Description of document:	Department of Justice (DOJ) Inspector General (OIG) most recent Management Advisory Memoranda, 2016-2019
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U.S. Department of Justice

Office of the Inspector General

January 29, 2020

Subject: Freedom of Information/Privacy Act Request [18-OIG-331]

This responds to your Freedom of Information Act request to the Office of the Inspector General (OIG). Specifically, your request seeks Management Advisory Memoranda produced by the OIG. It has been determined that this material is appropriate for release without excision and a copy is enclosed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller, at (202) 616-0646 for any further assistance with your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

If you are not satisfied with the OIG's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: https://foiastar.doj.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your

request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Kim Kochurka

Government Information Specialist
Office of the General Counsel

Enclosure

U.S. Department of Justice

Office of the Inspector General

September 25, 2017

MANAGEMENT ADVISORY MEMORANDUM FOR:

CHRISTOPHER A. WRAY
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Referring Alleged Misconduct to the Federal Bureau of Investigation's Inspection Division and the Department of Justice's Office of the Inspector General

The purpose of this memorandum is to advise you of potential systemic issues that the U.S. Department of Justice (Department, DOJ) Office of the Inspector General (OIG) identified during an ongoing review of the Federal Bureau of Investigation's (FBI) investigation and adjudication of unfavorable results from personnel security polygraph examinations of FBI employees. Specifically, as described below, we learned that, contrary to FBI policy, the FBI's Analysis and Investigations Unit (AIU) is not appropriately reporting all allegations of misconduct that it learns about to its Inspection Division (INSD) and to the OIG.

FBI policy instructs the AIU to refer to the INSD any FBI employee misconduct issue that involves "high-risk security concerns." In addition, FBI policy requires all FBI personnel to report allegations of potential employee misconduct or criminal conduct to the INSD in writing, and the INSD is required to forward those allegations to the OIG.

Further, federal regulation and Department policy state that all DOJ employees are required to report to the OIG, to their supervisor, or to their component's internal affairs office for referral to the OIG, any allegation of criminal or serious administrative misconduct on the part of a DOJ employee, except certain allegations of misconduct that are required to be reported to the DOJ Office of Professional Responsibility.[1]

[1] 28 C.F.R. § 45.11 (2016) and Attorney General Order No. 2835-2006 (September 11, 2006).

Despite these requirements, we identified several instances in which the FBI could not demonstrate that allegations of employee misconduct were referred either to the INSD or to the OIG. FBI officials told us that these referrals could have been made verbally during regularly scheduled coordination meetings between the AIU and INSD, although we note that FBI policy requires allegations of misconduct to be referred to the INSD in writing and the FBI could not locate any record of written referrals having occurred.

In our ongoing review, we selected and analyzed a judgmental sample of case files for 78 FBI employees whose polygraph examination results were deemed to be "Deception Indicated," "Inconclusive," and/or had suspected or confirmed use of countermeasures.[2] We requested and obtained documentation from the FBI to assess the steps it took during its investigation and adjudication of each case, from the initiation of the employee's reinvestigation through the final actions related to non-passing results or countermeasures and any related appeals. This included documentation of all polygraph retest examinations and any additional work by FBI personnel based on the polygraph results.

In addition, we queried OIG databases to determine whether potential misconduct identified in our sample was reported to the OIG's Investigations Division. We then cross-checked information listed in the OIG's investigative database with the INSD's database. Our review identified several cases in which AIU investigators became aware of serious allegations of misconduct, which were neither reported to the OIG nor reported in writing to the INSD, as required. We discuss two examples below:

1. During the post-test phase of a polygraph examination, an FBI Information Technology (IT) Specialist admitted to using FBI equipment to view and print photographs of scantily clad adult women, some of which the employee stated depicted partially naked women. Following this admission, the AIU initiated an investigation in part to review the IT Specialist's potential misuse of FBI computer systems. During an interview with the AIU more than a year later, the IT Specialist again admitted to using a standalone FBI computer to download and print photographs of scantily clothed women.[3] The IT Specialist also admitted

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[2] The employees in our judgmental sample were subject to a polygraph examination for one of the following reasons: (1) as part of their 5-year personnel security reinvestigation; (2) in response to a specific request from an FBI division or field office; or (3) as required by DOJ's Access Review Committee, which reviews appeals from denials or revocations of the eligibility of DOJ employees and applicants for access to classified information.

[3] In closing the investigation, the AIU noted that the Enterprise Security Operations Center's "enhanced analysis of [the employee's] ... use of the FBI IT systems" had determined that the employee had not misused FBI IT systems. While the reasoning for this determination is beyond the scope of the OIG review, the OIG is in the process of obtaining additional information regarding this matter and will follow up as may be appropriate.

to creating a fictitious Facebook account and conversing with a foreign national for approximately 6 months before their communications ended. During a polygraph retest examination, the IT Specialist received a Deception Indicated result. The IT Specialist noted a concern about the question regarding unauthorized foreign contacts, in part because of the exchanges with the foreign national, even though the IT Specialist denied that the foreign national was connected to any intelligence service.

Neither the INSD nor the OIG received any report of allegations involving the misuse of government equipment to view and print inappropriate photographs or the unreported foreign contacts.[4] Moreover, despite the fact that the IT Specialist unsuccessfully took four polygraph examinations and was debriefed from having access to Sensitive Compartmented Information (SCI), the IT Specialist received no disciplinary action relating to this misconduct and remained employed for more than 2 years after admitting to the misuse of FBI computers and for almost 1 year after admitting to unreported contacts with a foreign national. According to the FBI's Human Resources Division, the IT Specialist was eligible to retire and receive a federal retirement annuity.

2. During the post-test phase of a polygraph examination, a Special Agent admitted to an intimate relationship with a former FBI criminal source of about 6 months duration that had occurred more than 20 years earlier. The Special Agent had formerly managed the criminal source; but, according to the Special Agent, the relationship started after the source was no longer active for the FBI. Prior to the Special Agent's admission, the AIU had initiated an investigation due to a Deception Indicated result for a prior polygraph examination administered several months before the examination resulting in the post-test admission. In closing the investigation, the AIU noted the second polygraph examination but did not mention the Special Agent's post-test admission.

   Neither the INSD nor the OIG have any record of receiving information about the Special Agent's relationship with a former FBI criminal source. The Special Agent is still employed by the FBI.

As a result of our analysis of the FBI's case files, we are concerned that the FBI is not consistently reporting allegations of misconduct to the INSD and the OIG as required by FBI and Department policies and federal regulations and that this may hinder the FBI and the OIG from thoroughly and promptly

[4] In 2003, the OIG separately received information from the FBI's Office of Professional Responsibility alleging that the employee had engaged in unprofessional conduct by making threatening remarks to coworkers, disrupting the office with inappropriate behavior, and making inappropriate comments regarding female employees. The OIG referred the complaint back to the FBI for appropriate handling.

investigating employee misconduct. Our concerns are heightened because all FBI employees have Top Secret clearances, which give them access to classified information when relevant to their work. In the first example, although the FBI eventually debriefed the IT Specialist from access to SCI, the employee had such access for approximately 17 months after the employee's initial admissions, during which time the employee was unable to pass three polygraph examinations. While the INSD and the OIG do not adjudicate security clearances, independent investigations of misconduct allegations against employees with access to SCI are particularly important given the potential risks to U.S. national security.

