULLIVAN wrote and gave CONNERY a letter detailing his dissatisfaction with her comments at an October 2, 2015, Board Member offsite and that the letter contained language that CONNERY believed served as a veiled threat to her. OIG found that her view of this letter was reasonable, and that the letter could be interpreted as a threat.

SULLIVAN's main points of contention in the letter were that CONNERY (1) alluded to him during an offsite Equal Employment Opportunity (EEO) training session as having had problematic interactions with women and (2) publicly rebuked him at the offsite session by stating that a Board Member has "put their personal fight above the good of the agency." SULLIVAN believed the EEO session was meant to address complaints CONNERY had received about him instead of CONNERY communicating the concerns to him directly. SULLIVAN interpreted the second comment as criticizing his efforts to effect change in the agency, which culminated in his view that the former Chairman, Peter WINOKUR, was the problem and his conclusion that WINOKUR needed to be pushed to leave the agency and that SULLIVAN had to make "Peter WINOKUR go home." In concluding the letter, SULLIVAN wrote, "I hope this letter stays between the two of us. I pledge not to show it to anyone else. I fought with one Chairman – I have no desire to do it again." Although the letter also raised several other examples that SULLIVAN characterized as "minor slights," he expressed a wish to work together to establish a favorable, productive relationship and pledged to "do everything I can to assist you."

Board Members (excluding SULLIVAN) said CONNERY did not mention SULLIVAN by name or otherwise single him out during the EEO session, that SULLIVAN identified himself during the EEO session as the Board Member who had engaged in the behavior, and that the discussion was appropriate for the offsite.

SULLIVAN told OIG he did not intend for the letter to be a warning to CONNERY, but rather to convey that SULLIVAN's past actions in connection with WINOKUR were not related to personal desires, but what was best for the agency, and that he did not want to "fight again." Nevertheless, CONNERY and Board Member Jessie ROBERSON, who also reviewed the letter and had served on the Board with WINOKUR, believed the letter was threatening.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Issue 2: SULLIVAN intimidated staff members – by criticizing, berating, denigrating, and aggressively questioning professional staff in Board gatherings, Board meetings, private meetings, and in Notational Voting Comment Sheets – and by so doing caused a hostile and chilled work environment.

OIG found that SULLIVAN's behavior has had a chilling effect wherein those interviewed by OIG described either their own reluctance or the reluctance of others to disagree with SULLIVAN because they fear he may embarrass them or negatively impact their career. OIG found that there is a widespread perception among DNFSB senior managers and Board Members that SULLIVAN behaves antagonistically towards individuals who disagree with his points of view and that, as a result, several managers are reluctant to meet with him one-on-one or shield their staff from one-on-one meetings with SULLIVAN. One manager has stopped speaking up at Board meetings because SULLIVAN has indicated to him he does not want to hear from him and because he does not want to be criticized in front of the Board and his staff. Most of those interviewed, including the (b)(7)(C) said SULLIVAN treats the (b)(7)(C) with particular disdain, and that he treated past Acting General Counsels in a similar manner. Specific examples were also provided where SULLIVAN tried to have employees removed or disciplined for disagreeing with him, mischaracterized information so it would appear to support his views, disparaged managers to other managers and to staff, and openly displayed his temper by yelling at a female staff member while slamming the table. Three current Board Members and a former Board Member said that SULLIVAN had communication issues with staff, ranging from abusive and aggressive to disrespectful. The fourth current Board Member did not identify any "untoward behavior," but he noted his short tenure at the Board limited his ability to assess the situation.

SULLIVAN told OIG that his questions to staff are direct, not hostile, and it would be unreasonable to interpret them as intimidating; he does not intend to make staff look bad or surprise anyone; the Office of the General Counsel (OGC) attorneys are not very good and are not used to being challenged; and the Office of the General Manager (OGM) (b)(7)(C) has shown incompetence and lacked the expertise needed to be good at his job. SULLIVAN denied he had any issues with female staff and was offended by the suggestion that he did.

Issue 3: SULLIVAN sought and misused Senior Executive Service (SES) employee annual performance appraisals and undermined the employee/supervisor relationship.

OIG found there has been a longstanding disagreement between (1) SULLIVAN and other Board Members; and (2) OGC concerning SULLIVAN's request to review DNFSB SES performance appraisals. SULLIVAN initially requested these appraisals in May

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

2014 and was denied by the Chairman at the time. In 2015, the Department of Justice (DOJ) advised the Chairman that all Board Members should be provided this information if requested in connection with the Board's function to establish policies regarding employee supervision, and SULLIVAN was subsequently provided with the appraisals. In 2016, SULLIVAN again requested the appraisals and the Chairman – supported by OGC and the (b)(7)(C) – was reluctant to provide them in the absence of DNFSB policy concerning the handling of such requests. There was also a concern that SULLIVAN had misused one appraisal and undermined the employee/supervisor relationship in 2015 by telling one employee he had reviewed the employee's appraisal and that the employee's supervisor had not treated this individual fairly.

OIG was unable to validate, other than through testimony of those interviewed, whether or not SULLIVAN told the employee he had reviewed his appraisal. According to the employee, SULLIVAN said he had reviewed the appraisal and thought the supervisor had treated him unfairly, and the employee relayed this discussion to the Chairman, the Vice Chairman, and the (b)(7)(C). SULLIVAN denied discussing the appraisal with the employee. Instead, SULLIVAN said his conversation with the employee focused on a specific observation where SULLIVAN perceived the employee's supervisor had treated him unfairly on one occasion in front of the Board.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

BASIS FOR FINDINGS

Background

DNFSB was founded in 1988 pursuant to 42 United States Code § 2286 and related sections. The statute has been amended 11 times since, primarily through the annual National Defense Appropriation Acts (NDAA) in various years, as well as other legislation. DNFSB "provides independent analysis, advice, and recommendations to the Secretary of Energy" in ensuring the provision of "adequate protection of public health and safety" at the defense-related nuclear facilities operated by the Department of Energy (DOE). Such facilities include research laboratories, materials handling programs and projects, and other facilities.

DNFSB employs 110 technical and administrative employees and is organized into three main offices: an administrative office led by a General Manager, an Office of the General Counsel, and the Office of the Technical Director (OTD). DNFSB's primary, safety-related work product comes from technical staff employed in OTD. Technical staff include engineers and research personnel at headquarters, as well as site representatives at DOE defense-related nuclear facilities. DNFSB work products primarily consist of periodic reports and different specific forms of correspondence, issued to the DOE Secretary and for public release, containing recommendations on safety issues. All issued documents are voted upon by the Board, with a majority vote required for issuance. While DNFSB has the power to make recommendations, investigate issues, hold hearings, and require production of information by DOE and its contractors, it is not a regulatory or enforcement organization.

The enabling legislation provides for a five-member Board, with each member having one vote, and with no more than three being of a single political party. The legislation specifically designates the Chairman as holding the powers of a Chief Executive Officer, but permits delegation of powers at the Chairman's discretion. The President designates the Chairman and a Vice Chairman, who acts for the Chairman in his or her absence, but otherwise functions as an ordinary Board Member. All Board Members are to be technical experts per the statute, which specifies that they should be "respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board."

Recent amendments to the legislation contained in the 2016 NDAA provide for the required provision of information by the Chairman to Board Members and provide Board Members with an "approval" role in the Chairman's appointment or removal of the General Manager, General Counsel, and Technical Director. The statute requires three Board Members to be present to provide a quorum. Various formal requirements exist

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

to provide guidance on what constitutes an official Board meeting, and for the release of information from such meetings, and one of the primary functions of the General Counsel is to provide guidance to the Board on such issues.

Issue 1: SULLIVAN authored and provided a letter to CONNERY in which he communicated a veiled threat to her position as Chairman, DNFSB.

Review of Sean SULLIVAN's October 5, 2015, Letter to Joyce CONNERY

OIG reviewed SULLIVAN's letter to CONNERY in which SULLIVAN stated he felt offended by CONNERY's statements/actions. In the letter, SULLIVAN provided examples occurring at an EEO training session during an October 2, 2015, offsite for Board Members as well as in the office. In the letter, SULLIVAN also referenced his past relationship with former Chairman WINOKUR, noting that he made it a priority to remove WINOKUR as Chairman.

SULLIVAN began the letter by explaining he felt the relationship between himself and CONNERY "was not off to a good start." [Investigative Note: CONNERY was confirmed as DNFSB Chairman on August 5, 2015.] SULLIVAN stated his intent in writing the letter was to communicate his feelings and reiterate that he was hopeful they could work together "to establish a favorable, productive, long-term relationship." SULLIVAN provided several examples he felt illustrated his point that CONNERY's actions were offensive to him." For example, SULLIVAN believed the EEO training during the Board offsite was "highly unfair" to him because CONNERY had unjustly alluded to SULLIVAN being the reason for the EEO training session. SULLIVAN reiterated his belief that CONNERY intended to offend him, noting that she had remarked, "Sorry Sean, I should have talked to you about this beforehand," which, in his view, essentially removed any doubt as to her intention to identify him [SULLIVAN] as the reason for the training.

SULLIVAN also cited the example of CONNERY stating, during the offsite, that a Board member "put their personal fight above the good of the agency" during a non-public Board Member meeting. SULLIVAN considered this to be a "public rebuke" of his past actions under former Chairman WINOKUR. In his letter to CONNERY, SULLIVAN noted that CONNERY had not been at the Board while WINOKUR was Chairman and during that time, he [SULLIVAN] acted in the interest of the agency and country as he felt it his duty to address the inefficacies of the Board and the Board's leadership. SULLIVAN wrote,

I spent a year and a half trying everything possible to effect change, to no avail. I came to the conclusion that Peter [WINOKUR] had to go, and he had to be pushed. Everything I did, I did with one objective: to make

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Peter WINOKUR go home. Only then could the agency get better, and only then could the agency help DOE and NNSA get better. There is much more I could say here about what I did and why I chose to do it. If you are interested and have several free hours, maybe even days, I could go through the details. But I do want you to know that during 2014 I came to work every day with a very singular, very lonely, and very difficult mission. Peter was terrible at his job, but he really enjoyed his job. I determined that I had to take that enjoyment away. There was no other way to get him to go. That meant fighting with the man who had the power to align the entire staff against me. It also meant fighting with a man aligned with the Senate majority leader, who in turn was aligned with the President. My work environment, my reputation and my career were at all risk. I took the risk. It was the right thing to do.

I realize that all this may seem self-serving, perhaps incredibly so. I also realize that rational people may conclude that nothing could justify what I did last year.... I am not asking you to adopt my version of events as the official narrative.... But I ask that you keep your judgment to yourself. Expressing to others that I put 'my fight' above the best interests of the agency pierces anew a wound that is very deep and very personal to me.

SULLIVAN concluded the letter by stating,

I hope this letter stays between the two of us. I pledge not to show it to anyone else. I fought with one Chairman – I have no desire to do it again. I do have great hope for your tenure. Notwithstanding the criticism here, you clearly possess the skill, experience and demeanor to do a great job. I pledge to do everything I can to assist you.

(For further details, see Exhibit 1.)

Interview of Chairman Joyce CONNERY

CONNERY confirmed that the Board Member offsite was held [on October 2, 2015], and included EEO training. During the training, CONNERY brought up an example of an incident she witnessed during a briefing when a Board Member was dismissive to female staff member leading a briefing. After CONNERY provided the example, SULLIVAN identified himself as the subject of the discussion noting, "You must be talking about me." CONNERY said that she did not identify SULLIVAN because she did not want to name any particular person. Although not certain, she recalled apologizing to SULLIVAN only after receiving the letter and not during the offsite as SULLIVAN claimed in the letter.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

CONNERY confirmed she did state her belief, during the offsite, that it was not professional for a Board Member to put their individual needs in front of the agency's and to behave poorly at public hearings or in public settings. However, CONNERY said she did not identify a specific Board Member to whom this statement applied because there were several examples of various other individuals this could have applied to.

CONNERY also confirmed she received the letter in question from SULLIVAN on October 5, 2015, which identified concerns regarding the October 2, 2015, Board Member offsite. On October 5, 2015, CONNERY met with SULLIVAN to address his concerns. CONNERY stated she explained to SULLIVAN that she was not trying to publicly call him out, but she thought it was appropriate to bring attention to the matter regarding equitable treatment of staff. During their meeting, CONNERY also refuted SULLIVAN's claim that she was referring to him in her comment about placing individual needs in front of the agency's and provided the examples of other senior agency staff and Board Members not acting professionally.

Later that evening, CONNERY reread SULLIVAN's letter and became increasingly disturbed because she believed it sounded like a "manifesto" and contained statements that "were outside of normal rational thought." She considered SULLIVAN's letter to be a "veiled threat" because of the irrationality and tone of the letter in addition to SULLIVAN's written admission that he had "made it his life's mission to make Peter WINOKUR's life miserable so that he would leave the Agency." CONNERY added she felt threatened because SULLIVAN chose to leave the letter in her office when she was not present.

(For further details, see Exhibits 2 through 4.)

Interview of Former Chairman Peter WINOKUR

WINOKUR told OIG that he and SULLIVAN had worked well together in the beginning of SULLIVAN's tenure at the Board. WINOKUR said that the Board had experienced a difficult separation with a former Republican Board Member and that he went to great lengths to make sure SULLIVAN's opinions were solicited and included in the Board's decisionmaking process. WINOKUR believed his efforts backfired and SULLIVAN had a very inflated opinion about what his (SULLIVAN's) role was at the Board. WINOKUR thought SULLIVAN believed he (SULLIVAN) was a co-Chairman of the Board and began spending a majority of his time challenging WINOKUR's leadership at the Board. WINOKUR told OIG that SULLIVAN challenged his leadership in the press, at Capitol Hill, DOE, with the Board's staff, and with other Board Members. WINOKUR felt the Board's ability to perform its mission was impacted by SULLIVAN's behavior.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

WINOKUR told OIG that between the periods of April 2014 and September 2014, SULLIVAN wrote eight memoranda to WINOKUR that were titled, "Board Eyes Only," and were intended to be shared with WINOKUR and ROBERSON.¹ WINOKUR perceived the memoranda to be aggressive, abusive, and threatening. In a memorandum dated September 5, 2014, SULLIVAN laid out a range of issues he believed affected the Board. Those issues included employee morale and SULLIVAN's perception that DOE and Capitol Hill did not respect the Board. SULLIVAN used those assertions to request WINOKUR step down as the Chairman of the Board. WINOKUR responded with a five-page memo using great detail to point out why each of SULLIVAN's perceptions was incorrect.