We are providing this information so that the FBI can consider immediate corrective actions to ensure appropriate reporting of such information to both the INSD and the OIG. Please advise us within 30 days of the date of this memorandum on what actions the FBI has taken or intends to take with regard to these issues. If you have any questions or would like to discuss this information and our concerns, please contact me at (202) 514-3435.

cc: Scott Schools
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Office of the Deputy Attorney General

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Federal Bureau of Investigation

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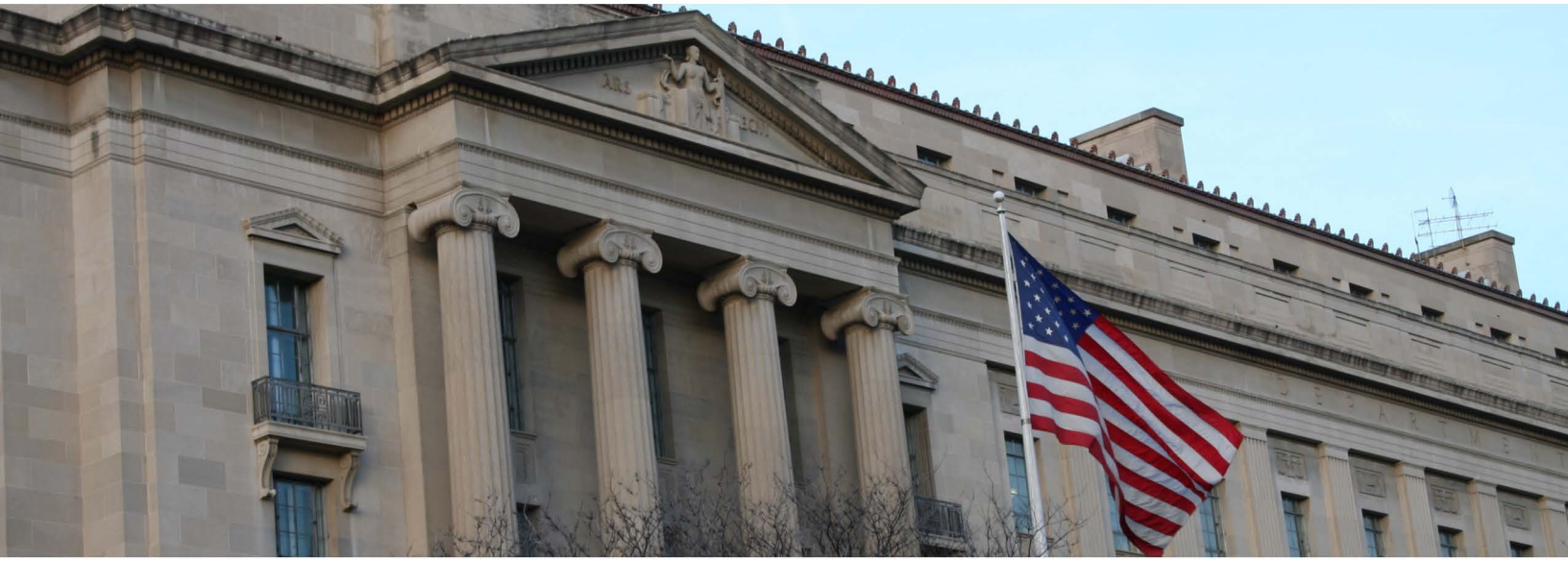
Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Public Summary of a Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding Inadequate Actions Taken to Mitigate a National Security Threat

Audit Division

June 2018

PUBLIC SUMMARY OF A MANAGEMENT ADVISORY MEMORANDUM FOR THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION REGARDING INADEQUATE ACTIONS TAKEN TO MITIGATE A NATIONAL SECURITY THREAT

In March 2017, the U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) began an audit of the Federal Bureau of Investigation's (FBI) efforts to address homegrown violent extremists (HVE). In August 2017, during our audit, we became aware of a national security threat posed by activities of an HVE who is incarcerated at a federal facility outside DOJ's authority. Upon receiving this information, we alerted FBI Counterterrorism Division (CTD) executive management of our concern and continued performing audit work to obtain further information about the significance of the threat and to assess the FBI's handling of it. In response to our notification, FBI executive management took formal steps to coordinate with parallel leadership of the non-DOJ federal entity to mitigate this threat. This document provides an unclassified, publically releasable summary of the OIG's recommendations to the FBI to further mitigate the threat to national security identified by the OIG during this audit. The FBI concurred with the OIG's five recommendations, while noting some disagreements with the OIG's analysis.

Based upon our interviews and review of available documents, in 2013 the FBI first became aware of activities of an HVE incarcerated in a federal facility outside DOJ's authority that posed a threat to national security. At that time, FBI personnel coordinated with the responsible federal entity regarding methods to address the threat. This coordination continued intermittently over a 4-year period. However, we found that these efforts did not adequately mitigate the threat. As noted, the FBI's recent actions taken following our notification to and involving CTD executive management, appear to have resulted in constructive steps to mitigate the threat. The OIG recommends that the FBI coordinate with the other federal entity to establish formalized procedures for this situation and to ensure that the threat posed by the HVE inmate is appropriately mitigated.

The threat posed by the activities of the particular HVE housed at a federal facility outside DOJ's authority indicates that there is an increased risk that similar circumstances may exist with respect to other individuals, including HVE subjects, in the custody of other non-DOJ entities. Therefore, the OIG recommends that the FBI evaluate and determine appropriate actions, in coordination with appropriate other entities, to mitigate the potential national security threats that could arise from HVEs held in facilities outside the DOJ's authority.

We provided the FBI, our congressional oversight committees, and the non-DOJ entity with more detailed information about the circumstances discovered during our audit in a classified memorandum so that it can assess and take immediate corrective actions regarding the national security concerns we identified. The OIG will continue our audit of the FBI's efforts to address HVEs and we will incorporate in our final report any actions taken by the FBI to address the issues raised in this summary and in greater detail in our classified memorandum to the FBI.

The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations.

To report allegations of waste, fraud, abuse, or misconduct regarding DOJ programs, employees, contractors, grants, or contracts please visit or call the **DOJ OIG Hotline** at oig.justice.gov/hotline or (800) 869-4499.

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Also at Oversight.gov

OIG'S MANAGEMENT ADVISORY MEMORANDUM TO THE DEPARTMENT

U.S. Department of Justice

Office of the Inspector General

July 21, 2016

MANAGEMENT ADVISORY MEMORANDUM FOR:

THE DEPUTY ATTORNEY GENERAL

ROBERT A. ZAUZMER
ACTING PARDON ATTORNEY
OFFICE OF THE PARDON ATTORNEY

THOMAS R. KANE
ACTING DIRECTOR
FEDERAL BUREAU OF PRISONS

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Management of the Application Process for the Department's Clemency Initiative

The purpose of this memorandum is to advise you of potential significant systemic issues we discovered in the course of the Office of the Inspector General's (OIG) ongoing review of the Department of Justice's (Department) clemency process. According to the Department's website, the Clemency Initiative (Initiative), which the Department announced in April 2014, is designed "to encourage qualified federal inmates to petition to have their sentences commuted, or reduced, by the President of the United States."[1] While our review is still in progress, we believe the systemic issues we have identified, as described below, may require the Department's immediate attention.

As part of the Initiative, the Department directed the Federal Bureau of Prisons (BOP) to provide a notice to all federal inmates about the Initiative along with a survey that was designed to assist the Department in determining inmates eligible for clemency consideration. On May 2, 2014, the BOP issued to all inmates in BOP-managed institutions a "NOTICE TO INMATES: Initiative on Executive Clemency."