WINOKUR described actions that SULLIVAN took to convey that WINOKUR was ineffective as Chairman and did not have control of the staff. In November 2014, SULLIVAN halted the Board's work and "held [WINOKUR] hostage" by refusing to vote on issues because he was upset that a Board directed policy that the staff was developing was not being developed fast enough. According to WINOKUR, SULLIVAN wrote an email to all staff members communicating his decision to interrupt the process of routine correspondence [Notational Voting] between DOE and DNFSB because of the disagreement he had with the other Board Members regarding the policy. He told the staff that he would not participate in Board votes until the policy was developed. WINOKUR explained that the Board had three Board Members during this period of time and SULLIVAN's nonparticipation meant that the Board could not legally communicate with DOE, no matter how serious the safety issue, due to the lack of being able to form a quorum.

WINOKUR noted that while working with SULLIVAN was unpleasant, it did not influence his decision to retire from DNFSB.

(For further details, see Exhibit 5.)

Review of Sean SULLIVAN's "Board Eyes Only" Memoranda

OIG reviewed eight memoranda written by SULLIVAN to Board Members from February 21 to September 5, 2014. Six of the eight memoranda addressed various concerns pertaining to the technical staff, and two were critical of then Chairman WINOKUR.

Of the six memoranda focusing on the technical staff, two reflected SULLIVAN's concerns regarding the staff's overall performance involving certain issues and areas warranting additional staff emphasis and analysis. A third memorandum was critical of staff estimates for a proposed Board business meeting, which in his view was "wildly

¹ At the time there were two vacant Board Member positions.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

excessive.” The fourth and fifth memoranda communicated SULLIVAN’s concerns regarding feedback he received from technical staff members, which reflected that the technical staff leadership directed the technical staff “to speak with one voice” and discouraged technical staff from voicing differing professional opinions in front of the Board and that the (b)(7)(C) was inappropriately restricting information flow from the staff to the Board. The sixth memoranda pertained to the staff’s preparation of letters to DOE and whether the staff’s focus had shifted away from resolving issues at the staff level toward producing Board letters to DOE and whether such letters had an impact on staff’s performance appraisals.

The final two memoranda reflected criticism of WINOKUR. One conveyed SULLIVAN’s concerns that the Chairman acted inappropriately by providing unilateral direction to the staff. The other cited 2014 Federal Employee Viewpoint Survey results, which SULLIVAN referred to as dismal. This September 2014 memorandum noted that since April 2014, SULLIVAN had written eight memoranda outlining agency problems, which had been met with denial and a continued lack of corrective action. The memorandum reflected, in part that the Chairman’s handling of staff senior executive positions “had been an unmitigated disaster,” and that “the Chairman cannot fix the problem. He is the problem.” In addition, the September memorandum reflected that SULLIVAN wrote it because he had “a duty to point out what was right for the agency and the country” and that “only a change of leadership at the top can fix this.”

(For further details, see Exhibit 5, attachments 1-8.)

Review of Board Notational Voting Records

OIG reviewed Board Votes completed in November 2014 and learned that SULLIVAN “no voted” on 16 separate Requests for Board Action (RFBA) and caused votes to fail due to a lack of a Board quorum, and abstained from voting on another matter. In his Notational Voting Comment Sheet pertaining to one of the no vote items, SULLIVAN stated, “The Chairman must perform his duties as directed by the enabling statute. Until he does, I cannot participate in Board actions unless the matter presents a risk to the public health and safety rising to the level of a formal recommendation. This matter does not rise to this level.” SULLIVAN also abstained on one RFBA issued in November, which allowed the Board to have a quorum. In his Notational Vote Comment Sheet on this matter, SULLIVAN detailed his frustration with OGC, OGM, and WINOKUR for not producing an operating procedure for posting Board Member comments to the DNFSB’s public Web page.²

² OIG investigation CD15-002 did not find evidence indicating that OGC or anyone else at the Board inappropriately delayed OGC’s development of procedures responsive to DNFSB Doc# 2014-095.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

(For further details, see Exhibits 6 and 7.)

Interview of Vice Chairman Jessie ROBERSON

Jessie ROBERSON, Vice Chairman, DNFSB, stated that Daniel SANTOS, Board Member, DNFSB, approached her sometime prior to October 2015 with the idea that the Board conduct an offsite to welcome the new Board Members (CONNERY and Bruce HAMILTON.) All Board Members agreed to the offsite. CONNERY proposed to Board Members that a speaker be invited to the offsite to address EEO-related concerns, to which all Board Members agreed. ROBERSON felt that the training was appropriate, both because of past incidents involving perceived unfair treatment toward women at DNFSB and to educate the Board Members on their responsibilities and liabilities. ROBERSON recalled CONNERY provided some general examples during the offsite discussion, but the examples were not specific to any Board Member. ROBERSON did not recall CONNERY apologizing to SULLIVAN during the offsite and felt that the training and discussion regarding EEO went well.

ROBERSON stated that CONNERY had shared SULLIVAN's October 5, 2015, letter with her [ROBERSON]. ROBERSON told OIG that SULLIVAN had also written a series of letters to WINOKUR, which in hindsight she understood to be SULLIVAN's attempt to remove WINOKUR as Chairman. ROBERSON found SULLIVAN's letter to CONNERY to be similarly threatening to CONNERY's position as Chairman, and ROBERSON believed SULLIVAN intended to communicate "the same thing could happen to her [CONNERY]."

(For further details, see Exhibits 8 and 9.)

Interview of Board Member Daniel SANTOS

SANTOS recalled that during the Board Member offsite, an individual was brought in to discuss EEO matters. SANTOS noted the Board Members were discussing the treatment of women in general terms until CONNERY introduced a specific example of a Board Member being dismissive towards a female staff member during a Board briefing. No Board Members, to include CONNERY, identified SULLIVAN in connection with the example. It was only after SULLIVAN identified himself as the Board Member in question, became defensive, and explained his actions that the example was attributed to SULLIVAN. SANTOS did not recall CONNERY apologizing to SULLIVAN during the offsite for using the example. SANTOS did not consider the discussions or example provided by CONNERY to be inappropriate because the Board Members had agreed to meet and receive EEO training.

(For further details, see Exhibit 10 and 11.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Interview of Board Member Bruce HAMILTON

Hamilton confirmed that during the Board Member offsite, an individual was brought in to discuss EEO matters including diversity and sexual harassment. Hamilton stated he did not feel that any specific examples or discussions were raised that would have singled out a particular Board Member and that the conversations were appropriate for the offsite.

(For further details, see Exhibit 12.)

Interview of Board Member Sean SULLIVAN

SULLIVAN confirmed that following the Board Member offsite, he gave CONNERY the October 5, 2015, letter in which he identified specific instances where he believed CONNERY treated him unfairly and/or was not promoting a collegial working relationship with him. SULLIVAN told OIG that he writes letters to individuals when he is emotional. He acknowledged that he is prone to not being able to control his temper and that writing letters allow him to remove emotion, and share his thoughts without being interrupted.

SULLIVAN said the letter he sent to CONNERY was unique because it was sent only to CONNERY whereas the letters he wrote to WINOKUR were shared with all Board members. SULLIVAN shared his letters to WINOKUR with all Board Members because the letters to WINOKUR typically identified and addressed specific problems with the agency. He did not share his letter to CONNERY with other Board Members because he viewed the issue as specific to their [CONNERY's and SULLIVAN's] working relationship and believed she [CONNERY] would become defensive if he included other Board Members on the letter.

SULLIVAN told OIG that his letter identified specific instances where CONNERY treated him unfairly and/or was not promoting a healthy working relationship with him. More specifically, SULLIVAN said that during the October 2, 2015, offsite, the group discussed non-policy issues, conducted sensitivity training, and spent an hour "listening to this woman talk about gender bias and gender bias only," but only gender bias as it relates to male bias toward females. SULLIVAN related that there was a statement that gender bias had been occurring at the Board. SULLIVAN believed it was clear to the group that he was the Board Member of focus. SULLIVAN claimed that at some point during the training, CONNERY told SULLIVAN that she was sorry for not speaking with him about the training topic in advance and that she believed he had been disrespectful to a female staff member while that staff member was briefing the Board. According to SULLIVAN, during the briefing referenced by CONNERY, SULLIVAN formulated a question and directed that question to the female staff member's "male superior."

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

According to SULLIVAN, the female staff member and CONNERY considered his action(s) to be a slight to the "woman" providing the brief. SULLIVAN said he was unaware that anyone perceived he was exhibiting such behavior. SULLIVAN also said he was offended because CONNERY had made a comment about Board Members placing their "personal fight" above the good of the agency.

SULLIVAN said that he did not intend for the letter to be a "warning" to CONNERY, but sought to explain Board dynamics and his relationship with WINOKUR during WINOKUR's tenure as Chairman. SULLIVAN chose to include details about his and WINOKUR's relationship because he wanted her to know that he believed WINOKUR had run DNFSB poorly and SULLIVAN's past actions were not related to personal desires, but what was best for the agency. SULLIVAN asserted that his intent was to tell CONNERY that he did not want to "fight again," to defend himself, and to show her that he was not trying to create a hostile work environment.

Regarding his relations with WINOKUR, SULLIVAN acknowledged that he had conflict with WINOKUR; however, he considered their relationship better than his relationship with CONNERY because he and WINOKUR talked regularly. However, SULLIVAN told OIG that he believed WINOKUR was a "problem" and did not think WINOKUR should have been Chairman. He said he told oversight staff members on Capitol Hill he believed WINOKUR was a "problem" and it would be good for the Board if WINOKUR left. SULLIVAN said he never told WINOKUR that he wanted WINOKUR to leave the Board. SULLIVAN did tell WINOKUR that he did not think WINOKUR had the ability to manage the staff. SULLIVAN believed WINOKUR was "ill-suited" for the role of Chairman and attributed that belief partially to negative results that the Board received from the Federal Employee Viewpoint Survey.

SULLIVAN explained why he made the choice to not participate in Board actions in November 2014. He said that in June 2014 the Board voted to approve policy that required individual Board Member's Notational Voting Sheets, with comments, to be posted to the Board's public Web page. In SULLIVAN's opinion, the staff took too long to produce an operating procedure and WINOKUR would not direct the staff to produce the operating procedure. Because of this, SULLIVAN refused to vote on Board matters unless the Board was voting on issues pertaining to adequate protection. According to SULLIVAN, there were issues before the Board that were related to safety in the sense that an affirmative vote would have created a reporting requirement for different weapons complex sites to provide additional information pertaining to safety related issues. SULLIVAN considered these matters "basic" and did not vote on these types of matters in November 2014.

(For further details, see Exhibits 13 through 15.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Issue 2: SULLIVAN intimidated staff members – by criticizing, berating, denigrating, and aggressively questioning professional staff in Board gatherings, Board meetings, private meetings, and in Notational Voting Comment Sheets – and by doing so caused a hostile and chilled work environment.

OIG interviewed DNFSB's 11 senior managers in OGC, OGM, and Office of the Technical Director (OTD); these managers collectively described specific examples where they either experienced, witnessed, or were told about SULLIVAN behaving in a critical or harsh manner towards Board employees. OIG also interviewed the five current Board Members, including SULLIVAN, about his interactions with staff members.

Interviews of OGC staff

(b)(7)(C) DNFSB, told OIG that SULLIVAN was antagonistic and intolerant of disagreement. Furthermore, (b)(7)(C) said that SULLIVAN had taken "a particular interest in the Office of General Counsel" because SULLIVAN held a law degree, and because he thus felt he had expertise in law that (b)(7)(C) speculated SULLIVAN lacked in nuclear technical issues. He noted that SULLIVAN consistently expressed dissatisfaction with OGC staff in all interactions directly with (b)(7)(C) and further explained that upon first starting at DNFSB, he was aware that SULLIVAN had sought to give him a written letter condemning OGC as a whole, but had been dissuaded from doing so by the Chairman.

Regarding his own direct interactions with SULLIVAN, (b)(7)(C) stated that when he first arrived [in October 2015], he experienced "a bit of a honeymoon period" where SULLIVAN talked to him about his concerns and issues at the Board. However, over time and when it became apparent that (b)(7)(C) was not fully supportive of SULLIVAN's "agenda," SULLIVAN became "much more antagonistic directly toward me." (b)(7)(C) stated that SULLIVAN had at first expressed to him a view that the agency should not be involved in certain areas, and that (b)(7)(C) had not agreed with SULLIVAN's views. For example, SULLIVAN told (b)(7)(C) that if a waste tank at the Hanford facility "blew up," he "didn't care," because the radiation exposure to the public would be small. (b)(7)(C) expressed disagreement with this view, holding to the NRC and DNFSB principle of achieving public radiation dosage "as low as reasonably achievable." SULLIVAN also told (b)(7)(C) he took a narrow view of regulating chemically toxic or non-breathable gas leaks at facilities, while (b)(7)(C) expressed the view that if workers who engaged in radiation safety functions could be incapacitated by such leaks, this was appropriate for oversight by DNFSB. (b)(7)(C) characterized such areas of disagreement as minor, given that (b)(7)(C) had no Board vote, and his job is simply to advise the Board as a whole on what Board actions would be legal.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

(b)(7)(C) described two other incidents that he thought led to SULLIVAN's antagonism towards him. One pertained to a longstanding issue of Board Member access to Senior Executive Service (SES) appraisals, and whether a requestor (in this case, SULLIVAN) needs to articulate a Privacy Act exception in order to gain access. The other matter pertained to the proper use of Sunshine Act exemptions relative to documents posted on DNFSB's Web site.

(b)(7)(C) stated that SULLIVAN was not physically intimidating, but that SULLIVAN was "intimidating in that he doesn't hesitate to use his position, power, authority, or influence to rake somebody over the coals or to ruin their reputation." (b)(7)(C) told OIG that a culmination of disagreements between he and SULLIVAN, to include the specific references above, led to SULLIVAN submitting an RFBA (REBA Doc# 2016-OD-2) to request Board Members rescind the Board's selection of (b)(7)(C) as the (b)(7)(C). (b)(7)(C) considered the RFBA an example of SULLIVAN's intimidation. (b)(7)(C) added that the RFBA was "very smart" on SULLIVAN's part in that it provided him a forum to legally but unaccountably document antagonistic views of (b)(7)(C) that could damage (b)(7)(C) reputation, and to simultaneously place the Chairman in a difficult position by "forcing her to put her own reputation on the line to defend mine." (b)(7)(C) confirmed that as a Privacy Act covered issue, the vote was not publicized, but that the other office directors were aware of the vote because he had given CONNERY permission to disclose it to them, and (b)(7)(C) had informed his own staff of it. He said SULLIVAN personally provided to him a draft copy of his own vote sheet on the issue articulating his negative views of (b)(7)(C). (b)(7)(C) stated that despite SULLIVAN's treatment of him, he sought to perform his duties in an "objective" manner and reinforced this need for objectivity with his staff.

(b)(7)(C) told OIG that in October 2015, and upon his arrival at DNFSB, SULLIVAN had wanted to provide him a letter that detailed SULLIVAN's unhappiness with the OGC and staff; however, CONNERY was able to persuade SULLIVAN not to provide the letter. Although he did not receive the letter, (b)(7)(C) understood that the letter was essentially "an attack on all of the staff in the Office of General Counsel," and he said that SULLIVAN complains about at least one OGC staff member during every meeting (b)(7)(C) has with him. As a result of this and the aggressive approach taken by SULLIVAN when meeting with OGC staff, (b)(7)(C) had taken steps to shield his staff from direct or solitary interactions with SULLIVAN. (b)(7)(C) said SULLIVAN had also taken the opportunity to disparage other office directors to (b)(7)(C) during one-on-one meetings that they have had. For example, SULLIVAN's initial conversation with him, when he first arrived at the Board, focused on how SULLIVAN felt the agency had problems, that (b)(7)(C) DNFSB, "is a cancer on the agency," and that (b)(7)(C) DNFSB, was incompetent. (b)(7)(C) said

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

SULLIVAN exhibited a pattern of criticizing anyone who had “crossed him in some way and disagreed with him” and that no one deserves the level of criticism that SULLIVAN delivers towards them.

(b)(7)(C) DNFSB, told OIG that she believed that SULLIVAN had a “complete disdain and disrespect” for any opinions or ideas or viewpoints that do not align with his own and would, if he could, impose performance-based disciplinary action based on those opinions. She said that “on two occasions,” she personally had presented a legal analysis during a briefing with SULLIVAN that differed from his analysis, and in addition to engaging in a display of temper on the spot, SULLIVAN had subsequently approached the Chairman and sought to have (b)(7)(C) subjected to misconduct-based discipline for “insubordination.” (b)(7)(C) denied ever behaving in an insubordinate manner. She said that for performing her duty as an OGC attorney to provide objective legal advice to the Board as a whole, “he abused his power and position to try and get me disciplined.” She characterized this as a “gross and egregious misuse of power,” with her credibility and reputation at stake.

(b)(7)(C) stated that one of these two incidents occurred in approximately February or March 2015 under ROBERSON’s tenure as Acting Chairman and the other, in August 2016, under the present Chairman. She said that ROBERSON had brought her and (b)(7)(C) former Acting General Counsel and former DNFSB employee, into her office and informed them that SULLIVAN sought to have them “admonished, basically for insubordination,” and that ROBERSON was declining to do so.

(b)(7)(C) learned about the more recent incident from (b)(7)(C) who, in turn, had been told by Chairman CONNERY. In that instance, (b)(7)(C) explained that in a meeting where she was representing OGC in (b)(7)(C) absence, along with (b)(7)(C) (b)(7)(C) SULLIVAN was presenting his own view on a particular, unspecified issue. She said SULLIVAN twice placed his hand in front of her face to signal silence from (b)(7)(C) when she attempted to interject OGC’s position, which (b)(7)(C) had provided to her. (b)(7)(C) was not speaking up on the matter. At a “pause in the conversation,” (b)(7)(C) again attempted to interject OGC’s position in what she described as a non-confrontational and non-interruptive manner. SULLIVAN again signaled for silence. After the meeting, (b)(7)(C) aware that SULLIVAN might follow up negatively, in advance informed (b)(7)(C) of this encounter. (b)(7)(C) learned from (b)(7)(C) that she had been correct in her expectation; almost immediately, SULLIVAN had indeed gone to the Chairman and said OGC as a whole, and (b)(7)(C) specifically, was insubordinate and should be punished.

(b)(7)(C) also told OIG that during a Board Meeting pertaining to Board Member access to Privacy Act protected documents, SULLIVAN had slammed the table seven times by her count and screamed “at the top of his lungs” at her in front of office directors for

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

disagreeing with him. She had learned it was futile to present a differing position to SULLIVAN and the best practice was to allow him to make a monologue and then depart. Because of SULLIVAN's treatment of her, she "loathes" meeting with him. She also said that this treatment causes her to over-prepare for meetings with SULLIVAN because she is aware he will try to find every fault possible with any argument she makes. She believed SULLIVAN has "a problem with women," and is deliberately provoking, "taunting," and "poking" her to force an emotional outburst from her that he can then seek to base an insubordination charge upon.

(b)(7)(C) told OIG that SULLIVAN had historically challenged every General Counsel when they have not agreed with his position(s). She said she had been copied on email communications between (b)(7)(C) former General Counsel, DNFSB, where SULLIVAN would question his legal opinions and (b)(7)(C) would respond that SULLIVAN was entitled to his own opinion, but his opinion would not change (b)(7)(C) (b)(7)(C) said that while SULLIVAN challenged (b)(7)(C) opinion(s), he treated subsequent General Counsels with less respect. She said she had attended numerous meetings with former Acting General Counsels (b)(7)(C) and (b)(7)(C) (b)(7)(C) where she witnessed SULLIVAN treat them disrespectfully when their legal opinions differed from his own. (b)(7)(C) recounted that SULLIVAN would yell at (b)(7)(C) and basically call him "incompetent." She said SULLIVAN would routinely tell (b)(7)(C) that "I'm the Board Member, you will listen to what I have to say." These interactions with SULLIVAN were "uncomfortable" because SULLIVAN was very "condescending" and "insulting" towards (b)(7)(C) (her supervisor at the time). SULLIVAN's interactions with (b)(7)(C) and (b)(7)(C) were similar and SULLIVAN's disagreements with (b)(7)(C) resulted in SULLIVAN attempting to have (b)(7)(C) removed by Board vote. (b)(7)(C) told OIG she believed the RFBA was likely submitted "out of complete irrational emotion and impulse" and "not on the basis of misconduct," but for not agreeing with SULLIVAN's positions on all issues. According to (b)(7)(C) these interactions created a hostile work environment and caused the OGC and its staff to "walk on eggshells" because they did not know when they would say something that would "send him [SULLIVAN] over the edge."

(b)(7)(C) former Acting General Counsel, DNFSB, refused to be interviewed by OIG based on the advice of legal counsel. He believed SULLIVAN had the ability and potential desire to negatively influence (b)(7)(C) future career opportunities if he were to talk to OIG. (b)(7)(C) added that he left DNFSB because of a toxic relationship he and SULLIVAN maintained, and he wanted to leave those experiences and memories in the past.

(For further details, see Exhibits 16 through 18.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Interviews of OGM Staff

(b)(7)(C) DNFSB, told OIG that SULLIVAN personally treats him "acceptably" and said SULLIVAN had not, even when angry at (b)(7)(C) insulted him or "made derogatory remarks." (b)(7)(C) said that SULLIVAN had "a couple of times" made disparaging comments regarding him in Notational Vote comments, "but that does not bother me." (b)(7)(C) said, "People I care about know the source." (b)(7)(C) was more upset by SULLIVAN's "unfair and harsh" comments about other senior staff. He said that the (b)(7)(C) "takes the brunt of it." He said "in the last year or so in the Board Room," SULLIVAN has refrained from making personal attacks.

(b)(7)(C) DNFSB, told OIG that she witnessed a tense exchange between Chairman CONNERY and SULLIVAN regarding his requirement to undergo a polygraph to obtain a Sigma clearance. He wanted the Chairman to intervene to change this process, despite DOE's position, as owner of the clearance process, that the process was mandatory. He wanted the Chairman "to represent [SULLIVAN's] interest" to DOE, and in the absence of that, felt all DNFSB staff involved in the process, up to and including the Chairman, were not "doing our jobs." SULLIVAN had previously argued this issue directly to (b)(7)(C), stating that "he didn't need to sign the poly [consent] form in order to get Sigma." (b)(7)(C) gave a noncommittal response and said she would consult with the (b)(7)(C) and SULLIVAN then "ripped up the poly form very dramatically in front of me, threw it in the garbage." The (b)(7)(C) responded that SULLIVAN was not exempt from the DOE requirement, and provided an email to this effect. The next morning in the Board room before the entire Board, (b)(7)(C) read this email aloud to the room, and it was revealed that SULLIVAN had inaccurately represented to several DNFSB staff and to DOE Personnel Security that (b)(7)(C) had told him he did not have to sign the form. (b)(7)(C) personally contacted DOE Personnel Security and they confirmed to her that DOE controlled the process and SULLIVAN was required to sign the form, and "if you don't sign the form, you don't get Sigma." She said that SULLIVAN had provided the inaccurate information to OGC and OGM staff as well as other Board Members such as Vice Chair ROBERSON. SULLIVAN even reiterated the false information to (b)(7)(C) directly after all of the above had transpired and she had challenged and corrected him at the time, with a staff member present as a witness. (b)(7)(C) stated that because of this incident, she did not feel comfortable meeting with SULLIVAN one on one, "because I know he'll lie about what I say," and she made it a regular practice to take a third party to witness any interactions with SULLIVAN.

(b)(7)(C) said her interactions "one on one" interactions with SULLIVAN had been rare, other than the above incident. In Board room gatherings, he would occasionally question her intensely on a given topic but would "back down" if she provided an answer

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

and justification for her position. (b)(7)(C) contrasted this with his treatment of the (b)(7)(C) whom she said SULLIVAN would “just attack and attack and attack.”

(b)(7)(C) stated that when she first arrived at DNFSB, in a “meet and greet” session with SULLIVAN, SULLIVAN had compared (b)(7)(C) to a “one-legged man in an ass kicking contest,” and “made it very clear” that he was soliciting her to go outside chain of command directly to him if she wanted to “skip” (b)(7)(C) in the chain of command.

(b)(7)(C) confirmed that SULLIVAN did not directly confront or disparage (b)(7)(C) but rather typically ignored or dismissed him and his input during meetings.

(b)(7)(C) DNFSB, did not recount any instances where SULLIVAN had directly berated her; however, she recalled an incident where SULLIVAN was dismissive and discourteous about a Veterans Day tribute (b)(7)(C) had provided for DNFSB employees with military service. (b)(7)(C) had also served on a committee composed of staff from different DNFSB offices to develop a policy directive regarding the availability of outside detail assignments for DNFSB staff members. She said that SULLIVAN, who took an interest in the development of this directive, was “dismissive” of committee members’ expertise, including her own. She said SULLIVAN’s dismissiveness had resulted in valid legal and HR issues not being addressed in the process, and this, in turn, resulted in a lower quality policy directive.

(b)(7)(C) said because of her neutral position, staff throughout the agency often used her as a “sounding board” for their own work difficulties. (b)(7)(C) was aware that some technical staff had contemplated leaving the agency specifically because of conflicts with SULLIVAN.

According to (b)(7)(C), CONNERY had complained openly to her about SULLIVAN’s lack of respect for CONNERY and had said that she (CONNERY) did not like being alone in a room with him. (b)(7)(C) also confirmed that (b)(7)(C) had expressed concern about being in a room alone with SULLIVAN as well, due to “aggressive” interactions in the past. (b)(7)(C) felt “under heard” by SULLIVAN and described how SULLIVAN lacked respect for female staff members and their professional contributions.

(For further details, see Exhibits 19 through 21.)

Interview of OTD staff

OIG interviewed the seven OTD senior managers. No OTD manager believed the employees on the technical staff had been chilled by SULLIVAN’s treatment because the technical directorate had mechanisms in place where Group Leads, the (b)(7)(C) (b)(7)(C) and (b)(7)(C) reviewed matters before they were

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

communicated to the Board. Most OTD managers told OIG that SULLIVAN is pleasant to interact with when staff agree with SULLIVAN's position on issues presented to the Board. Additionally, in some cases, SULLIVAN held positions that were easy for the technical staff to support. However, interactions with SULLIVAN were anything but pleasant when the staff's view(s) did not comport to SULLIVAN's. The OTD managers also considered many of SULLIVAN's Notational Voting Comment Sheets to be disparaging of the staff or the staff's effort. In addition, six of the seven OTD managers recalled a 2014 exchange between SULLIVAN and former Acting General Counsel (b)(7)(C) where SULLIVAN treated (b)(7)(C) in an "antagonistic" and "extremely unprofessional" manner during a public business meeting. According to the managers, these interactions took place in a public forum, were broadcast on the Internet, and were embarrassing for everyone in the room.

(b)(7)(C) DNFSB, said that conflict with SULLIVAN arises because when SULLIVAN "believes something, he will do just about anything that – within his power to try to get what he wants." According to (b)(7)(C) SULLIVAN had "attacked" (b)(7)(C) by providing input for (b)(7)(C) performance appraisal that was critical of (b)(7)(C) performance. (b)(7)(C) believed this was an attempt by SULLIVAN to influence (b)(7)(C) views to comport with his. (b)(7)(C) has modified his behavior in the Board room because SULLIVAN becomes very angry with him and then becomes dismissive in public when he disagrees with SULLIVAN. There have been instances where the staff was asked to provide an opinion, and a junior staff member would provide their opinion. (b)(7)(C) then attempted to provide his opinion, and SULLIVAN told (b)(7)(C) "I don't want your opinion. I want their opinion." This made (b)(7)(C) feel like SULLIVAN did not consider him part of the staff. SULLIVAN perceived (b)(7)(C) was filtering staff information and sent a memo to the staff expressing his desire to not have "things filtered." As a result, (b)(7)(C) now sits quietly during Board meetings because SULLIVAN is not interested in what he has to say. (b)(7)(C) said SULLIVAN believes that if (b)(7)(C) speaks, the staff will just agree with (b)(7)(C) because (b)(7)(C) signs their performance appraisals. (b)(7)(C) also made the choice to not be outspoken in the Board room because of the negative impact on the staff and the awkward position that it puts them in when he, as the (b)(7)(C) is openly criticized by a Board Member in front of the staff. (b)(7)(C) said he wants the "nuclear safety message" to come out of the meeting(s) without additional "drama." According to (b)(7)(C) SULLIVAN's behavior toward him has diminished his position and credibility as (b)(7)(C)

(b)(7)(C) said that SULLIVAN uses the Notational Voting Process "as a broadcast medium to express his views." (b)(7)(C) peers outside of the DNFSB "look at [the vote sheets] with great anticipation." (b)(7)(C) meets weekly with the senior liaison between himself and the Secretary of Energy, and the senior liaison will bring up issues documented in the vote sheets. He said that DOE pays "great attention to who's under

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

fire and what they are doing and how they are perceived." (b)(7)(C) said that this has negatively impacted him "because I have to sit and defend some of those behaviors." (b)(7)(C) said that these types of vote sheet comments affect the credibility of the Board.