[1] Department of Justice (DOJ), "Clemency Initiative," https://www.justice.gov/pardon/clemency-initiative (accessed July 20, 2016).

along with an "Executive Clemency Survey."[2] The survey consisted of 13 questions and a list of requested information. The notice outlined the purpose of the Initiative and said it "invites petitions from non-violent federal inmates who would not pose a threat to public safety if released." The notice went on to state that "this initiative is limited to inmates who" met six criteria, including that they had served at least 10 years of their sentence. Inmates could complete the survey either in writing or electronically via the TRULINCS system, which is a BOP electronic messaging system. However, inmates were advised that if they wished to have an attorney from the Clemency Project 2014 ("CP 14") assist them in preparing a clemency petition, they should complete the form via TRULINCS.[3]

To date, we have identified several significant potential issues with the Department's and the BOP's implementation of this survey effort. First, there appears to be significant confusion about the Initiative's criteria and specifically whether inmates must meet all six designated criteria, particularly the provision regarding having "served at least 10 years of their prison sentence," in order to be eligible for consideration. As noted above, the Notice to Inmates states that the Initiative "is limited to" inmates who meet the six designated criteria, including that they had served at least 10 years of their sentence. The notice, in addition to being provided to all inmates in BOP-managed institutions, also was posted on the BOP's website and was provided to CP 14 attorneys. BOP staff told us that it was their understanding that the Initiative was limited to inmates who had served at least 10 years of their sentence, and it was therefore unclear to them why the BOP made the survey available to all inmates rather than targeting distribution to those inmates who had met the 10-year requirement. Moreover, in an attachment to an email dated May 7, 2014, a senior Department official wrote that the White House understood the 10-year requirement to mean "a hard 10 years served, but I will verify."[4] Additionally, Office of the Pardon Attorney (OPA) attorney training materials, developed by the

[3] As discussed below, based on our interviews with BOP officials and contract prison staff, we could not confirm whether all inmates in contract prisons received the notice and survey. It is our understanding that the Department and the BOP did not intend to exclude these inmates from the Initiative.

[4] CP 14 consists of private attorneys from several independent legal organizations who volunteered their time to determine the eligibility of the inmates and filed clemency petitions on behalf of eligible inmates.

[4] See Kathryn H. Ruemmler, White House Counsel, memorandum to Deputy Attorney General James Cole, April 23, 2014, which notes that inmates should "have served at least 10 years of their sentence" as one of the additional factors the Department should take into account when recommending commutation of sentence for inmates who would have received a substantially lower sentence if convicted of the same offense today.

same senior Department official and the former Pardon Attorney, clearly indicate that inmates must have served at least 10 years of their sentence to be eligible under this Initiative.[5]

However, in contrast to the mandatory language used in the Notice and the understandings outlined in the documents described above, the Department used permissive language about the criteria in both its announcement of the Initiative and on its website, stating that the Department was seeking to "prioritize" clemency applications from inmates who met the six eligibility requirements.[6] Consistent with this permissive language, another senior official in the Office of the Deputy Attorney General, who was involved in developing the Initiative and training materials, told us that the six criteria were not, in fact, considered "hard and fast rules," and that inmates do not have to meet all of the criteria to be considered for clemency. According to the senior official, the Department had the BOP send the survey to all inmates in BOP-managed institutions, not just those who met the six criteria, because the Department was interested in considering applications from all inmates who had received unjust sentences and who would not pose a public safety risk if they were released. Consistent with the permissive language found on the Department's website and in the announcement of the Initiative, we found that of the 337 inmates granted commutation by the President since December 2014, 41 inmates had not served 10 years of their sentence.

We also found that the BOP received 42,808 surveys from inmates and that it forwarded 35,717 of those surveys to CP 14 attorneys for eligibility determinations.[7] However, our analysis of BOP data has found that only 22,720 inmates of the 189,146 inmates in BOP-managed institutions and contract prisons as of September 2014 would have served at least 10 years of their sentence by October 2015, the end of the survey period, meaning that a significant number of inmates who had not served 10 years of their sentences submitted surveys and that a substantial number of the surveys forwarded to CP 14 for review were for inmates who had not served at least 10 years of their sentence.

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[5] See "Commutations, Implementing the Deputy Attorney General's Executive Clemency Initiative," presented on September 4, 2014, at the National Advocacy Center, Columbia, South Carolina.

[6] See DOJ, "Clemency Initiative."

[7] Of these 42,808 inmate surveys, 7,091 either declined the assistance of CP 14 or did not answer the question asking them whether they would like the assistance of CP 14. Therefore, these 7,091 surveys were not forwarded to CP 14.

According to an email dated March 15, 2016, from the Acting Pardon Attorney to all OPA staff, of the 35,717 inmate surveys that the BOP sent to CP 14, CP 14 determined that 22,349 (63 percent) were ineligible for commutation under the Initiative's criteria. Since our review is not focused on the decision-making by CP 14 attorneys, we do not know whether or how many of these inmates were determined to be ineligible for consideration because of the 10-year criteria. Further, while it is clear that many inmates who do not meet the 10-year criteria applied for clemency under the Initiative, we do not know how many inmates decided *not* to apply because of the mandatory language used in the notice and in the survey that the inmates received, or based on the understanding of BOP staff related thereto.

By not clearly advising inmates that the 10-year criterion was permissive rather than mandatory, there was a significant risk created that many inmates who may not have met that criterion did not submit a survey. It may also have resulted in CP 14 failing to send to the Department potentially meritorious applications of inmates simply because they did not meet the 10-year criterion. The Department should consider whether and how to notify inmates, the BOP, and CP 14 that the 10-year criterion is permissive and should provide inmates who have not previously applied with the opportunity to do so in a timely fashion.

Additionally, we found that the Department and the BOP failed to follow up on inmates who started to prepare an electronic survey using the TRULINCS system but did not complete it. According to the BOP, 26,759 electronic surveys were "In Progress" but were not submitted to the BOP by the time the survey period ended. BOP officials told us that it was not the BOP's responsibility to follow up with inmates who started the survey but did not complete it. Of the 26,759 electronic surveys that were "In Progress," we found that: 11,982 had been opened but the inmate did not provide their register number and no questions were answered; 7,816 had been opened and the inmate provided their register number but did not answer any questions; and the remaining 6,961 had been opened and the inmate both provided a register number and answered at least one question. We further determined that 2,816 of these 6,961 inmates answered at least 10 questions and that 333 inmates actually answered all 13 questions. Institution staff opined that some of the inmates who completed but did not submit the survey may have had difficulties using a computer. Attached to this memorandum as Exhibit A are lists of register numbers for inmates who started the survey, provided their register numbers, but did not submit their surveys electronically. The Department should consider whether to contact in writing the inmates on these lists who did not apply for the Initiative to determine whether they intended to apply, and to provide assistance to

interested and potentially eligible inmates so that they can apply in a timely manner.

In that regard, we found that the BOP did not ensure that all non-English speaking, illiterate, learning disabled and mentally challenged inmates had assistance when completing the survey. While the survey was provided in both English and Spanish, the BOP housed inmates with citizenship from 173 different nations at the end of fiscal year (FY) 2014.[8] Institution staff told us that, generally, if any inmate needed assistance with the survey, the inmate would have had to proactively reach out to staff for help, yet no institution staff we interviewed recalled having provided such assistance.[9] The inmates with whom we spoke who had limited English speaking and writing skills indicated to us that, as a result, they were left to rely on other inmates to provide assistance. While some staff also told us there may have been "town halls" or unit meetings about the Initiative, no staff we interviewed recalled providing any assistance to inmates with the challenges described above.

Given the vulnerabilities and challenges of these inmates, it is unclear whether these inmates received or understood the survey, and whether they would be capable of or comfortable with seeking assistance. If the Department wants to make certain that all potentially meritorious candidates for clemency under the Initiative apply for it, then the Department and the BOP should ensure that appropriate resources, including foreign language assistance, are made available to assist inmates in completing the survey, and that inmates are informed about the availability of such assistance.

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[8] In our 2011 report on the Department's international prisoner transfer program (Transfer Program), we found that language barriers may have kept some inmates from fully understanding the program. See DOJ OIG, *The Department of Justice's International Prisoner Transfer Program*, Evaluation and Inspections (E&I) Report I-2012-02 (December 2011). In response to recommendations in our 2011 report, and as described in our 2015 status review of the transfer program, the BOP translated all documents and forms related to the transfer program into every language associated with treaty nations. The BOP also revised its program statement to direct case managers to discuss the transfer program at the inmate's initial classification and at every subsequent program review. See DOJ OIG, *Status Review on the Department's International Prisoner Transfer Program*, E&I Report I-2012-02 (August 2015). After our 2011 report was issued and the BOP took steps to make inmates more aware of the opportunity to request transfer, the number of transfer requests increased substantially — 56 percent from FY 2010 to FY 2011. By the end of FY 2013, requests had risen another 10 percent.