(b)(7)(C) said the process of presenting technical issues to the Board is intimidating for staff members and "everybody knows you're in for a fight" when they are working an issue that they know is inconsistent with the outcome that SULLIVAN wants. (b)(7)(C) did not believe SULLIVAN's methods created a chilled work environment because technical staff managers "will just say no [to SULLIVAN] and then face the slings and the arrows and the dagger of having to deal with the fact that now you're not – you're not being supportive" of SULLIVAN's views.

According to (b)(7)(C) DNFSB, SULLIVAN is not receptive to facts that he does not agree with. (b)(7)(C) said that he experienced one interaction with SULLIVAN wherein he was discussing an assignment for one of (b)(7)(C) staff members. SULLIVAN told (b)(7)(C) it was "going to get bloody" if SULLIVAN was not told what he wanted to hear during the next Board gathering.

(b)(7)(C) also told OIG that SULLIVAN is "very free to misrepresent things or – either because he's deliberately taking them out of context or because he honestly is blinded by his own desire to see what he wants to see." (b)(7)(C) offered an example wherein he explained that a former staff member was trying to have the Board issue a letter to DOE pertaining to an evaporator at the high-level waste farms at Hanford. SULLIVAN asked the staff member why he was trying to "get this letter out." The staff member responded, "so I can get a good performance appraisal." (b)(7)(C) did not know why the staff member responded that way, but noted there were other staff members involved yet SULLIVAN did not ask them the same question even though they all wanted to see the letter issued to DOE. SULLIVAN had since taken that exchange out of context to say that OTD managers make the staff write letters that they do not believe in and threaten the staff's performance appraisals if they do not. (b)(7)(C) said that SULLIVAN used this exchange as an example to the Board of how OTD managers pressure the staff into doing things that the staff does not think they should do.

(b)(7)(C) also told OIG that SULLIVAN does not respect the (b)(7)(C) opinion(s) and, as a lawyer himself, SULLIVAN believes "he has no need for the General Counsel's opinion." (b)(7)(C) said that the General Counsel "is the guy who gets it from him the worst."

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

(b)(7)(C) told OIG, "I can't imagine that it isn't intimidating to people to talk to him [SULLIVAN]," and "I can't imagine that somewhere along the way there isn't a chilling effect happening to people." According to (b)(7)(C) SULLIVAN had created an environment where staff are afraid to bring up issues for fear of being "pummeled."

(b)(7)(C) Group Lead, DNFSB, said that prior to working for the Board, he and SULLIVAN were peers. They graduated from the Naval Academy 1 year apart and had previously served in the Navy together. While (b)(7)(C) had no negative experience related to the way SULLIVAN treated him, he said that SULLIVAN believes his objectives for the Board are more important than the people doing the work and SULLIVAN had told (b)(7)(C) "I'm doing what's right. If it hurts people's feelings, so be it." (b)(7)(C) told OIG that in light of the changes made to the NDAA and SULLIVAN's RFBA to remove (b)(7)(C), he believed (b)(7)(C) had been chilled and was preoccupied with not upsetting SULLIVAN instead of letting the technical analysis speak for itself.

According to (b)(7)(C), Group Lead, DNFSB, the threat posed by a RFBA to remove an Office (b)(7)(C) could impact an Office (b)(7)(C) ability to "stand up" to a Board Member if the Office (b)(7)(C) knows there are Board Member(s) that are "after him."

(b)(7)(C) Group Lead, DNFSB, told OIG that he had an exchange with SULLIVAN during a closed meeting where SULLIVAN attempted to direct (b)(7)(C) to write a recommendation that the staff would send to the Board for consideration to communicate to DOE. (b)(7)(C) did not believe the situation warranted a recommendation. While neither SULLIVAN nor (b)(7)(C) raised their voices, the discussion led to SULLIVAN and (b)(7)(C) silently staring at each other from across the table. SULLIVAN eventually told (b)(7)(C) "do it or I'll find somebody who will do it."

(b)(7)(C) Group Lead, DNFSB, told OIG that while individual staff members were not identified in SULLIVAN's Notational Voting Comment Sheets, there is always a staff lead for a project and the staff can infer who the comments are directed towards.

(b)(7)(C) Group Lead, DNFSB, told OIG that in addition to voting record comments, he has witnessed SULLIVAN raise his voice, use hand gestures, and verbally push back to defend his position with staff. According to (b)(7)(C) SULLIVAN's tactics were designed to intimidate staff so that issues SULLIVAN did not agree with were not brought up again.

(For further details, see Exhibits 22 through 28.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Interview of Chairman Joyce CONNERY

CONNERY told OIG that SULLIVAN bullied the DNFSB staff and took particular exception with OGC. She said that SULLIVAN treated (b)(7)(C) with a particular lack of respect. SULLIVAN often found (b)(7)(C) legal interpretations unacceptable and would become very frustrated with her. According to CONNERY, SULLIVAN "made it his personal mission to attack" (b)(7)(C) former Acting General Counsel, DNFSB. She said that SULLIVAN had attempted to discredit (b)(7)(C) to CONNERY based on SULLIVAN's knowledge of the law.

In October 2015, CONNERY selected (b)(7)(C), an attorney from the NRC who was participating in the SES Development Program, to serve as (b)(7)(C). SULLIVAN drafted a memo, which he planned to present to (b)(7)(C), outlining all the reasons based on his own legal opinions that SULLIVAN believed OGC and its staff to be "incompetent." CONNERY asked SULLIVAN not to provide the memo because she did not think it was fair to "set (b)(7)(C) up." She wanted (b)(7)(C) to make "his own legal judgments" and not be influenced by SULLIVAN.

CONNERY told OIG that while SULLIVAN had not specifically asked her to discipline (b)(7)(C) for insubordination, he had complained to CONNERY and called (b)(7)(C) "haughty" on at least one occasion because she had presented legal opinions that he did not agree with. He had also asked CONNERY to speak with (b)(7)(C) following conversations wherein he disagreed with (b)(7)(C) legal opinions. SULLIVAN told CONNERY that she "needed to do something about the Office of General Counsel" because he believed OGC's legal opinions were incorrect.

CONNERY said she was concerned for the staff and that SULLIVAN could have an influence on their career(s) and that influence could negatively impact them for the rest of their career(s). She said she believed SULLIVAN was using his position of power as a Board Member to intimidate staff members and to pursue a political agenda.

(For further details, see Exhibits 2 and 4.)

Interview of former Chairman Peter WINOKUR

WINOKUR told OIG that SULLIVAN was abusive and aggressive towards him and towards the staff. He said SULLIVAN would scream at staff members during both public and closed meetings if staff member(s) did not agree with him. According to WINOKUR, SULLIVAN made it difficult for the staff to do their jobs and be "honest brokers" of information because he used his position and authority to challenge, push, and be aggressive with the Board's staff. WINOKUR said the SES employees had "stiff backbones" and were capable of standing up to SULLIVAN even though they knew

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

standing up to him would be painful and difficult; however, he was less convinced that the junior staff was able to stand up to SULLIVAN. WINOKUR said the morale at the Board was low, and in 2014, the Board contracted Logistics Management Institute (LMI) to help address this issue. While not naming SULLIVAN directly, the LMI report used the words “abusive, bullying, antagonistic, unprofessional, toxic, aggressive, polarizing, and divisive.” WINOKUR believed those words were directly intended to describe SULLIVAN.

(For further details, see Exhibit 5.)

Interview of Vice Chairman Jessie ROBERSON

ROBERSON described SULLIVAN's interactions with office directors as contentious and said that SULLIVAN took issue with the staff when the staff did not provide “the answer he wants.” She further described SULLIVAN and (b)(7)(C) relationship as toxic. According to ROBERSON, SULLIVAN had told (b)(7)(C) subordinates that he wants (b)(7)(C) removed from the (b)(7)(C) position.

ROBERSON stated that SULLIVAN had been historically and consistently dissatisfied with the work products of former General Counsels and believed them to be incompetent attorneys. ROBERSON said that she had not always agreed with OGC and had observed the office provide opinions, concerning the Board's statute, without a full understanding of legislative history. On those occasions, ROBERSON would push back; however, she did not believe this was an indication of competence or incompetence. She thought the opinions were the result of OGC trying to answer the Board's questions without the necessary time to do adequate research.

ROBERSON said that SULLIVAN tries to co-mingle policy and legal decisions and that when the policy opinion did not satisfy SULLIVAN, it became a big deal. SULLIVAN also believed that OGC staff should tell the Board whether or not information provided by the technical staff concerning identified issues were matters of adequate protection. ROBERSON said that the determination of adequate protection belongs to the Board. The Board is made up of technical experts and the Board Members are to decide, through a formal legal process, whether or not an issue is a matter of adequate protection. SULLIVAN had also taken issue with OGC because they would not support his views relating to OGC's role in determining if/when there is an issue of adequate protection.

ROBERSON told OIG that while she served as the Acting Chairman, she had observed SULLIVAN become “angry and animated” and bang his fists on the table on several occasions during Board gatherings. ROBERSON could not recall specific dates or details; however, she said that the behaviors were generally targeted at OGC attorneys

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

and that SULLIVAN was “very aggressive” toward (b)(7)(C) for presenting legal opinions that SULLIVAN did not agree with. Following a Board gathering in 2015, SULLIVAN told ROBERSON that he believed (b)(7)(C) and (b)(7)(C) had acted insubordinately because OGC did not accept his opinion on a legal matter. SULLIVAN demanded that ROBERSON direct OGC to change its legal opinion to align with his and that ROBERSON discipline (b)(7)(C) and (b)(7)(C) if they did not comply. ROBERSON could not recall specific details; however, she stated that she did not agree with his assessment and did not carry out any portion of his demand.

(For further details, see Exhibits 8 and 9.)

Interview of Board Member Daniel SANTOS

SANTOS told OIG that SULLIVAN struggles to communicate with other Board Members. SANTOS said that SULLIVAN becomes frustrated when other Board Members disagree with him and things do not go his way. SANTOS has tried to communicate to SULLIVAN that sometimes being right is not enough and that he needs to communicate more effectively with others. SANTOS said that when frustrated, SULLIVAN interrupts other Board Members during meetings to express his view(s) concerning the issue(s) being discussed. However, he noted that SULLIVAN does not like to be interrupted when speaking and had become upset and voiced his displeasure to SANTOS when SANTOS had interrupted SULLIVAN during meetings in the past. SANTOS said he and SULLIVAN have had three to four such discussions. SULLIVAN has also shown frustration with SANTOS for not voting “with him or not going [along] on his action [Request for Board Action].” SANTOS perceived that SULLIVAN wants a “vote for a vote” based on SULLIVAN asking him, “why would I support you if you never support me?”

Regarding SULLIVAN's interactions with staff, SANTOS said SULLIVAN was a “product of the Navy culture”; he is “tough” and “some people might not deal well with that type of interaction and may feel disrespected by the approach.” SANTOS said that SULLIVAN conducts himself as an authority figure when he interacts with the staff. He said SULLIVAN is “very open and welcoming” until he knows he's not agreed with or something is not going to go his way. SANTOS said SULLIVAN has expressed continued frustration with OGC, including past General Counsels. The Board has had three or four General Counsels, and SULLIVAN viewed all of them negatively and had described OGC attorneys as “unethical” and “incompetent.” SANTOS believed that because SULLIVAN had a law degree, he conducts his own analysis, believes himself to be a more competent attorney, and takes pride in challenging OGC. SANTOS said that SULLIVAN's legal arguments are routinely built to support his own opinions and that he does not always consider all available information. SANTOS added that the

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OGC "clearly [operated] with the best interest of the Board and the agency and its employees on the actions" and fully researched issues to ensure the staff and Board are protected from adverse action(s).

In June 2016, SULLIVAN submitted a RFBA to request that Board Members rescind the Board's selection of (b)(7)(C) as the (b)(7)(C). SANTOS advised SULLIVAN to not move forward with the action; however, SULLIVAN did. SANTOS chose not to participate in the vote and the vote failed due to a 2-2 result. (b)(7)(C) subsequently came to SANTOS and told him that SULLIVAN had called (b)(7)(C) into his office and shared the vote with him. SANTOS thought that SULLIVAN's actions were inappropriate and SANTOS believed that Board deliberation, especially concerning personnel actions, were protected and should not have been shared with anyone outside of the Board. Based on the information (b)(7)(C) shared with SANTOS, SANTOS believed SULLIVAN engaged in an "act of intimidation."

SANTOS said that SULLIVAN exhibits a "huge delta" in his behaviors when interacting with technical staff. For example, SULLIVAN can be "very intense and tough" with the technical staff when he is interested in an issue, but he has also walked out of meetings when he was not interested in the subject matter. SANTOS did not know if SULLIVAN intended to "send out a particular message," but SULLIVAN's behavior was different from that of other Board Members. SANTOS added that SULLIVAN was not as "intense" with the technical staff as he was with OGC; however, he exhibited similar behavior of "making himself known that he is right."

SANTOS said that SULLIVAN has used the voting comment sheets to state that the staff is technically wrong. SULLIVAN also routinely asks the technical staff members whether or not a matter before the Board is an issue of adequate protection. SANTOS has asked the same question to the staff; however, he did not ask the question as routinely as SULLIVAN. SANTOS said the determination is a decision that the Board Members have to make. He said that the staff is "petrified" when SULLIVAN asks the question because SULLIVAN "turns up the game and the tough love" if he does not receive an answer from the staff that he wants. SANTOS told OIG that SULLIVAN's treatment of the staff had created a chilled work environment because the treatment had caused staff members to not want to engage with Board Members. This lack of engagement affected the ability of Board members to perform their duties because the staff was not providing them with timely information.

(For further details, see Exhibits 10 and 11.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Interview of Board Member Bruce HAMILTON

HAMILTON told OIG he had not observed any “untoward behavior” by SULLIVAN. However, he noted his short tenure at the Board limited his ability to assess the situation.

(For further details, see Exhibit 12.)

Review of Board Notational Voting Records

OIG reviewed 265 Notational Voting Records for fiscal year (FY) 2015-2016 to assess whether SULLIVAN had used the notational voting process to question, criticize, attack, or embarrass staff or other Board Members. OIG did not conduct a review of voting records prior to FY 2015 because those voting record comments sheets were not posted to the DNFSB’s public Web page for public view. OIG found that SULLIVAN had utilized his Notational Voting Comment Sheets for the FY 2015 office work plans to praise OGM and OTD and to document his disapproval of OGC’s. In Doc# 2015-040 and Doc# 2015-066, SULLIVAN stated the FY 2015 OGC Work Plan “is not a good one.” In 16 other Notational Voting Comments Sheets, SULLIVAN questioned and refuted (1) staff technical viewpoints, (2) the necessity to communicate staff identified issues to DOE, and (3) legal opinions provided by OGC. He also challenged the staff’s work in areas that he considered outside of DNFSB’s jurisdiction and expressed disagreements with other Board Members. While SULLIVAN did not name individuals, he did refer to official position titles in his comment sheets.

(For further details, see Exhibits 29 and 30.)

Interview of Board Member Sean SULLIVAN

SULLIVAN told OIG that his questions to staff are direct, not hostile, and it would be unreasonable to interpret them as intimidating. He offered that the question he asks OTD staff most often is whether an issue being briefed is about adequate protection at DOE sites. The staff typically tells SULLIVAN that issues pertaining to adequate protection are judgment calls that are to be made by Board Members. SULLIVAN believed that staff should be able to answer the question when asked. He also said the staff does not like it when he asks the question and he thinks it puts the staff in an uncomfortable position because he believes they have been told by the office directors not to answer it. SULLIVAN acknowledged that the staff was unhappy and said he did not know what to do about it because he did not have “tools” to do anything about it. He further clarified that he does not control staff promotions, pay, or work assignments. He believed he could only effect a change in morale if he abandoned “the duty he swore to do.”

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

According to SULLIVAN, the attorneys in OGC fit within the “paradigm of (A) they’re not very good lawyers to start with, and (B) what they spend their time doing is advocating for their brethren in the technical staff... to the point where they are influencing Board Member votes.” SULLIVAN told OIG that as a lawyer, he “can spot this crap” and he knows the OGC and staff “hate that” because unlike the technical staff, the lawyers in OGC are not used to being challenged.

SULLIVAN said that he had significant disagreements with three Acting General Counsels and that (b)(7)(C) former General Counsel, DNFSB, had been the only attorney filling the position that offered the Board sound legal advice. Most recently, SULLIVAN had submitted a RFBA, Board Doc# 2016-OD-2, to rescind the Board’s approved vote to select (b)(7)(C) then (b)(7)(C) DNFSB, as the DNFSB’s (b)(7)(C) because (b)(7)(C) had established a pattern of not providing the Board with sound legal advice. SULLIVAN said he had considered other options, to include requesting a closed meeting or a Board offsite gathering for Board Members to discuss (b)(7)(C) performance. SULLIVAN said that holding a closed meeting presented several challenges. (b)(7)(C) would have had to be afforded the opportunity to attend and present a defense, and the Board would have needed to have counsel in attendance; however, they could not have (b)(7)(C) provide legal counsel because he would have been the subject of the meeting, and they could not have an OGC staff attorney provide counsel because the attorney would still work for (b)(7)(C) if the Board decided not to take action. They could not request an attorney from the NRC because (b)(7)(C) was still employed by the NRC and on loan to the DNFSB. SULLIVAN said that an offsite gathering would have been ineffective because, due to Sunshine Act rules, the Board Members could have discussions, but could not deliberate or make a decision relating to the discussion. SULLIVAN added that he attempted to get other Board Members to consider actions short of holding a vote to rescind the Board’s job offer to (b)(7)(C), but those were not successful. SULLIVAN told OIG that the vote did not pass, but it gave him an opportunity to write down his thoughts concerning the matter and gave (b)(7)(C) a chance to read them.

When interviewed concerning his interactions with OGM staff, SULLIVAN stated his opinion that (b)(7)(C) had shown “incompetence” and that (b)(7)(C) was a “budget guy” who lacked expertise in other areas SULLIVAN felt he needed to be effective at DNFSB. SULLIVAN did not identify or address any direct negative interactions with (b)(7)(C) or other OGM staff, or make any other negative comments about OGM staff to OIG. SULLIVAN disagreed that he needed to take a polygraph to obtain a Sigma clearance, but did not characterize either positively or negatively the tone of the discussions on this issue among himself, (b)(7)(C), and other staff. SULLIVAN maintained that (b)(7)(C) told him he did not need to sign the polygraph consent form.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

SULLIVAN also denied that he had any issues with female staff. He said in late March 2016, he had “yelled” at the Chairman for making such a suggestion, which he found offensive.

SULLIVAN told OIG that he had not used the comment sheets to criticize office directors since the Board began making their vote sheets publically available in 2014. SULLIVAN said he had criticized policy and those who know which office director supported or sponsored the policy could probably “put two and two together.” Regarding SULLIVAN’s questions to staff during public meetings, SULLIVAN told OIG that he does not intend to make the staff “look bad” or surprise anyone. He said that he typically informs the staff member and their supervisor prior to the meetings of the question(s) he intends to ask.

(For further details, see Exhibits 13 through 15.)

Issue 3: SULLIVAN sought and misused SES employee annual performance appraisals and undermined the employee/supervisor relationship.

Background/Chronology

In April 2014, SULLIVAN asked then-Chairman WINOKUR for all documents related to the performance of DNFSB SES staff. WINOKUR denied the request and provided OGC’s legal opinion on this matter to SULLIVAN. OGC’s advice to WINOKUR was not to provide SULLIVAN with SES performance appraisals due to privacy concerns.

SULLIVAN disagreed with OGC’s opinion, claiming he has the right under the law to see anything that has an effect on Board operations, and in May 2014 he submitted a RFBA to the Board to approve his receipt of the SES performance appraisals. The Board voted 2-1 to deny his request.

SULLIVAN asked WINOKUR to seek an authoritative opinion on the matter and WINOKUR sought an opinion from DOJ/Office of Legal Counsel (OLC). In May 2015, OLC issued an opinion that concluded

...the Board’s organic statute is best read to grant the requesting Board member a right of access to SES performance appraisals. To start, we think that the text of [42 U.S.C. §] section 2286(c)(2) makes plain that one of the Board’s “functions” is to formulate policies concerning the supervision of employees. By its terms, this provision deems employee supervision one of the “functions of the Board,” albeit one to be exercised by the Chairman. And it expressly authorizes the Board to “establish” “policies” to which the Chairman is “subject” when supervising

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

employees. Further reinforcing the Board's authority in this area, section 2286(c)(2) states that the Chairman must conduct his supervision "in accordance with paragraph (5)"—that is, the paragraph detailing each Board member's authority to participate in Board decisions and obtain full access to pertinent information. Read naturally, these provisions thus make clear that one of the Board's functions is to "establish" "policies" regarding employee supervision. As a result, under section 2286(c)(5)(B), Board members are entitled to access information that "relates to" that function.

In May 2015, and after the OLC opinion, then Acting Chairman ROBERSON provided SULLIVAN with DNFSB SES appraisals.

In June 2016, SULLIVAN asked (b)(7)(C) for the past 2 years of SES appraisals.

In June 2016, Chairman CONNERY denied SULLIVAN's request until the policy and procedures are issued.

In July 2016, ROBERSON submitted a RFBA to the Board to develop policy and procedures relating to Board Members requesting Privacy Act protected information.

(For further details, see Exhibits 3, 13, 14, and 31.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that WINOKUR's 2014 opposition to giving SULLIVAN the SES appraisals was prior to (b)(7)(C) employment at DNFSB, but he was aware that a former General Counsel (b)(7)(C) wrote a memorandum against it and WINOKUR ultimately agreed to send the question to DOJ for an opinion. In (b)(7)(C) view, the DOJ opinion was a "poorly written legal memo... that gave effect to both the Atomic Energy Act and the Privacy Act, saying that yes, under the Atomic Energy Act, all Board Members have a right to access documents, and under the Privacy Act you have to show – you have to meet one of the exceptions to access a Privacy Act Record." (b)(7)(C) said DOJ did not analyze this in a "conflict of laws" manner, but instead gave effect to both statutes, reaching a conclusion that SULLIVAN had stated a policy need to access the records that met the need exception under the Privacy Act and directing that he be provided with those records.

(b)(7)(C) said that SULLIVAN's more recent request for the records did not occur in the same manner. This time, SULLIVAN asked the DNFSB (b)(7)(C) for the last 2 years of SES appraisals and (b)(7)(C) recalled that SULLIVAN did not initially provide a reason. (b)(7)(C) said both the (b)(7)(C) and the Chairman came to him and

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

asked how to respond, and (b)(7)(C) wrote a response saying SULLIVAN needs to articulate his need under the Privacy Act because DOJ gave effect to both acts. (b)(7)(C) said that SULLIVAN promptly responded that he needed the appraisals for a policy-related reason, and the Chairman wanted to make sure with (b)(7)(C) that the rationale was sufficient. In the meantime, (b)(7)(C) said, Board Member HAMILTON was pressing for unredacted agency records concerning telework, and the Chairman was faced with these two outstanding requests. (b)(7)(C) said the Vice Chairman "essentially intervened" and issued an RFBA to establish a policy on Board Member access to privacy information, and the Chairman decided to wait to respond to any Privacy Act request until the policy is established.

(For further details, see Exhibit 16.)

Interview of (b)(7)(C)

(b)(7)(C) said SULLIVAN initially contacted him, by email, in 2016 to say he wanted the SES appraisals. (b)(7)(C) responded either verbally or by email to ask, pursuant to the 2014 DOJ opinion, what SULLIVAN needed them for. (b)(7)(C) recalled a subsequent email from SULLIVAN that said something "along the lines of what do I have to say to get these, as opposed to kind of proactively saying this is why I want them or this is my need." (b)(7)(C) did not respond to the email because subsequently, a RFBA resulted in a joint tasking for OGM and OGC to develop Board policies and procedures on how Privacy Act material should be handled. (b)(7)(C) also told OIG that he was not the appropriate point of contact for SES appraisals in any event because the (b)(7)(C) was the record system owner. (b)(7)(C) did not recall SULLIVAN doing anything with the previous set of appraisals he had received besides reviewing and returning them, and he specifically recalled no policy related followup on that transaction.

(For further details, see Exhibit 19.)

Interview of Chairman Joyce CONNERY

CONNERY told OIG she did not believe Board Members should have unfettered access to employee personnel files because SULLIVAN had obtained access to SES appraisals before and used that information in a manner that she believed was unethical. CONNERY said that (b)(7)(C) a member of DNFSB's technical staff who was formerly an SES member but voluntarily returned to civil service, told her that SULLIVAN had approached (b)(7)(C) and discussed (b)(7)(C) performance appraisal with him. CONNERY said that SULLIVAN specifically told (b)(7)(C) that he did not believe that (b)(7)(C) (b)(7)(C) and (b)(7)(C) and WINOKUR had treated (b)(7)(C) fairly in his performance appraisal. CONNERY said that SULLIVAN did not like (b)(7)(C) or WINOKUR and that SULLIVAN was trying to

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

discredit (b)(7)(C) to (b)(7)(C). CONNERY also said that although SULLIVAN had said he wanted the SES appraisals for the purpose of creating policy, he did not do anything with the information, which was a "bone of contention with the Board Members who allowed him access at the time." When CONNERY directly asked SULLIVAN why he sought the appraisals in June 2016, his response to her was "none of your goddamn business."

CONNERY said in individual conversations with other Board Members subsequent to SULLIVAN's 2016 request for SES appraisals, they brought up the fact that he had asked for this before, nothing came of it, and then there was "this breach." She said the other Board Members seemed to want to have a policy in place before any information was released to either SULLIVAN or HAMILTON (telework records). "So, the Vice Chair actually put in an RFBA to put a policy in place, and that RFBA passed three to two."

CONNERY said in July 2016, (b)(7)(C) staff member, House Armed Services Committee (HASC) asked CONNERY why she was not providing the information that SULLIVAN and HAMILTON had requested. CONNERY explained her position, that the Board had voted to establish a policy, and that she believed the policy would ensure the staff was not subject to arbitrary or capricious actions by Board Members. CONNERY believed that SULLIVAN and HAMILTON had communicated the issue to (b)(7)(C) at some point between SULLIVAN's request and her conversation with (b)(7)(C). In October 2016, CONNERY received a letter from Mike ROGERS, Chairman, HASC, Subcommittee on Strategic Forces, which directed her to provide the requested information to Board Members SULLIVAN and HAMILTON. [Investigative Note: CONNERY responded to ROGERS in a letter dated November 2, 2016, conveying her intent to provide Board Members access to Privacy Act protected information and develop a policy for such situations. See page 35 of this report for more details.]

(For further details, see Exhibits 2 and 3.)

Interview of Board Member Jessie ROBERSON

ROBERSON told OIG that about 2 weeks before (b)(7)(C) decided to step down from the SES position and return to civil service, he told her that SULLIVAN had told him he had reviewed (b)(7)(C) last couple of performance appraisals and it was clear to him (SULLIVAN) that (b)(7)(C) was "not one of (b)(7)(C) favorites and he should be upset about that." ROBERSON told (b)(7)(C) to work with his supervisor, and that it was "totally inappropriate" for SULLIVAN to have done this. ROBERSON then spoke with

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

SULLIVAN and told him what he had done was inappropriate, she did not appreciate it, he needed to stop “enraging” the staff in this manner, and that (b)(7)(C) had performance shortcomings that SULLIVAN was not aware of.

(For further details, see Exhibit 8.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that she recalled an executive, whom she thinks was (b)(7)(C) told her that SULLIVAN had called him (b)(7)(C) into his office and told him that SULLIVAN had reviewed his appraisal and disagreed with it. (b)(7)(C) said that prior to giving SULLIVAN the records in 2015, she had told him not to share the information with anyone and it was for his use only. (b)(7)(C) said, “It is absolutely inappropriate for someone at that level to have a conversation with an employee about their first line supervisor. It was not initiated by the employee. There was no reason for it, other than to cause further fracture.” (b)(7)(C) said that she would provide SULLIVAN with appraisals this time only if directed to do so.

(For further details, see Exhibit 21.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that sometime prior to August 2015, and while serving as the Group Lead for Nuclear Programs and Analysis, SULLIVAN held a meeting with (b)(7)(C) and two of (b)(7)(C) staff members. Upon conclusion of the meeting, SULLIVAN asked (b)(7)(C) to close the door and remain in SULLIVAN's office. SULLIVAN told (b)(7)(C) (1) he had access to SES personnel files, (2) he had reviewed (b)(7)(C) file, and (3) (b)(7)(C) had not treated (b)(7)(C) fairly in the previous year. (b)(7)(C) was certain SULLIVAN wanted him to be aware he had seen his appraisal.

(b)(7)(C) told OIG that his conversation with SULLIVAN did not influence his decision to step down from SES, that he did not have a good relationship with his immediate supervisor, and that for all the extra work he was putting in for the SES role, “all the grief and all the time put in, there was no financial benefit and there was a lot more stress.”

(For further details, see Exhibit 32.)