[9] BOP officials and staff also told us that if no BOP staff who spoke an inmate's language were available, the institution could use a contract translation service such as DOJ's Language Line, which is available via telephone. We do not know the extent to which inmates were made aware of this possibility.

Finally, we found that the Department and the BOP cannot determine whether all inmates in contract prisons received the notice and clemency survey.[10] The BOP issued a memorandum to all contract prison Wardens, instructing them to distribute the Notice to Inmates, which includes the Initiative's criteria, and the survey.[11] However, unlike inmates in BOP-managed institutions, inmates in contract prisons do not have access to TRULINCS. As a result, contract prison inmates interested in being considered for clemency were unable to submit an application electronically and had to complete a paper copy of the survey and then forward the completed survey directly to either CP 14 or the OPA.

We found that the BOP left it to each contract prison to develop an adequate process for notifying inmates about the survey and that each contract prison Warden developed their own process for distributing the survey and educating inmates about the initiative. For example, we found that some contract prisons distributed the survey to inmates as soon as they received the memorandum discussed above, while others made the survey available to inmates only upon request. If the Department wants to make certain that all potentially meritorious candidates for clemency under the Initiative, including those inmates in contract prisons, apply for it, then the Department and the BOP need to provide clear instructions to each contract prison Warden, including requiring the contract prisons to confirm, in writing, that all inmates in these facilities have received the survey and have been informed how to complete and submit it.

We are providing this information to the Department and BOP leadership so that they can consider whether to undertake corrective action while our review is ongoing. Please advise us within 60 days of the date of this memorandum of any actions the Department has or intends to take regarding these issues. If you have any questions or would like to discuss the information in this memorandum, please contact me at (202) 514-3435.

Attachment

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[10] According to BOP FY 2014 data, there are approximately 30,000 inmates, primarily foreign nationals with a drug or immigration offense, incarcerated in contract prisons. A commutation of sentence has no effect on a person's immigration status and will not prevent removal or deportation from the United States. As noted above, it is our understanding that the Department and the BOP did not intend to exclude inmates in contract prisons.

[11] BOP Technical Direction 14-04 – Initiative on Executive Clemency

cc: Andrew J. Bruck
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APPENDIX 3

OIG MANAGEMENT ADVISORY MEMORANDUM TO THE DEA ON OVERSIGHT OF CONTRACTS FOR ANALYTIC LINGUIST SERVICES

U.S. Department of Justice

Office of the Inspector General

February 28, 2017

MANAGEMENT ADVISORY MEMORANDUM FOR:

CHUCK ROSENBERG
ACTING ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Notification of Concerns Identified in the Drug Enforcement Administration's Oversight of Contracts for Analytic Linguist Services

The purpose of this memorandum is to advise you of concerns that we identified during the course of our ongoing audit of the Drug Enforcement Administration's (DEA) contract number DJD-13-C-0004, awarded to Conduit Language Specialists, Inc. (Conduit) for analytic linguist services for the mountain region. We began our audit in September 2016 to assess the DEA's administration of and Conduit's performance in accordance with the terms, conditions, laws, and regulations applicable to this contract. Since that time, we have identified concerns related to the language proficiency of linguists, the DEA's and Conduit's quality assurance (QA) practices, and the DEA's ability to adequately define its contract need.

We understand that the DEA is in the process of planning for new analytic linguist services contracts. Although our audit has not concluded, this memorandum provides early notification of our concerns that we believe are significant enough to warrant the DEA's immediate attention and consideration in its new contract planning.

The DEA awarded time and materials contract number DJD-13-C-0004 to Conduit in October 2012 for analytic linguist services such as transcription, translation, and interpretation. The DEA also awarded seven other regional

analytic linguist services contracts. The majority of the contracts are scheduled to end in October 2017.[1]

Deficiencies with Linguist Language Proficiency Testing & Security Requirements

The contract states that language proficiency testing in the source language(s) and English is required for all analytic linguists (linguists) in the four basic communications skills (listening, reading, writing, and speaking). Evidence of language proficiency testing with acceptable results from organizations listed in the contract is required to be submitted to the DEA Task Monitor for all linguists prior to working on the contract. We found that DEA Task Monitors were not aware of this requirement and have never asked for these results. Indeed, Conduit has never provided results to DEA for linguists on this contract.

We examined an initial sample of 30 out of 490 linguists on the contract and determined that 28 of the 30 linguists did not have the required testing completed prior to working on the contract. As a result, Conduit billed the DEA an estimated $2,238,077 for linguists without valid language proficiency test results.[2] Compounding the deficiencies with language proficiency testing, we also identified a linguist without a valid background investigation and two linguists who did not have approved waivers to work on the contract while their background investigations were in process. Furthermore, we identified 13 linguists that had not signed non-disclosure agreements prior to working on the contract.[3]

After we asked DEA officials about test results, which DEA could not provide, the Contracting Officer, with no further explanation, signed waivers in December 2016 and January 2017 for the writing portion of the tests for 125 linguists. However, the DEA stated that an inordinate amount of waivers may be indicative of substandard performance. The contract indicated waivers are to be submitted and approved along with a justification on an individual basis. According to DEA officials, the justification for all of the issued waivers

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[1] The DEA awarded Conduit two of the regional contracts; contract numbers DJD-13-C-0004 and DJD-13-C-0003. One of the eight contracts is scheduled to end in November 2018.

[2] This calculation was based on the approximate total hours worked for these 28 linguists and the average cost per hour for each linguist for both divisions for Spanish and common languages from the base period of the contract. We have not completed our analysis to determine the exact amount Conduit billed the DEA for the 28 linguists. Therefore, the amount presented in this management advisory memorandum is subject to change.

[3] We also note that the non-disclosure agreements that we reviewed did not contain the language set forth in 5 U.S.C. § 2302(b)(13) prohibiting their application to limit whistleblower disclosures.

was a backlog in the re-certification process without any consideration of actual language proficiency. We consider this justification to be questionable at best since the 28 linguists in our sample were not even in the re-certification process as Conduit did not provide any prior test results for those linguists to the OIG. Additionally, we determined that several of the linguists granted waivers were already working on the contract prior to receiving a waiver. Without the required test results, the DEA cannot ensure it is paying for the required level of service as stipulated in the contract, raising concerns regarding the validity and accuracy of linguist work, which the DEA relies on when developing cases. Furthermore, without proper background investigations and signed non-disclosure agreements, DEA cannot ensure the integrity of the cases under investigation.

It is important to note that in two previous OIG audits of the DEA's linguist services contracts in December 2010 and February 2012, we found that the linguists working on the DEA contracts did not have valid language certifications.[4] In both reports we recommended that the DEA correct the issue and the DEA agreed with our recommendations. However, it appears this issue was not permanently addressed and may be a systemic issue for the DEA covering multiple contractors across multiple years.

Lack of a Government Quality Assurance Surveillance Plan and Insufficient Contractor Monitoring

According to Federal Acquisition Regulation (FAR) Subpart 46.4, *Government Contract Quality Assurance*, quality assurance surveillance plans should be prepared in conjunction with the statement of work and agencies should ensure government contract QA is conducted by or under supervision of government personnel. Additionally, FAR 16.601, *Time and Materials Contracts*, emphasizes the importance of government QA of contractor performance due to the increased risk to the government when using time and materials contracts. However, we found that the DEA did not develop a government quality assurance surveillance plan and only performs limited QA for this contract. The DEA case agents only review the English synopses that that linguists complete.

Under the contract, Conduit has primary responsibility for performing QA to ensure linguist work is accurate and complete. However, we found that Conduit was not enforcing their QA plan. For example, Conduit was not

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[4] *Audit of the Drug Enforcement Administration's Language Services Contract with MVM, Inc. Contract No. DJDEA-08-C-0047 El Paso Field Division*, Audit Report GR-60-11-005 (December 2010). *Audit of the Drug Enforcement Administration's Language Services Contract with SOS International, Ltd. Contract Number DJDEA-05-C-0020 Dallas Field Division*, Audit Report GR-60-12-004 (February 2012).

completing a Monthly QA Checklist as required by their QA plan. The Monthly QA Checklist contains 40 quality points that can be tracked, measured, and changed to meet target goals set by the DEA related to security, translation accuracy, timeliness, personnel availability, and linguist responsibilities. Additionally, Conduit has some QA positions that remain un-filled.

Due to the absence of a government QA plan and the deficiencies in Conduit's monitoring, the DEA again cannot ensure it is receiving the required level of service it is paying for and raises concerns regarding the validity and accuracy of linguist work, on which the DEA relies when developing cases.[5]

Definition of Contract Need

FAR Part 37, *Service Contracting*, states that agency officials are responsible for accurately describing the need to be filled through service contracting that ensures full understanding and responsive performance by contractor.

The DEA awarded contract number DJD-13-C-0004 with a ceiling of $133 million, which increased to $135 million, but has only obligated approximately $33.5 million. Using historical costs, the DEA estimated the total contract to be only $40 million. We found the primary requirement for the contract need was the maximum number of hours per language, resulting in an unrealistic and inflated number of linguists per division or office. The DEA estimated 150 linguists for the Phoenix division and 75 linguists for the Centennial office. However, the actual capacities of the wire rooms are 83 workstations for Phoenix and 28 for Centennial. The DEA also required linguists for the Larimer offices where no wire rooms currently exist.

Due to the unrealistic number of hours and related linguists required at each location, Conduit cannot keep linguists with completed background investigations available at smaller offices. When linguists are needed, they may not have valid background investigations, or require additional checks or reinvestigations to be able to work. While Conduit can bring in linguists from other locations to work at the smaller offices, Conduit must pay the travel costs, unless the number of linguists needed exceeds the required number identified in the contract. This has never happened under the contract. Although the DEA's obligation for travel costs is limited under the contract, the DEA still included $5 million for travel costs, without a clear justification.

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[5] While our audit is continuing, DEA should consider assessing the potential impact that deficiencies in proficiency testing and quality assurance may have on completed or ongoing prosecutions and notify any affected authorities.

We found the DEA's development of requirements for contract number DJD-13-C-0004 did not include a complete methodology to support the contract need. Since the DEA has begun planning for the next linguist contracts, we believe it is imperative the DEA ensure its methodology for determining its needs for linguists is adequately defined and supported. This would help ensure contractors can appropriately price and estimate personnel requirements, as well as improve the efficiency of background investigations.

We are continuing our audit of the DEA linguist services contract number DJD-13-C-0004 awarded to Conduit. We will include in our final report any actions the DEA takes based on the concerns raised in this memorandum. While we did not review the other contract the DEA awarded to Conduit for linguist services – contract number DJD-13-C-0003 – for the northwest coast region, the concerns we identified are potentially occurring on that contract, as well.

If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 514-3435, or Jason R. Malmstrom, Assistant Inspector General for Audit, at (202) 616-4633.

cc: Gary Barnett
Counsel to the
Deputy Attorney General

Scott Schools
Associate Deputy Attorney General

Janice O. Swygert
Audit Liaison
Drug Enforcement Administration

Richard P. Theis
Assistant Director
Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

APPENDIX 4

MANAGEMENT ADVISORY MEMORANDUM TO OJP AND OVW

U.S. Department of Justice

Office of the Inspector General

LIMITED OFFICIAL USE

December 21, 2017

MEMORANDUM FOR ALAN R. HANSON
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS

NADINE M. NEUFVILLE
DEPUTY DIRECTOR
GRANT DEVELOPMENT AND MANAGEMENT
OFFICE ON VIOLENCE AGAINST WOMEN

FROM: JASON R. MALMSTROM
ASSISTANT INSPECTOR GENERAL FOR AUDIT

SUBJECT: Notification of Concerns Identified during an Audit of Department of Justice Cooperative Agreements Awarded to Wiconi Wawokiya, Inc., Fort Thompson, South Dakota

Please note that this memorandum is marked Limited Official Use and is for official government purposes only. Therefore, care should be taken to properly safeguard the memorandum to protect the information from improper disclosure. While we have discussed with Wiconi our preliminary concerns identified in this memorandum, this information should not be shared with Wiconi unless expressly authorized by the OIG.

The purpose of this memorandum is to formally advise you of concerns identified during the course of our ongoing audit of five cooperative agreements awarded by the Office of Justice Programs (OJP) Office on Victims of Crime (OVC) and seven cooperative agreements awarded by the Office on Violence Against Women (OVW) to Wiconi Wawokiya, Inc. (Wiconi), totaling $6.23 million. The primary purpose for this funding is to serve victims of domestic violence and sexual assault on the Crow Creek and Lower Brule Sioux Tribes near Fort Thompson, South Dakota.

Wiconi also receives Department of Justice (DOJ) funding as a subrecipient of other entities receiving grants from OJP's OVC and Office of

Juvenile Justice and Delinquency Prevention (OJJDP).[1] In addition to DOJ funding, Wiconi receives federal assistance from other agencies, including the Department of Interior's Bureau of Indian Affairs and the Department of Health and Human Services. We believe the concerns expressed in this memorandum potentially apply to other government assistance awards.

We initiated this audit in March 2017. Although our audit has not concluded, we have identified significant concerns that we believe warrant both OJP and OVW's immediate attention. The concerns identified in this memorandum are preliminary, and new information provided by Wiconi may affect the audit results in our final report. These concerns include:

- Limited recipient compliance with OIG documentation requests.
- Weaknesses in Wiconi's financial management system, including inadequacies in the award accounting records.
- Inadequate internal controls that are repeatedly circumvented by Wiconi officials.
- Inadequate support of timely progress towards achieving grant goals and objectives.
- Duplicate reporting of victims served on semi-annual progress reports, which includes duplicates within each reporting period, as well as across multiple awards.
- Extensive concerns with more than $680,000 in payroll costs charged to the OVC awards, as well as multiple concerns with over $380,000 in other OVC direct costs.[2]

Previously, OJP officials informed us that the remaining funding under Wiconi's open and active DOJ awards had been placed on hold following the OIG advising OJP of some of these concerns, and that this hold prevents Wiconi from accessing any funding. Please advise us of any actions that OJP

[1] Wiconi receives Crime Victims Fund (CVF) victim assistance funding from the OVC through the State of South Dakota and also receives funding from OJJDP, as a subrecipient of the National Children's Alliance. Therefore, the OVC and OJJDP should advise, as appropriate its primary recipients – the State of South Dakota and the National Children's Alliance – of the concerns identified in this memorandum, recommending that they use the information for their management purposes and instructing them not share the information with Wiconi unless the OIG authorizes such disclosure.

[2] The $380,000 in other OVC direct costs includes duplicative costs that we have taken issue with for more than one reason.

and OVW have taken or intend to take that result in the release of these funds to Wiconi. We are continuing our audit of both OJP and OVW awards, and our final report will include any actions taken based on the concerns identified in this memorandum.