Interviews of DNFSB Staff

Of the 11 senior OGC, OGM, and OTD managers interviewed, 5 said they would be uncomfortable if SULLIVAN got access to their appraisals and that concern was widespread among staff that SULLIVAN might leak personal information to the media or

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

otherwise misuse it to go after them. (b)(7)(C) told OIG that she had heard rumors SULLIVAN had leaked Privacy Act protected information belonging to (b)(7)(C) to the media. This caused (b)(7)(C) to be concerned that if SULLIVAN had information about her, she could end up reading about herself in the press at some point. (b)(7)(C) was concerned that SULLIVAN was attempting to access SES performance appraisals to gather “ammo to support putting forward [RFBAs] Board actions to put people that disagree with him out of a job.”

(For further details, see Exhibits 16, 19, 20, 22, and 23.)

Interview of Board Member Sean SULLIVAN

SULLIVAN told OIG that he has had a similar conflict with both WINOKUR and CONNERY in that both have denied SULLIVAN access to information to which SULLIVAN believes he has a statutory right, and he does not believe he needs to provide a reason to access the information. In April 2014, SULLIVAN requested access to SES performance appraisals to review them to determine if there were any policy issues that he could address. WINOKUR denied SULLIVAN access to the appraisals. SULLIVAN said the Board sought an opinion from the DOJ OLC and “they ruled in my favor that the Chairman is compelled to give me the information.”

SULLIVAN told OIG that he ultimately did not identify or recommend any policy changes based on his review of the appraisals.

SULLIVAN stated that he never discussed SES performance appraisals with anyone else, to include the individual SES staff members whose performance appraisals SULLIVAN reviewed. When specifically asked about (b)(7)(C) SULLIVAN said that he did not recall speaking with (b)(7)(C) about his performance appraisal. SULLIVAN said (b)(7)(C) had spoken to him on occasion and expressed his view that he had been treated unfairly. SULLIVAN recalled an occasion where (b)(7)(C) sat in the Board room and was asked a question. SULLIVAN said that the (b)(7)(C) “jumped in and I thought the (b)(7)(C) basically was verbally counseling him in front of the rest of the board, or whatever.” SULLIVAN recalled telling (b)(7)(C) he thought he had been treated unfairly in that instance, but SULLIVAN did not recall discussing his performance appraisal with him.

(For further details, see Exhibits 13, 14, and 15.)

OIG Review of Joyce CONNERY’s Letter to Mike ROGERS

OIG reviewed CONNERY’s response letter to ROGERS pertaining to Board Member access to Privacy Act protected documents. In her written response, CONNERY

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

acknowledged that she was "obligated by and personally committed to ensuring compliance with all provisions of the Board's enabling statute," "bound by the opinion from the DOJ [May 2015, OLC opinion] to allow sharing of all information, including information on all Board employees and personnel, necessary for the Board to fulfill its policy making function," and that she would "not withhold information from Board Members that is made available to me that relates to the Board's policy and oversight functions." CONNERY explained that OLC had previously granted access to SULLIVAN for the requested appraisals "based on the specific 'need' for the records articulated in his request." CONNERY conveyed that, in carrying out her responsibilities as the law dictates, she "must also ensure that the privacy of the Board's staff is not violated," that she intended to provide Board Member access to Privacy Act protected information, and was "working with fellow Board Members and senior staff to draft a policy and procedures that will provide Board Members access to information, protect the agency from legal actions, and allow adequate privacy protections for the Board's staff."

(For further details, see Exhibit 33.)

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

EXHIBITS

1. SULLIVAN letter to CONNERY, dated October 5, 2016
2. Transcript of Interview, CONNERY, dated October 8, 2015
3. Transcript of Interview, CONNERY, dated October 6, 2016
4. Memorandum of Interview, CONNERY, dated December 6, 2016
5. Transcript of Interview, WINOKUR, dated March 2, 2016, with attachments 1-8
6. Board Notational Vote Comment Sheet Doc# 2015-006, dated November 5, 2014
7. Board Notational Vote Comment Sheet Doc# 2015-019, dated November 7, 2014
8. Transcript of Interview, ROBERSON, dated October 9, 2015
9. Memorandum of Interview, ROBERSON, dated December 6, 2016
10. Transcript of Interview, SANTOS, dated October 8, 2015
11. Transcript of Interview, SANTOS, dated September 7, 2016
12. Transcript of Interview, HAMILTON, dated October 9, 2015
13. Transcript of Interview, SULLIVAN, dated July 7, 2016
14. Transcript of Interview, SULLIVAN, dated July 14, 2016
15. Transcript of Interview, SULLIVAN, dated September 29, 2016
16. Transcript of Interview, BIGGINS, dated August 22, 2016
17. Transcript of Interview, (b)(7)(C) dated August 23, 2016
18. Memorandum to File, Telephonic Contact with (b)(7)(C) dated March 15, 2016
19. Transcript of Interview, (b)(7)(C) dated August 23, 2016
20. Transcript of Interview, HERRERA, dated August 19, 2016
21. Transcript of Interview, (b)(7)(C) dated August 19, 2016
22. Transcript of Interview, (b)(7)(C) dated August 24, 2016
23. Transcript of Interview, TONTODONATO, dated September 1, 2016
24. Transcript of Interview, PASKO, dated August 29, 2016
25. Transcript of Interview, DAVIS, dated August 29, 2016
26. Transcript of Interview, DWYER, dated August 30, 2016

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

- 27. Transcript of Interview, ROSCETTI, dated August 30, 2016
- 28. Transcript of Interview, POLOSKI, dated August 29, 2016
- 29. Board Notational Vote Comment Sheet Doc# 2015-040, dated December 17, 2014
- 30. Board Notational Vote Comment Sheet Doc# 2015-066, dated March 4, 2015
- 31. DOJ OLC Opinion - Appraisals of Senior Executive Service Employees, dated May 21, 2015
- 32. Transcript of Interview, (b)(7)(C) dated February 25, 2016
- 33. CONNERY letter to ROGERS, dated November 15, 2016

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Distribution

Case File CD16-002

(b)(7)
(C)

12/16/16

Magnum

OIG (b)(7) (C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McMillan	D. Lee	H. Bell
12/15/16	12/16/16	12/17/16	12/16/16	12/ /16	12/16/16

Official File Copy



**Defense Nuclear Facilities
Safety Board**

Washington, DC 20004-2901

Office of the
Inspector General

December 18, 2015

(b)(7)(C)

White House
1650 Pennsylvania Ave NW
Washington, DC 20502

Dear (b)(7)(C):

This letter accompanies the results of an Office of the Inspector General, U.S. Nuclear Regulatory Commission (NRC), investigation pertaining to a Privacy Act violation involving the former (b)(7)(C) Defense Nuclear Facilities Safety Board. Although the report references exhibits, the exhibits are not enclosed and will be provided upon request.

Please note that this report is marked "Official Use Only" and, consequently, all persons having access to this report should be made aware that it must not be publicly released and must be distributed only to those who have a need-to-know to conduct official business. Also, this report will be provided to the Federal Bureau of Investigation.

If you have any questions, please contact me at 301-415-5930, or Joseph A. McMillan, Assistant Inspector General for Investigations, at 301-415-5929.

Sincerely,

Hubert T. Bell
Inspector General

Enclosure: As stated

~~THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.~~

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OFFICE OF THE INSPECTOR GENERAL

Report of Investigation



Alleged Privacy Act Violation Pertaining to a
Defense Nuclear Facilities Safety Board Senior Official

(b)(7)(C)	Case No. CD 15-03	(b)(7)(C)
(b)(7)(C)	Special Agent	(b)(7)(C)
Joseph A. McMillan, Assistant Inspector General for Investigations		Date 12/18/15

THIS REPORT IS RELEASABLE ONLY BY THE U.S. NUCLEAR REGULATORY
COMMISSION, OFFICE OF THE INSPECTOR GENERAL.

THIS REPORT OR ITS EXHIBITS MAY NOT BE PLACED IN ADAMS WITHOUT WRITTEN
PERMISSION OF THE NRC OIG.
EXEMPT FROM RELEASE UNDER FREEDOM OF INFORMATION ACT EXEMPTIONS (5),
(6) OR (7) AND PRIVACY ACT EXEMPTIONS (j)(2) OR (k)(1)

THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR
GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR
DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.

TABLE OF CONTENTS

	<u>PAGE</u>
STATUTES, REGULATIONS, AND POLICY.....	1
SUBJECT	4
ALLEGATION	4
FINDINGS	4
BASIS FOR FINDINGS	5
EXHIBITS	15

STATUTES, REGULATIONS, AND POLICY

Privacy Act of 1974, 5 U.S.C. § 552a, Records Maintained on Individuals

(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless:

1. The disclosure is to an agency employee who normally maintains the record and needs it in the performance of duty;
2. The disclosure is made under the Freedom of Information Act;
3. The disclosure is for a "routine use";
4. The disclosure is to the Census Bureau for the purposes of a census survey;
5. The disclosure is to someone who has adequately notified the agency in advance that the record is to be used for statistical research or reporting, and the record is transferred without individually identifying data;
6. The disclosure is to the National Archives and Records Administration as a record of historical value;
7. The disclosure is to an agency "of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity," and if the record is provided in response to a written request by the head of the agency;
8. The disclosure is made where there are "compelling circumstances" affecting someone's health or safety, and the person whose health or safety is affected is sent a notification of the disclosure;
9. The disclosure is made to Congress, or any committee or subcommittee within Congress;
10. The disclosure is made to the Comptroller General in the course of the duties of the General Accounting Office;
11. The disclosure is made pursuant to a court order;

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

12. The disclosure is made to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b)(i)(1) Criminal penalties - Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**Federal Register: "DNFSB Privacy Act; System of Records." DNFSB – 4,
Personnel Records: ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM,
INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

DNFSB--to maintain personnel files on DNFSB employees to facilitate processing of personnel actions.

Bureau of the Public Debt--to maintain Official Personnel Folders for DNFSB.

Office of Personnel Management--to maintain transfer and retirement records for the calculation of benefits and collection of anonymous statistical reports.

Federal Retirement Thrift Investment Board--to invest employee contributions in selected funds, track financial performance of employee investments, and provide performance reports.

Social Security Administration--to maintain Social Security records for the calculation of benefits.

Department of Labor--to process Workmen's Compensation claims.

Department of Defense Military Retired Pay Offices--to adjust military retirement.

Veterans Administration--to evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security--to determine entitlement to unemployment compensation or other state benefits. Federal, State, or Local government agencies--to investigate individuals in connection with security clearances, and administrative or judicial proceedings. Private Organizations--to verify employees' employment status with DNFSB.

~~OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION~~

DNFSB will disclose information to appropriate agencies, entities, and persons when DNFSB: (1) Suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) determines that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DNFSB or another agency or entity) that rely upon the compromised information; and (3) deems the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DNFSB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

SUBJECT

Sean Patrick SULLIVAN, Board Member
Defense Nuclear Facilities Safety Board (DNFSB)

ALLEGATION

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based upon information that Privacy Act protected information related to (b)(7)(C) DNFSB, was leaked. On April 6, 2015, (b)(7)(C) Attorney for (b)(7)(C) notified DNFSB of an April 3, 2015, article that appeared in a publication titled (b)(7)(C). The article contained statements that indicated that (b)(7)(C) (b)(7)(C) by the Department of Energy (DOE) and that (b)(7)(C) had been (b)(7)(C) (b)(7)(C). (b)(7)(C) asserted that someone within DNFSB and/or the DOE had violated the Privacy Act of 1974, as well as various ethical obligations, in their effort to smear (b)(7)(C). (b)(7)(C) requested that OIG conduct an investigation into this violation of law.

FINDINGS

Privacy Act information about (b)(7)(C) available to a limited number of DNFSB and DOE staff, was published in the April 3, 2015, (b)(7)(C) article; OIG was unable to determine the source of the Privacy Act information that appeared in the article. During the course of this investigation, OIG found that SULLIVAN violated the Privacy Act of 1974, 5 USC 552a, Records Maintained on Individuals, by disclosing personnel information pertaining to (b)(7)(C) that was maintained in a Privacy Act protected DNFSB system of records without (b)(7)(C) consent and for which there was no applicable statutory exemption. On March 19, 2015, SULLIVAN sent an email to (b)(7)(C) Professional Staff Member, House Armed Services Committee, disclosing that (b)(7)(C) had been (b)(7)(C). SULLIVAN was aware of (b)(7)(C) individual interest in knowing the status of (b)(7)(C) employment and voluntarily made this disclosure on his own initiative. Neither (b)(7)(C) nor any congressional committee or subcommittee chairman responsible for DNFSB oversight requested Privacy Act protected information pertaining to (b)(7)(C) prior to March 19, 2015. OIG found no statutory exemptions or authority for SULLIVAN to disclose this Privacy Act protected information about (b)(7)(C) to (b)(7)(C).

BASIS FOR FINDINGS

Review of [REDACTED] Article

OIG reviewed the [REDACTED] article written by [REDACTED] Journalist, and titled [REDACTED]. This article divulged adverse information relating to [REDACTED] security clearance and employment status. Specifically, the article stated that [REDACTED] by DOE and that DNFSB had [REDACTED]. The article also discussed details of an NRC OIG investigation (CD14-03) and a DOE security clearance investigation. [Investigative Note: OIG's investigation found that [REDACTED] showed a lack of candor in not disclosing to DNFSB hiring officials the reason why the Department of Homeland Security (DHS) OIG [REDACTED]. DOE, the agency responsible for DNFSB security clearances, had conducted a concurrent and routine periodic re-investigation to determine [REDACTED] eligibility to have continued access to classified information; this re-investigation led to the findings that prompted DOE to [REDACTED].]

(For further details, see Exhibit 1.)

Review of [REDACTED] Email to DNFSB

OIG reviewed an email from [REDACTED] to DNFSB that stated that [REDACTED] was aware of the publication of this adverse information. [REDACTED] asserted that someone within DNFSB and/or DOE had violated the Privacy Act of 1974, as well as various ethical obligations. in an effort to smear [REDACTED] requested that OIG conduct an investigation into this violation of law.

(For further details, see Exhibit 2.)

Review of Department of Energy Suspension Letter

OIG reviewed a March 19, 2015, DOE [REDACTED] letter pertaining to [REDACTED]. [REDACTED] [REDACTED] Office of Headquarters Personnel Security Operations, Office of Headquarters Security Operations, DOE, wrote Jessie ROBERSON, Acting Chairman, DNFSB, to inform her of the [REDACTED] [REDACTED], which would remain in effect until a final determination of [REDACTED] had been made under DOE's administrative review procedures, as defined in Title 10, Code of Federal Regulations, Part 710. The letter also requested that ROBERSON take appropriate action to ensure that [REDACTED] had

(For further details, see Exhibit 3.)