If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 616-4633, or David M. Sheeren, Regional Audit Manager, Denver Regional Audit Office, at (303) 335-4001.

cc: Scott Schools
Associate Deputy Attorney General

Matthew Shcehan
Counsel to the Deputy
Attorney General

Rachel K. Parker
Chief of Staff and Senior Counsel
Office of the Associate
Attorney General

Steve Cox
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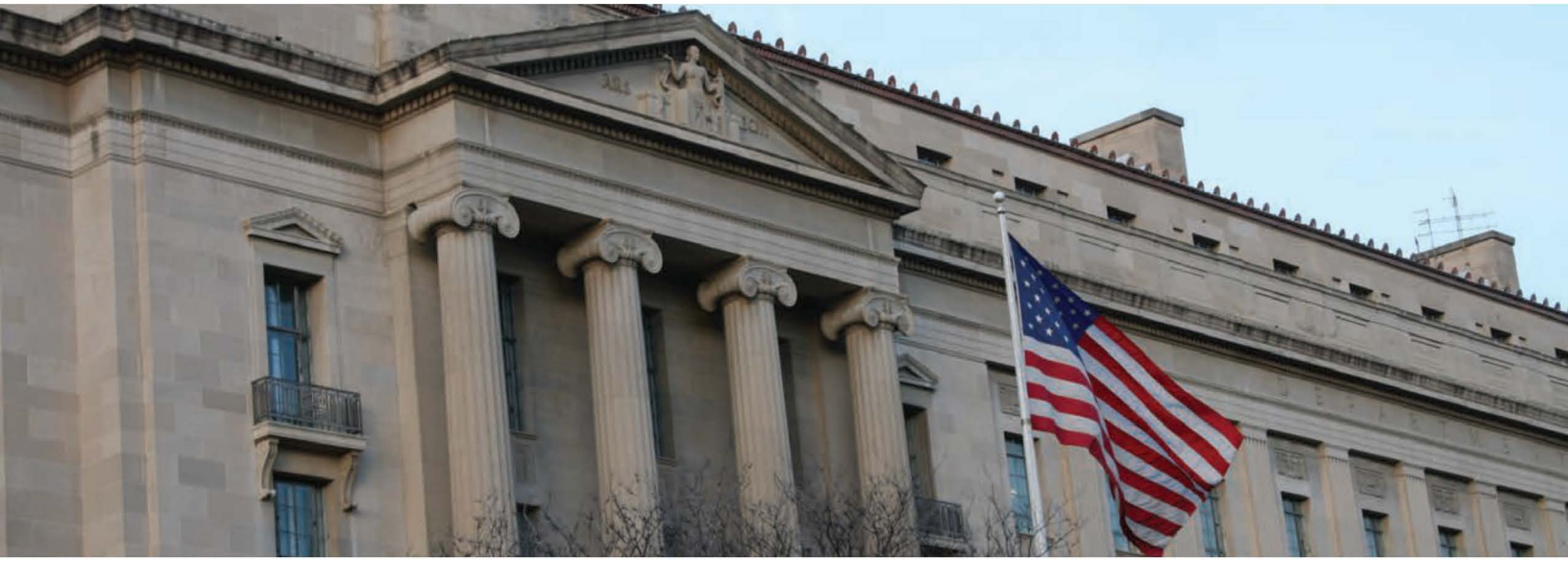
Office of the Inspector General

Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Management Advisory Memorandum of Concerns Identified in the Office of Justice Programs Regional Information Sharing Systems Grants

Audit Division 20-006

November 2019

U.S. Department of Justice

Office of the Inspector General

October 31, 2019

MANAGEMENT ADVISORY MEMORANDUM FOR:

KATHARINE T. SULLIVAN
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Notification of Concerns Identified in the Office of Justice Programs Regional Information Sharing Systems Grants

The purpose of this memorandum is to advise you of concerns involving the Office of Justice Programs (OJP) Regional Information Sharing Systems (RISS) program grants that we identified during our audit of RISS grants awarded to the Rocky Mountain Information Network (RMIN).[1] These concerns expand beyond RMIN to include other RISS grants. Therefore, this memorandum provides notification of our concerns that we believe require OJP's immediate attention.

The purpose of OJP's RISS grant program is to assist local, state, federal, and tribal criminal justice partners by providing adaptive solutions and services that facilitate information sharing, support criminal investigations, and promote officer safety. The RISS program grants fully fund six regional RISS Centers: (1) Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN), (2) Mid-States Organized Crime Information Center (MOCIC), (3) New England State Police Information Network (NESPIN), (4) Regional Organized Crime Information Center (ROCIC), (5) Western States Information Network (WSIN), and (6) RMIN.

During our audit of OJP RISS Grant Numbers 2015-RS-CX-0003 and 2018-RS-CX-0002 awarded to RMIN, we identified four transactions totaling

[1] We began this audit in May 2019 and issued the final audit report in September 2019. Audit of the Office of Justice Programs Grants awarded to the Rocky Mountain Information Network, Audit Report GR-60-19-014.

$4,000 for professional dues paid to the RISS Directors Association (RDA) that we determined were unallowable under grant rules and that lacked sufficient support. While reviewing the documentation related to the RDA expenditures, we noted that documentation included an email from the RMIN Executive Director instructing the RMIN Comptroller to pay the dues to the RDA. When we asked about the purpose of the RDA, we were instructed by RMIN staff to discuss the issue with the RMIN Executive Director.

According to RMIN's Executive Director, the RDA is a separate, non-profit corporation that the RISS Directors established in 2000. The RMIN Executive Director stated that the purpose of the RDA is to provide the RISS Directors with a platform to address RISS-wide issues, share best practices, discuss strategy and upcoming initiatives, and foster relationships and coordination among the RISS Directors and RISS Centers. The RMIN Executive Director also stated that the six regional RISS Center Executive Directors agreed to provide $1,000 annually in dues to fund the RDA. Based on this explanation, we determined the RDA is an unbudgeted subrecipient. However, RMIN did not receive OJP approval to use a subrecipient.

The annual dues paid by the six RISS Centers are the RDA's only source of funding. As a result, the RDA is funded solely through RISS grant funds. All six RISS Center Executive Directors are members of the RDA's board, which is managed by the Institute for Intergovernmental Research (IIR).[2]

We requested a copy of the RDA's general ledger for the period included in the scope of our audit of RMIN, which covered fiscal year (FY) 2015 through May 2019. We received the RDA check register and found that during this time the RDA received $24,000 in RISS funds from the 6 RISS Centers. We also found that the RDA had expended $16,017 of these RISS funds. Moreover, we noted that the RDA's check register included a number of expenditures that are generally not allowable under federal awards, including gifts for retiring Executive Directors, trinkets, and payments totaling $9,986 to an organization that, according to its public website, provides congressional updates, as well as lobbying services.

Based on our analysis of the RDA expenditures, as well as statements made by the RMIN Executive Director, it appears that the RDA makes expenditures using RISS grant funds that are not allowed under the RISS program. It should also be noted that the RDA dues paid by the six RISS Centers are unallowable because the RISS Centers did not receive OJP approval to use a subrecipient or include the RDA dues in their award budgets.

[2] IIR is a non-profit corporation that receives OJP Justice Information Sharing Training and Technical Assistance Program grants to manage the RISS Technology Support Centers RISS awards.

Assuming that the RISS Centers have been providing $1,000 annually since the RDA was established in FY 2000, the unallowable expenditures using RISS funds could be in excess of $100,000.

Therefore, we recommend that OJP conduct an examination of the total amount of RISS funding provided to the RDA by the six RISS Centers since its inception, as well as an examination of how the RISS funds provided to the RDA were used since it was established. OJP should also consider requiring the RISS Centers to stop funding the RDA.

We requested a response to the draft advisory memorandum from OJP, which can be found in Attachment 1. Our analysis of that response is included in Attachment 2.

If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 514-3435, or Jason R. Malmstrom, Assistant Inspector General for Audit, at (202) 616-4633.

Attachments

cc: Maureen A. Henneberg
Deputy Assistant Attorney General
for Operations and Management
Office of Justice Programs

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Louise Duhamel
Acting Assistant Director
Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

Attachment 1

OFFICE OF JUSTICE PROGRAMS' RESPONSE TO THE DRAFT MEMORANDUM

U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

OCT 2 4 2019

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: Ralph E. Martin
Director
Office of Audit, Assessment, and Management

Tracey Trautman
Acting Director
Bureau of Justice Assistance

SUBJECT: Response to the Office of the Inspector General's Draft Management Advisory Memorandum, *Notification of Concerns Identified in the Office of Justice Programs Regional Information Sharing Systems Grants*

This memorandum provides a response to the Office of the Inspector General's (OIG) October 4, 2019, draft Management Advisory Memorandum entitled, *Notification of Concerns Identified in the Office of Justice Programs Regional Information Sharing Systems Grants.* The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft Management Advisory Memorandum.