Review of DNFSB Proposed Indefinite Suspension Memorandum

OIG reviewed DNFSB's (b)(7)(C) memorandum, which was based on DOE's (b)(7)(C) letter that (b)(7)(C) (b)(7)(C). This memorandum was presented to (b)(7)(C) on March 19, 2015. The memorandum proposed indefinite suspension and placed (b)(7)(C) in a paid nonduty status with full pay and benefits, but restricted him from access to any DNFSB worksites and from performing any DNFSB work or conducting any official DNFSB business. [Investigative Note: (b)(7)(C) (b)(7)(C) DNFSB, told OIG that (b)(7)(C) (b)(7)(C). The memorandum also notified (b)(7)(C) that a written decision on the proposed (b)(7)(C) would take effect no earlier than 30 calendar days after the date he received the memorandum and of his right to reply to the notice.

(For further details, see Exhibit 4.)

Review of *Federal Register*: "DNFSB Privacy Act; System of Records"

OIG reviewed DNFSB's Privacy Act; System of Records published in the *Federal Register* dated July, 20, 2011 (Volume 76, Number 139). DNFSB's notice of systems of records identified nine (DNFSB-1 through DNFSB-9) categories of records protected by the Privacy Act. The review revealed that personnel files (DNFSB-4) contain 12 categories of unclassified information relating to DNFSB employees and applicants. [Investigative Note: (b)(7)(C) told OIG that personnel files were a DNFSB Privacy Act protected system of record.]

(For further details, see Exhibit 5.)

Review of Legal Interpretations Concerning Exemption 9 of the Privacy Act

Section 552a (b) of the Privacy Act states, "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains [subject to 12 exemptions]." Exemption (b)(9) provides for disclosure to "either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Office of

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Management and Budget implementation guidelines state, "This language does not authorize the disclosure of a record to members of Congress acting in their individual capacities without the consent of the individual."

Moreover, a December 5, 2001, Department of Justice (DOJ) Letter Opinion, titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members," concluded that the Privacy Act prohibits disclosure of Privacy Act protected information to the ranking minority member of a Senate Committee member, noting that "...each House of Congress exercises its investigative and oversight authority through delegations of authority to its committees, which act either through requests by the committee chairman, speaking on behalf of the committee, or through some other action by the committee itself." The DOJ Letter Opinion also cited a Congressional Research Service opinion that "Individual members may seek the voluntary cooperation of agency officials or private persons. But no judicial precedent has recognized a right in an individual member, other than the chair of a committee, to exercise the authority of a committee in the context of oversight without the permission of a majority of the committee or its chair."

Review of DNFSB Board Procedures

OIG reviewed *DNFSB Board Procedures*. This document encompassed the procedures governing the conduct of business at the DNFSB Board Member level. It provided information delineating Board Member duties, responsibilities, and decisionmaking processes, including voting on proposed Board Actions. The *DNFSB Board Procedures* provided that the Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to the appointment and supervision of employees of the Board including issuing performance evaluations, promotions, and disciplinary actions. The *DNFSB Board Procedures* also outlined procedure of the Chairman to delegate his/her authorities. If the Chairman decided to delegate his/her authorities, then the Chairman or his/her designee would complete the Chairman's Delegation of Authority Form 1, documenting the specific authorities delegated, and the person or position receiving the delegated authority. The Chairman and his designee shall date and sign the Chairman's Delegation of Authority form.

(For further details, see Exhibit 6.)

Interview of [REDACTED]

OIG contacted [REDACTED] author of the [REDACTED] article. [REDACTED] declined to provide any information relating to this investigation.

Interview of Jessie ROBERSON

ROBERSON told OIG that DOE (b)(7)(C) and, as the Acting DNFSB Chairman, she oversaw the DNFSB actions that (b)(7)(C) (b)(7)(C). ROBERSON had been aware that (b)(7)(C) was the subject of an NRC OIG investigation. She had received OIG's report and had sought legal counsel from the NRC Office of the General Counsel (OGC) relating to that matter. ROBERSON was also aware that OGC communicated with DOE, but was not privy to any details of those communications.

ROBERSON provided SULLIVAN and Daniel SANTOS, Board Member, DNFSB, with copies of NRC OIG's report for them to review. ROBERSON stated, "...all Board members had a right to know what was happening with the (b)(7)(C)." ROBERSON provided a letter cautioning SULLIVAN and SANTOS not to disclose information contained in the report. ROBERSON recalled that SULLIVAN pushed back and asked, "Why can't we? When can we talk openly about these?" ROBERSON told SULLIVAN, "Never.... There's no reason that anybody should be speaking about this to anybody." SULLIVAN then asked why he could not talk openly about several other employees who were eventually named in the article. ROBERSON advised he seek guidance from Human Resources.

On March 10, 2015, ROBERSON and SULLIVAN attended a congressional budget meeting. SULLIVAN asked to speak with (b)(7)(C) staff member, House Armed Services Committee, privately at the close of the meeting. [Investigative Note: The House Armed Services Committee is responsible for oversight of the DNFSB.] (b)(7)(C) returned and asked ROBERSON and (b)(7)(C) for the House Armed Services Committee, to meet with SULLIVAN and (b)(7)(C) in a separate room. According to ROBERSON, (b)(7)(C) asked her about (b)(7)(C) status at DNFSB. ROBERSON advised that she had received NRC OIG's report and that she was seeking legal counsel. She also told (b)(7)(C) that DOE was reviewing (b)(7)(C) (b)(7)(C). (b)(7)(C) then asked ROBERSON what would happen if DOE (b)(7)(C). ROBERSON told (b)(7)(C) that all DNFSB employees must have a clearance. [Investigative Note: (b)(7)(C) was still employed as the (b)(7)(C) DNFSB, when this conversation took place. At the time, ROBERSON had not received any notification from DOE notifying her of whether or not DOE planned to (b)(7)(C).]

ROBERSON said that (b)(7)(C) DNFSB, was contacted [March 31, 2015] by a journalist whom she believed to be (b)(7)(C) Journalist, (b)(7)(C), asking questions about (b)(7)(C) status. ROBERSON wrote a comment and had (b)(7)(C) provide it to the journalist. SULLIVAN also notified ROBERSON that a journalist, whom she believed was

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

[redacted] contacted him asking questions about (b)(7)(C) status. SULLIVAN told ROBERSON that he told them it was a personnel matter and he could not comment.

According to ROBERSON, rumors began to surface following the [redacted] article pertaining to (b)(7)(C) concerning the source of the information. ROBERSON related that there was distrust between the staff and the Board. ROBERSON heard rumors that people believed SULLIVAN was responsible for sharing that information with the [redacted]. According to ROBERSON, the [redacted] had previously published an article about issues at the DNFSB. ROBERSON stated there were some implications that (b)(7)(C) was a source of information for the article. ROBERSON said, "I'm not so sure whether it's Sean or whether it's Sean providing information to (b)(7)(C) and (b)(7)(C) providing it to the paper."

ROBERSON considered (b)(7)(C) employment status with the DNFSB and the status of his DOE [redacted] to be information protected by the Privacy Act of 1974. ROBERSON opined that no information about (b)(7)(C) should be released outside of DNFSB because all relevant information is predecisional. ROBERSON believed that DNFSB would never have the right to discuss the status of [redacted] [redacted] belongs to DOE. ROBERSON was unaware of any official Freedom of Information Act or Privacy Act request being submitted to DNFSB requesting information pertaining to (b)(7)(C) status.

ROBERSON, as Acting Chairman, DNFSB, believed that she was permitted to speak with a sitting member of Congress, such as a member of the House Armed Services Committee, concerning a DNFSB employee's [redacted]. ROBERSON said that if she were asked where the DNFSB's (b)(7)(C) was, she could communicate the information as long as they understood it was Privacy Act information. ROBERSON did not believe she was permitted to share the same information with Congressional staffers.

(For further details see Exhibits 7 through 9.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that (b)(7)(C) DNFSB, informed him, prior to the publication of the [redacted] article, that (b)(7)(C) had been (b)(7)(C) and (b)(7)(C) by DOE; however, (b)(7)(C) did not provide any details pertaining to the cause of the actions taken. [Investigative Note: (b)(7)(C) was (b)(7)(C) supervisor at the time.] (b)(7)(C) did not discuss (b)(7)(C) status with anyone outside of DNFSB; however, he recalled receiving an email from [redacted] requesting information pertaining to (b)(7)(C) status. (b)(7)(C), ROBERSON, and DNFSB OGC drafted

~~OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION~~

a response stating that DNFSB could not release the information. (b)(7)(C) added that public relations/media relations was one of his unofficial extra duties at DNFSB. (b)(7)(C) explained that he routes any received requests to the appropriate offices for response/action.

(For further details see Exhibit 10.)

Interview of Sean SULLIVAN

SULLIVAN told OIG that he was aware of OIG's investigation [CD14-03]. ROBERSON provided an opportunity for SULLIVAN and SANTOS to review OIG's report. SULLIVAN received OIG's report from (b)(7)(C) DNFSB, who told SULLIVAN the report was for him only. SULLIVAN said he read the report twice and returned it to (b)(7)(C). Subsequently, SULLIVAN and ROBERSON had discussions about (b)(7)(C) and his status with DNFSB. ROBERSON told SULLIVAN that she had sought outside counsel and she was awaiting a determination on (b)(7)(C) from DOE's security office.

On approximately March 18, 2015, SULLIVAN learned that DOE was going to meet with (b)(7)(C) and (b)(7)(C). SULLIVAN was not provided an opportunity to review DOE's file on (b)(7)(C) or the letter from DOE that notified DNFSB that (b)(7)(C). [Investigative Note: SULLIVAN had several discussions with ROBERSON and SANTOS between early February 2015 and March 19, 2015, concerning the ongoing personnel and DOE security issues with (b)(7)(C).]

SULLIVAN said he had communicated with (b)(7)(C) concerning (b)(7)(C) beginning in the fall of 2014. SULLIVAN told OIG that he contacted (b)(7)(C) and expressed frustration that (b)(7)(C) seemed to always give a legal opinion that suited the wishes of Peter WINOKUR, then DNFSB Chairman. (b)(7)(C) subsequently informed SULLIVAN that there was an OIG investigation involving (b)(7)(C). (b)(7)(C) led SULLIVAN to believe that the House Armed Services Committee had requested OIG to investigate whether or not (b)(7)(C) was truthful during the hiring process for DNFSB following (b)(7)(C) from the Department of Homeland Security.

SULLIVAN stated that he had another conversation with (b)(7)(C) subsequent to receiving OIG's report in February 2015. SULLIVAN believed this conversation took place at a nuclear deterrence conference that was sponsored by (b)(7)(C). SULLIVAN told (b)(7)(C) that he had read the report and it "confirms what I thought." [Investigative Note: SULLIVAN had previously told OIG, "...I wasn't sure if (b)(7)(C) was lying or just a bad lawyer."] SULLIVAN stated that he and (b)(7)(C) did not discuss any details of the report. (b)(7)(C) asked what action DNFSB planned to take. SULLIVAN told (b)(7)(C) that ROBERSON had to seek an attorney to advise her

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

and there was no plan. (b)(7)(C) indicated he would obtain a copy of the report through official channels. [Investigative Note: On May 27, 2015, NRC OIG provided two copies of the report of investigation for CD14-03 to the House Armed Services Committee pursuant to a May 21, 2015, written request made by William M. THORNBERRY, Chairman, House Armed Services Committee.]

SULLIVAN told OIG that he next saw (b)(7)(C) on approximately March 10, 2015, when he and the other Board Members briefed DNFSB's budget to (b)(7)(C) and (b)(7)(C). (b)(7)(C) pulled SULLIVAN aside following the briefing and asked if he had an update on (b)(7)(C). SULLIVAN referred (b)(7)(C) to ROBERSON because she, as the Acting Chairman, was responsible for DNFSB personnel actions. SULLIVAN, ROBERSON, (b)(7)(C) and (b)(7)(C) went into a side room where SULLIVAN said ROBERSON told the group that she had outside counsel and that counsel had advised her to act on (b)(7)(C). DOE was reviewing (b)(7)(C) and (b)(7)(C) would be placed on administrative leave if DOE decided to act on (b)(7)(C).

SULLIVAN told OIG that he emailed (b)(7)(C) and informed him that (b)(7)(C) had been (b)(7)(C). On June 9, 2015, (b)(7)(C) informed SULLIVAN that he had received OIG's report and asked if there was an update on (b)(7)(C) appeal. SULLIVAN said, "No."

SULLIVAN did not know why (b)(7)(C) was continuously interested in (b)(7)(C) status. SULLIVAN speculated that (b)(7)(C) primary interest was in WINOKUR. SULLIVAN stated (b)(7)(C) did not like WINOKUR and he believed that (b)(7)(C) "was hoping this would all come back on WINOKUR somehow." (b)(7)(C) told SULLIVAN, "he had read the report, and he was wondering if Peter WINOKUR was being truthful [referring to the circumstances surrounding (b)(7)(C) hiring] when Peter said he didn't know about this."

Prior to April 3, 2015, the publication date of the (b)(7)(C) article, and after (b)(7)(C) the date (b)(7)(C) was (b)(7)(C). SULLIVAN received a phone call from (b)(7)(C) asked if SULLIVAN could comment on (b)(7)(C) being (b)(7)(C). SULLIVAN told (b)(7)(C) "This is a personnel matter, I can't talk personnel matters." SULLIVAN briefed ROBERSON following his phone call from (b)(7)(C). ROBERSON told SULLIVAN that (b)(7)(C) had contacted her as well. SULLIVAN did not know who provided (b)(7)(C) with information relating to (b)(7)(C) status at the DNFSB.

When asked if he considered the information pertaining to (b)(7)(C) status that was published in the (b)(7)(C) was protected by the Privacy Act, SULLIVAN responded, "Yeah, it's definitely something that we shouldn't be reading about in the (b)(7)(C)..." SULLIVAN was asked if he was aware of

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

any restrictions in the Privacy Act on sharing information with other governmental entities such as the White House or Congress. SULLIVAN responded that he was sure there are exceptions and exemptions but he was not an expert.

(For further details see Exhibits 11 and 12.)

Interview of (b)(7)(C)

OIG interviewed (b)(7)(C) DNFSB. (b)(7)(C) was the issuing official for (b)(7)(C) letter. He did not know specific details of what led to (b)(7)(C); however, he did know that DOE (b)(7)(C) based on information DOE obtained during a periodic reinvestigation for (b)(7)(C) security clearance. (b)(7)(C) informed Office of the General Manager (OGM) employees, during an OGM all hands meeting, that (b)(7)(C) would not be the (b)(7)(C) for an indefinite period of time. He did not disclose the reason(s) (b)(7)(C) was in the position. (b)(7)(C) stated the only other conversations he had concerning (b)(7)(C) status were with ROBERSON and (b)(7)(C) (b)(7)(C) said he did not know (b)(7)(C) and had never communicated with him.