The Regional Information Sharing Systems (RISS) Program, administered by OJP's Bureau of Justice Assistance (BJA), is a nationwide initiative composed of six regionally-based centers that provide critical operational support to state, local, tribal, territorial, and Federal law enforcement agencies. The RISS Centers provide assistance in addressing terrorism, drug trafficking, organized criminal activity, criminal gangs, violent crime, human trafficking, deconfliction, and other regional crime priorities.

The purpose of the RISS Program is to enhance the ability of public safety enforcement entities to identify, target, and disable criminal conspiracies and activities spanning jurisdictional, state, and sometimes international boundaries. The six regionally-based RISS Centers provide direct resources and support to officers and law enforcement agencies, to assist in the reduction of violent crime, the identification of terrorist activities, and the enhancement of officer safety.

During the audit of one of the RISS Centers, the Rocky Mountain Information Network (RMIN), the OIG identified four transactions, totaling $4,000 for professional dues paid to the RISS Directors Association (RDA), that the OIG determined were unallowable under grant rules. The RMIN's Executive Director told the OIG that the purpose of the RDA is to provide the RISS Directors with a platform to address RISS-wide issues, share best practices, discuss strategy and upcoming initiatives, and foster relationships and coordination among the RISS Directors and RISS Centers.

The draft Management Advisory Memorandum directed one recommendation to OJP. For ease of review, the recommendation directed to OJP is summarized below and followed by OJP's response.

1. **We recommend that OJP conduct an examination of the total amount of RISS funding provided to the RDA by the six RISS Centers since its inception, as well as an examination of how the RISS funds provided to the RDA were used since it was established. OJP should also consider requiring the RISS Centers to stop funding the RDA.**

   The Office of Justice Programs agrees with this recommendation. OJP will conduct an examination of all RISS awards to determine the total amount of RISS funding provided to the RDA by the six RISS Centers since its inception, as well as an examination of how the RISS funds provided to the RDA were used since it was established. This examination will be limited to all open RISS awards, and those RISS expired awards that are within the three-year record retention period, as specified by 2 CFR § 200.333, and in accordance with the Department of Justice Grants Financial Guide. The RISS Centers will also be notified that an exception to the record retention policy, in accordance with 2 CFR § 200.333(a), will be in place until this matter is officially closed by the OIG. Further, based on the examination, OJP will take the appropriate follow-up actions, which may include requiring the RISS Centers to stop funding the RDA, and returning funds for any unallowable costs to OJP.

Thank you for the opportunity to respond to this draft Management Advisory Memorandum, and for your continued collaboration to improve the administration of OJP grant programs. If you have any questions regarding this response, please contact Jeffery Haley, Deputy Director, Audit and Review Division, Office of Audit, Assessment, and Management, at (202) 616-2936.

cc: Katharine T. Sullivan
Principal Deputy Assistant Attorney General

cc: Maureen A. Henneberg
Deputy Assistant Attorney General

Leigh Benda
Chief Financial Officer

Rafael A. Madan
General Counsel

Robert Davis
Acting Director
Office of Communications

Richard P. Theis
Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

Jorge L. Sosa
Director, Office of Operations – Audit Division
Office of the Inspector General

OJP Executive Secretariat
Control Title IT20191004140259

ATTACHMENT 2

OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE RECOMMENDATION

The OIG provided a draft of this advisory memorandum to OJP. OJP's response is incorporated in Attachment 1 of this final memorandum. OJP agreed with our recommendation and stated the actions it will implement in response to our concerns. As a result, the status of the recommendation is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the recommendation.

Recommendation for OJP:

1. **Conduct an examination of the total amount of RISS funding provided to the RDA by the six RISS Centers since its inception, as well as an examination of how the RISS funds provided to the RDA were used since it was established. OJP should also consider requiring the RISS Centers to stop funding the RDA.**

   Resolved. OJP agreed with our recommendation. OJP stated in its response that it will conduct an examination of all RISS awards to determine the total amount of RISS funding provided to the RDA by the six RISS Centers, as well as an examination of how the RISS funds provided to the RDA were used. OJP stated that its examination will be limited to all open RISS awards, and those RISS expired awards that are within the 3-year record retention period. Based on its examination, OJP stated that it will take the appropriate follow-up actions, which may include requiring the RISS Centers to stop funding the RDA, and returning funds for any unallowable costs to OJP.

   This recommendation can be closed when we receive documentation showing that: (1) OJP has completed its examination of the RISS awards, identified the total amount of RISS funding provided to the RDA, and determined how the RISS funds provided to the RDA were used; and (2) based on the results of its examination, OJP had taken appropriate follow-up actions.

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U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL
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Also at Oversight.gov

U.S. Department of Justice

Office of the Inspector General

March 26, 2018

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

TO: ROBERT W. PATTERSON
ACTING ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Recommendation for the Drug Enforcement Administration to Review whether its Field Offices are Engaging in Unlawful Fundraising on Behalf of the Drug Enforcement Administration Survivors Benefit Fund

In February 2017 the Office of the Inspector General (OIG) received two complaints made by the Drug Enforcement Administration's (DEA) Office of Chief Counsel to its Office of Professional Responsibility alleging that DEA employees in [redacted] and another DEA division were improperly raising funds on behalf of the Drug Enforcement Administration Survivors Benefit Fund (SBF). The SBF is a private, non-profit organization created for the purpose of providing financial support to families of DEA employees and task force officers killed in the line of duty. While the SBF has an indisputably important mission, federal regulations expressly prohibit certain fundraising activity by federal employees. We therefore investigated both complaints.

This memorandum addresses an allegation that personnel in the DEA's [redacted] Division were operating a store out of the [redacted] office selling merchandise, including t-shirts and mugs emblazoned with the DEA logo, for the purpose of raising proceeds for the SBF in violation of federal regulations.[1] We concluded that the [redacted] Division operated a store for many years for the sole benefit of the SBF in contravention of federal ethics regulations.[2]

[1] We also investigated allegations that during work hours DEA employees in another DEA division solicited donations to the SBF from non-federal entities in support of an SBF-sponsored golf tournament. We concluded that a DEA employee violated DEA policy and acted in contravention of federal ethics regulations. We address these allegations in a separate report.

[2] The DEA does not have a policy regarding the operation of stores in its divisions.

Based on this finding, we recommend that the DEA determine if any other field divisions are currently operating stores, determine if proceeds from these stores are being directed to the SBF or similar organizations, immediately take action to bring into compliance any stores that are not abiding by applicable ethics rules, and draft a policy regarding the operation of division stores to ensure ongoing compliance with all laws and ethics regulations.

Background

The Drug Enforcement Administration Survivors Benefit Fund is a 501(c)(3) organization created in 1997 for the purpose of providing financial benefits to surviving family members of DEA employees and deputized task force officers killed in the line of duty. The SBF also runs programs to preserve the memory of those slain officers and employees. The SBF has five board members, including a President, Treasurer, and three Directors, and maintains its own website. On its website, it is alternatively referred to as the "DEA SBF," the "Drug Enforcement Administration Survivors Benefit Fund," and the "DEA Survivors Benefit Fund." Many DEA field offices hold fundraisers throughout the year to support the SBF.[3] The SBF raises funds in part by participating annually in the Combined Federal Campaign (CFC).[4]

The standards of ethical conduct for employees of the executive branch are provided in 5 C.F.R. § 2635. Its subparts cover a wide-array of topics that dictate how federal employees should comport themselves when fulfilling their roles as federal employees. Section 2635.704 states that government property, such as computers, e-mail accounts, and office supplies, may only be used for authorized purposes. Section 2635.808 prohibits federal employees from using their official titles, positions or any authorities associated with their public office to further any fundraising efforts outside of the CFC. While 5 C.F.R. § 2635.808 provides that a federal employee may engage in fundraising in his or her personal capacity for non-profit organizations, it also states that the employee may not personally solicit funds or other support from prohibited sources or use one's official title, position or any authority associated with one's public office to further any fundraising efforts.[5]

In 2014 the OIG issued a report detailing its investigation of the DEA's use of Kenneth "Wayne" McLeod as a provider of retirement and financial planning

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[3] According to the SBF website, in 2018, DEA Headquarters and the DEA divisions in Philadelphia, St. Louis, Atlanta, Seattle, and Detroit will host golf tournaments for the purpose of raising funds for the SBF. *See* https://www.survivorsbenefitfund.org/?fuseaction=event.list (accessed March 14, 2018).