(For further details see Exhibit 13.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that DNFSB placed (b)(7)(C) on (b)(7)(C) following receipt of DOE's letter that (b)(7)(C).
[Investigative Note: DNFSB issued (b)(7)(C) (b)(7)(C) and that memorandum was maintained in a hard copy DNFSB personnel file. As noted on page 6 of this report, the memorandum notified (b)(7)(C) that he was (b)(7)(C)]

(b)(7)(C) advised that personnel files are a DNFSB Privacy Act protected system of record. (b)(7)(C) also told OIG that the DNFSB Chairman was the only person authorized to speak on behalf of the agency. (b)(7)(C) added that the responsibility could be delegated to other Board Members or staff, but that (b)(7)(C) was not aware of any such delegation of responsibilities pertaining to the release of information concerning (b)(7)(C) employment status at the DNFSB.

(For further details, see Exhibit 3, 14, and 15.)

Interview of Additional DNFSB Employees

OIG interviews of SANTOS, (b)(7)(C), and (b)(7)(C) DNFSB, did not provide pertinent information in furtherance of identifying the

individual(s) responsible for leaking Privacy Act protected information to anyone outside of DNFSB or DOE.

(For further details see Exhibits 16 through 19.)

Interview of DOE Employees

OIG interviews of DOE officials

(b)(7)(C)
(b)(7)(C) (b)(7)(C)
(b)(7)(C) (b)(7)(C) (b)(7)(C)
(b)(7)(C) and
(b)(7)(C) did not provide pertinent information in furtherance of identifying the individual(s) responsible for leaking Privacy Act protected information to anyone outside of DNFSB or DOE.

(For further details see Exhibits 20 through 27.)

Review of DNFSB Email

OIG reviewed Outlook content obtained from the DNFSB server containing emails for ROBERSON, SULLIVAN, SANTOS, (b)(7)(C) and (b)(7)(C). The primary focus of the review was to identify information relevant to whether or not DNFSB Board Members and/or staff had any communications with (b)(7)(C) that were related to the (b)(7)(C) access or his (b)(7)(C) from DNFSB. The review revealed sequences of emails referencing a request for information made by (b)(7)(C). The original request for information relating to (b)(7)(C) was sent to (b)(7)(C) on March 31, 2015. (b)(7)(C) forwarded that request to ROBERSON, (b)(7)(C) and (b)(7)(C). OIG did not find emails containing Privacy Act protected information sent to (b)(7)(C).

(For further details see Exhibit 28.)

Review of Sean SULLIVAN's Email

OIG reviewed Outlook content obtained from the DNFSB server containing emails for SULLIVAN. The primary focus of this review was to identify information relevant to SULLIVAN's communications with (b)(7)(C) that were related to the (b)(7)(C) (b)(7)(C) or his (b)(7)(C) from DNFSB. The review confirmed that on (b)(7)(C), SULLIVAN sent an email to (b)(7)(C) to inform him that (b)(7)(C).

(For further details see Exhibit 29.)

Review of Department of Energy Staff Emails

OIG reviewed a copy of Outlook content obtained from the DOE server containing emails for (b)(7)(C) and (b)(7)(C). The primary focus was to extract information relevant to whether or not DOE staff had any communications with J. [redacted] that were related to the (b)(7)(C) or his (b)(7)(C) from DNFSB. The keyword search returned no emails pertinent to this investigation.

Department of Justice Coordination

[redacted] Fraud and Public Corruption Section (USAO-DC) was briefed on this investigation. (b)(7)(C) declined prosecution in-lieu of administrative action.

EXHIBITS

1. [REDACTED] Article, dated April 3, 2015.
2. Department of Energy [REDACTED]
3. DNFSB Proposed; [REDACTED]
4. Email, (b)(7)(C) to DNFSB, dated April 6, 2015.
5. DNFSB Privacy Act; System of Records, dated July 20, 2011.
6. DNFSB Board Procedures, dated December 2014.
7. Transcript of Interview of Jessie ROBERSON, dated May 26, 2015.
8. Transcript of Interview of Jessie ROBERSON, dated November 10, 2015.
9. Email, Jessie ROBERSON to OIG, dated November 12, 2015.
10. Transcript of Interview of (b)(7)(C) dated June 4, 2015.
11. Transcript of Interview of Sean SULLIVAN, dated May 21, 2015.
12. Transcript of Interview of Sean SULLIVAN, dated June 11, 2015.
13. Transcript of Interview of (b)(7)(C) dated April 29, 2015.
14. Transcript of Interview of (b)(7)(C) dated May 21, 2015.
15. Transcript of Interview of (b)(7)(C) dated November 9, 2015.
16. Transcript of Interview of Daniel SANTOS, dated June 4, 2015.
17. Transcript of Interview of (b)(7)(C) dated May 26, 2015.
18. Transcript of Interview of (b)(7)(C) dated May 26, 2015.
19. Transcript of Interview of (b)(7)(C) dated June 11, 2015.
20. Transcript of Interview of (b)(7)(C) dated July 16, 2015.

~~OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION~~

- 21. Transcript of Interview of (b)(7)(C) [redacted], dated July 16, 2015.
- 22. Transcript of Interview of (b)(7)(C) [redacted], dated October 13, 2015.
- 23. Transcript of Interview of (b)(7)(C) [redacted], dated June 2, 2015.
- 24. Transcript of Interview of (b)(7)(C) [redacted], dated July 17, 2015.
- 25. Transcript of Interview of (b)(7)(C) [redacted], dated June 2, 2015.
- 26. Transcript of Interview of (b)(7)(C) [redacted], dated October 14, 2015.
- 27. Transcript of Interview of (b)(7)(C) [redacted], dated October 13, 2015.
- 28. Memorandum to File, Review of Defense Nuclear Facility Safety Board (DNFSB) Staff (b)(7)(C) [redacted] dated April 28, 2015.
- 29. Memorandum to File, Review of SULLIVAN (b)(7)(C) [redacted] dated July 8, 2015.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

File Location: (b)(7)(C), (b)(7)(E)

Distribution

Case File CD-15-03 Historical File MAGNUM

OIG	OIG	Editor	OIG	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	J. McManis	D. LeBeau	H. Bell
12/15/15	12/15/15	12/15/15	12/17/15	12/17/15	12/15/15	12/15/15

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION



**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**
WASHINGTON, D.C. 20004-2901

OFFICE OF THE
INSPECTOR GENERAL

July 17, 2018

MEMORANDUM TO:

Concur: Case Closed

(b)(7)(C)

Acting Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS PERTAINING TO VIOLATION OF THE
ATOMIC ENERGY ACT BY CHAIRMAN SULLIVAN
(OIG CASE NO. CD17-001)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission, initiated this investigation based on an allegation submitted by (b)(7)(C) (b)(7)(C) Office of General Counsel (OGC), Defense Nuclear Facilities Safety Board (DNFSB), on March 24, 2017. (b)(7)(C) alleged that Sean SULLIVAN, DNFSB Chairman at the time, violated the Atomic Energy Act (AEA) by "inappropriately direct[ing] a pending Board vote to be withdrawn thereby denying the other board members equal responsibility and authority in establishing decisions and determining an action of the board...interfering with four Board Members having one vote."

THIS DOCUMENT IS THE PROPERTY OF THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR GENERAL (OIG). IF LOANED TO ANOTHER AGENCY, IT AND ITS CONTENTS ARE NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE RECEIVING AGENCY WITHOUT OIG'S PERMISSION.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

The potential violation relevant to this investigation is the AEA, 42 U.S.C. Section 2286, "Establishment of Defense Nuclear Facilities Safety Board," Subchapter XVII-A "Defense Nuclear Facilities Safety Board" Section 2286(c), "Establishment – Chairman, Vice Chairman, and Members."

Findings

OIG determined that SULLIVAN violated the AEA by inappropriately withdrawing, without the consent of the other board members, two actions that were already voted on by the other board members, thereby denying them equal responsibility and authority. The Board's voting record indicated that two requests that were submitted by the general counsel and voted on by the other members were withdrawn. Further, SULLIVAN admitted to other board members that he intentionally ordered [redacted] to withdraw the votes. On February 2, 2018, SULLIVAN unexpectedly separated from Government service and is no longer the chairman of DNFSB or a Federal employee.

Basis for Findings

On February 21, 2017, the DNFSB board members had approved, by 5-0 vote, to hold a closed meeting on March 13, 2017, to discuss potential recommendations to the Secretary of Energy. [redacted] indicated that in accordance with the Sunshine Act of 1976 and the DNFSB Board Procedures, the Board was to hold a separate vote to close the meeting to the public and apply "one or more exemptions to the Sunshine Act's general requirement that meetings be conducted publicly."

On March 6, 2017, [redacted] submitted Request for Board Action (RFBA) #2017-300-045 – Request for Board Action by [redacted] to Approve to Close the Meeting Scheduled for March 13, 2017. The voting record showed four board members, Jessie ROBERSON, Danial SANTOS, Joyce CONNERY, and Bruce HAMILTON, Vice-Chairman at the time, completed their votes, approving the request to proceed to hold the closed meeting. Subsequently, on March 7, 2017, [redacted] submitted another RFBA #2017-300-046 – RFBA by [redacted] for Board Approval of Detailed Agenda and Federal Register Notice, which was approved by CONNERY, ROBERSON, and SANTOS. However, SULLIVAN directed the [redacted] to withdraw both of these RFBA's, which the voting record showed their status as "Withdrawn."

[redacted] reported to OIG that SULLIVAN's action was a direct violation of the AEA, Section 2286, Sub-paragraph (c), which states, "Chairman, Vice Chairman, and each member of the Board, shall have equal responsibility and authority in establishing decisions and determining actions of the Board, and have one vote." [redacted] alleged

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

that SULLIVAN, without the consent of other members, withdrew the vote after the other board members had voted on the request. (b)(7)(C) added SULLIVAN "prevented the other board members' votes from being counted and archived as a final board action on the pending matter."

(b)(7)(C) further stated that under the DNFSB Board Procedures, the (b)(7)(C) is required to provide the board a specific agenda for the meeting, and what Sunshine Act exemptions should be applied to closed meetings. Under RFBA #2017-300-046, (b)(7)(C) advised the board that the following two Sunshine Act exemptions be applied to the closed meeting:

- Sunshine Act Exemption 3 – a meeting should be closed if the information is prohibited from being released by some other law or statute; and
- Sunshine Act Exemption 9(b) – the Board may close the meeting if release of the information is likely to significantly frustrate the intent of the action being discussed, or the information being discussed.

(b)(7)(C) stated that, in the past, SULLIVAN has raised concerns about Exemption 9(b). (b)(7)(C) explained that this particular exemption provides "the Board the greatest flexibility in the future to withhold information from the public, until the Board feels that [the exemption] no longer applies and can release the information"; however, SULLIVAN did not agree that it should be applied to any of DNFSB's closed meetings as he believed he had the liberty to share any information about the agency as he deemed was warranted.

(b)(7)(C) reported that because of SULLIVAN's action, the board was forced to delay the closed meeting. (b)(7)(C) said that SULLIVAN not only denied the board members' ability to have their vote registered and counted, but also forced the effect of denying the public's capacity to see the registered vote.

SANTOS agreed that SULLIVAN violated the statute. According to SANTOS, SULLIVAN informed the other board members via email that he withdrew the requests "due to staff error," indicating that (b)(7)(C) inappropriately submitted the RFBA's when he was not authorized to do so. According to SULLIVAN, the DNFSB (b)(7)(C) do not have "the ability under the Board Procedures" to submit RFBA's into "notional vote," as only the board members have that capacity. However, SANTOS indicated that this had been done in the past and accepted by the Board without any issues. SANTOS suggested that SULLIVAN's real intention was to deny the application of Sunshine Act Exemption 9(b) being applied to the scheduled March 13 closed meeting, and implying that it was a staff error was just an excuse.

~~OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION~~

ROBERSON reported that she had previously debated with SULLIVAN about the Exemption 9(b) difference of opinion. ROBERSON also indicated that in the past, SULLIVAN specifically did not like 9(b) because it "limit(s) his ability to share information" once it is applied to a closed meeting.

ROBERSON stated that after she found out that SULLIVAN had pulled the two RFBAs, she held a phone conversation with him, and he "acknowledged that the Board gets to decide" to close the meeting "under whatever exemptions it choses, [and that] he respects the right of the Board"; however, "he had pulled the vote by then," and by doing so, he prohibited the other board members exercising their rights. ROBERSON reported SULLIVAN's action was a direct violation of the agency's Board Procedures.

CONNERY agreed with the other two board members that SULLIVAN was in violation of the statute. CONNERY informed she was on travel when the two RFBAs were submitted, so she voted in "absentia via email." CONNERY also agreed that SULLIVAN was not very fond of Exemption 9(b) as he had previously suggested to her that it was "problematic and unnecessary." CONNERY indicated that "it is the authority of the [REDACTED] to determine under what authorities and exemptions, Sunshine Act Exemptions meetings are to be closed"; however, SULLIVAN "has a longstanding issue with the fact that the (b)(7)(C) [REDACTED] tries to provide the exemptions."

CONNERY believed that SULLIVAN's action was a "violation because [the Board] had already started voting." CONNERY stated that the Board should have "archived" the vote and introduced "other procedural ways to handle" the problem; instead, SULLIVAN unilaterally withdrew the votes that other board members had already voted upon.

OIG reviewed the emails that SULLIVAN had exchanged with ROBERSON. Records show SULLIVAN admitting he ordered the (b)(7)(C) [REDACTED] to withdraw the votes, but his reasoning was that it was "due to staff error." Further, SULLIVAN indicated that he was "in full compliance with the law and the Board Procedures," suggesting that his actions did not violate any procedures.

OIG also reviewed previous voting records that were purportedly submitted by (b)(7)(C) [REDACTED]. Records show that these RFBAs were submitted by office directors and they were voted by the board members without any issues.

On February 2, 2018, SULLIVAN unexpectedly separated from Government service and is no longer the chairman of DNFSB or a Federal employee.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Even though OIG substantiated misconduct, due to SULLIVAN's unexpected separation from the Federal service, it is recommended that this investigation be closed to the files of this office.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION

Distribution
Case File CD17-001

(b)(7)
(C)

7/13/18

Magnum

OIG (b)(7)(C)	OIG (b)(7)(C)	OIG (b)(7)(C)	OIG	OIG
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	D. Lee	H. Bell
7/2/18	7/2/18	7/17/18	1/18	7/19/18

Official File Copy