[4] The SBF applies to be part of the CFC independently from the DEA. Furthermore, DEA guidance provides that employees are not to use official resources to promote specific charities during the CFC.

[5] Prohibited sources include, among other things, organizations and individuals doing business or seeking to do business with the employee's agency.

seminars. During the course of that investigation we found, among other things, that DEA officials were violating the aforementioned subparts of 5 C.F.R. § 2635 by engaging in improper activities in connection with the SBF. These violations included DEA employees soliciting funds from prohibited sources on behalf of the SBF, DEA supervisors soliciting funds from subordinates for the SBF's benefit, and DEA employees using official time while engaging in SBF-related activities.

As a consequence of our findings, we recommended that the DEA conduct a review and issue guidance regarding the DEA's relationship with the SBF. We recommended that such guidance address: (i) the proper limitations on the use of DEA time and resources in support of SBF fundraising; (ii) the ban on soliciting funds from prohibited sources; and (iii) the need for the DEA to avoid favoring or appearing to favor supporters of the SBF in DEA decisions.

In response to our recommendations, in approximately June 2015 the DEA's Office of Chief Counsel drafted a document titled *Frequently asked Questions Regarding Raising Funds and Conducting Other Solicitations at the Workplace* (FAQs). The FAQs were the DEA's effort to concisely explain the rules contained in the federal regulations relating to fundraising. The FAQs also made clear that the CFC is the only authorized activity for the solicitation of employees in the federal workplace. The FAQs stated that the "[u]se of official time and Government resources, to . . . sell items in support of the charitable organizations is prohibited." The Office of Chief Counsel also prepared a document titled *Interacting with Private Organizations* that included a section describing the limitations on fundraising for private organizations. Both guidance documents were accompanied by a memorandum from the Acting Deputy Administrator to DEA senior managers describing the documents and the need for DEA employees to operate within the rules pertaining to fundraising and interacting with outside entities. The cover memoranda also directed the senior managers to distribute the guidance documents to their employees and ensure that their employees followed the rules. The cover memoranda and accompanying guidance documents were distributed by e-mail to DEA senior managers, including [redacted] Special Agent in Charge (SAC) [redacted]

In addition, on August 27, 2015, the two guidance documents were sent to all DEA employees, including [redacted] through an e-mail with the subject "Fundraising in the Workplace." The e-mail summarized the restrictions associated with fundraising in the workplace that were described in detail in the guidance documents.

The DEA Chief Counsel's Office provides annual training to all of its Division Counsel in September of each year. While the topics covered in the annual training vary from year to year, in 2016 the Chief Counsel's Office provided training on the fundraising regulations. Walter Travis, who became the

Division Counsel to the [redacted] Division in January 2016, attended this training.[6] Furthermore, all SACs, including [redacted] were also provided with training regarding the fundraising rules in November 2016 after several violations of the fundraising rules came to then-DEA Administrator Charles Rosenberg's attention.

Investigative Findings

In 2000, Diversion Coordinator Brooke Kingsley, with the permission of then-SAC [redacted], began operating a "store" in the [redacted] Division's recreational area (RA).[7] At SAC [redacted] suggestion, Kingsley contacted the SBF's [redacted] who agreed to provide funds to start the store, which sold t-shirts, mugs and hats. Kingsley told us that from the start, all proceeds from merchandise sales were going to support the SBF.

The store operated in support of the SBF until approximately January 12, 2017, when [redacted] Division Counsel Travis brought the store's existence to the attention of the DEA Chief Counsel's Office. Travis told us that a DEA employee who had been running the store inquired if the store could stop sending proceeds to the "DEA Survivors Benefit Fund" and use it instead to fund office events. Travis told us that this was when he first learned the store was giving money to the SBF. He also told us that he knew it was impermissible to raise funds for charitable organizations, but, due to "DEA" being part of the SBF's name, he was confused whether it was a DEA-run program or a private charity.[8] This confusion prompted him to contact the Office of Chief Counsel for guidance.

Travis was advised by Senior Attorney and DEA Deputy Ethics Official Gregory Carroll, from the Office of Chief Counsel, that the [redacted] Division should immediately stop sending proceeds to the SBF because it was impermissible to fundraise on behalf of charitable organizations.[9] Based upon this instruction, Travis recommended to [redacted] SAC [redacted] that he immediately shut down the store. According to both [redacted] and Travis, [redacted] did so.

[redacted] told the OIG that he knew that the proceeds from the store were going to the SBF and that he had "no problem at all" with that because "it never in [his] wildest dreams occur[ed] to [him] that supporting [the SBF] in

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[6] Walter Travis is a pseudonym.

[7] Brooke Kingsley is a pseudonym.

[8] Our understanding is that the DEA is in the process of addressing the SBF's use of the DEA's name, as well as the DEA shield and seal, because of the confusion surrounding whether the SBF has an official affiliation with the DEA.

[9] Gregory Carroll is a pseudonym.

any capacity could be wrong." He stated further that it "never occurred" to him that the store was violating the fundraising rules.[10]

Travis stated that [redacted] the SBF's [redacted] called him on the day the store was shut down and threatened to sue the DEA. Travis also told us that he recommended to [redacted] that the merchandise be locked in a supply closet and [redacted] agreed. Travis maintained possession of the closet's key.

[redacted] told us that immediately after the store was shut down, [redacted] called him and told [redacted] that he ([redacted] could use the unsold merchandise elsewhere.[11] According to Travis, [redacted] came to him and took possession of the key to the supply closet. [redacted] stated that he later gave [redacted] four or five boxes of merchandise from the supply closet because [redacted] could use items for "other [SBF] reasons outside of the division."

Conclusions and Recommendations

Based on the foregoing, we concluded that the [redacted] Division operated a store for many years for the sole benefit of the DEA SBF in contravention of federal ethics regulations. Furthermore, despite the Chief Counsel's Office issuing guidance in 2015 to all DEA employees, including SAC [redacted] and training of all DEA division SACs, including [redacted] in November 2016 regarding the rules and regulations relating to fundraising in the workplace, [redacted] did not appreciate that his division was acting in contravention of the fundraising rules by operating the store. However, when Travis advised [redacted] of the violation, [redacted] acted promptly to shut down the store and cease the division's improper fundraising for the SBF.

Based upon [redacted] interactions with SBF [redacted] and the DEA's apparent relationship with the SBF, it appears that other DEA divisions may currently be operating similar stores for the benefit of SBF. It is improper for DEA employees to operate any stores for the purpose of benefitting the SBF or other similar entities. Consequently, the OIG makes the following recommendations:

1. The DEA should determine whether any of its field divisions are currently operating "stores."
2. The DEA should determine if any identified "stores" are providing the proceeds from sales to the SBF or similar organizations.
3. If proceeds from the sales are being provided to the SBF or similar organizations, the DEA should direct those stores to immediately take action to comply with federal regulations.

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[10] [redacted] became the SAC in [redacted] in 2011.

[11] [redacted] told us that he knew [redacted] for 25 years prior to this telephone call.

4. The DEA should draft and implement a policy regarding the operation of division "stores" to ensure that stores are operating within the bounds of the law, such as incorporating as a not-for-profit entity, establishing a board of directors, and adopting written by-laws.

We request that the DEA advise us within 60 days of the date of this memorandum of any actions the Department has taken or intends to take regarding the issues discussed in this memorandum. If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 514-3435.

cc: Zach Terwilliger
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