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Federal Communications Commission  
Washington, D.C. 20554

March 19, 2020

Re: FOIA Control No. 2020-000363

This letter responds to your Freedom of Information Act (FOIA) request for a copy of the final report for the following closed FCC OIG investigations: OIG-I-18-0009, OIG-I-18-0019, OIG-I-18-0020, OIG-I-18-0023, OIG-E-19-0008, and OIG-LI-18-0015.

For OIG-I-18-0009, OIG-I-18-0019, OIG-I-18-0020, OIG-I-18-0023, OIG-E-19-0008, and OIG-LI-18-0015, the Report of Investigation (ROI) for each is enclosed. With regard to the ROIs, as indicated on the documents, certain material has been redacted pursuant to FOIA exemptions 5, 6, 7(A), 7(C), and/or 7(E).

FOIA Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.<sup>1</sup> Exemption 5 encompasses a deliberative process privilege intended to "prevent injury to the quality of agency decisions."<sup>2</sup> To fall within the scope of this privilege the agency records must be both predecisional and deliberative.<sup>3</sup> Predecisional records must have been "prepared in order to assist an agency decision maker in arriving at his decision."<sup>4</sup> Deliberative records must be such that their disclosure "would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."<sup>5</sup>

Certain material contained in the responsive documents has been redacted, as it discusses inter-Agency communications, and release of this information would chill inter-Agency deliberations and impede candid communications. We have determined it is reasonably foreseeable that disclosure would harm the FCC's deliberative process, which Exemption 5 is intended to protect.

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<sup>1</sup> 5 U.S.C. § 552(b)(5).

<sup>2</sup> *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

<sup>3</sup> *Id.* at 151-52.

<sup>4</sup> *Formaldehyde Inst. v. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) ("In deciding whether a document should be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents. . . .").

<sup>5</sup> *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc'ns Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

FOIA Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>6</sup> Balancing the public’s right to disclosure against the individual’s right to privacy, we have determined release of this information would constitute a clearly unwarranted invasion of personal privacy. The redacted information includes the names and personally identifying information of individuals who were the subjects of an investigation, as well as the names and personally identifying information of investigators. We have determined it is reasonably foreseeable disclosure would harm the privacy interest of the persons mentioned in these records, which Exemption 6 is intended to protect.

FOIA Exemption 7(A) authorizes the withholding of “records or information compiled for law enforcement purposes [the production of which] could reasonably be expected to interfere with enforcement proceedings.”<sup>7</sup> Certain information has been redacted, as it was compiled for law enforcement investigation(s), some of which may remain ongoing, and relating such information about an investigation could be a hinderance.<sup>8</sup> We have determined it is reasonably foreseeable disclosure would harm the FCC OIG or the Federal government’s law enforcement activities, which Exemption 7 is intended to protect.

FOIA Exemption 7(C) protects “records or information compiled for law enforcement purposes [the production of which] could reasonably be expected to constitute an unwarranted invasion of personal privacy.”<sup>9</sup> Balancing the public’s right to disclosure against the individual’s right to privacy, we have determined release of this information would constitute an unwarranted invasion of personal privacy. The redacted information includes the names and personally identifying information of individuals who were/are employed at this agency, as well as the names and personally identifying information of individuals subject to investigation. These names were compiled during the course of an investigation and in instances such as this, the balance favors not releasing these names. We have determined it is reasonably foreseeable disclosure would harm the FCC OIG or the Federal government’s law enforcement activities, which Exemption 7 is intended to protect.

FOIA Exemption 7(E) protects “records or information compiled for law enforcement purposes [the production of which] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk a circumvention of the law.”<sup>10</sup> Information redacted under this Exemption would disclose guidelines for law enforcement investigations and prosecutions that, if made public, may allow targets to avoid prosecution in future investigations. We have determined it is reasonably foreseeable that disclosure would harm the FCC OIG or the Federal government’s law enforcement activities, which Exemption 7(E) is intended to protect.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.<sup>11</sup> However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.<sup>12</sup> The

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<sup>6</sup> 5 U.S.C. § 552(b)(6).

<sup>7</sup> 5 U.S.C. § 552(b)(7)(A).

<sup>8</sup> *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978).

<sup>9</sup> 5 U.S.C. § 552(b)(7)(C).

<sup>10</sup> 5 U.S.C. § 552(b)(7)(E).

<sup>11</sup> 5 U.S.C. § 552(b) (sentence immediately following exemptions).

<sup>12</sup> *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

redactions and/or withholdings made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We also reviewed the responsive documents to determine if discretionary release is appropriate.<sup>13</sup> The materials protected from disclosure under Exemption 5 are not appropriate for discretionary release because disclosure would harm the inter-Agency deliberative process. The materials protected from disclosure under Exemption 6 are not appropriate for discretionary release in light of the personal privacy interests involved. The materials protected from disclosure under Exemption 7 are not appropriate for discretionary release in light of the law enforcement sensitivities involved.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.<sup>14</sup> To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.<sup>15</sup>

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes as category (3), "all other requesters."<sup>16</sup> As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.<sup>17</sup> The production did not involve more than 100 pages of duplication and took less than two hours of search time. Therefore, you will not be charged any fees.

You may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.<sup>18</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12<sup>th</sup> St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to [FOIA-Appeal@fcc.gov](mailto:FOIA-Appeal@fcc.gov). Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison  
Federal Communications Commission, Office of the Managing Director, Performance  
Evaluation and Records Management

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<sup>13</sup> See President's Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

<sup>14</sup> See 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

<sup>15</sup> 47 C.F.R. § 0.470.

<sup>16</sup> 47 C.F.R. § 0.466(a)(8).

<sup>17</sup> 47 C.F.R. § 0.470(a)(3)(i).

<sup>18</sup> 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

445 12<sup>th</sup> St SW, Washington, DC 20554  
202-418-0440  
[FOIA-Public-Liaison@fcc.gov](mailto:FOIA-Public-Liaison@fcc.gov)

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001  
202-741-5770  
877-684-6448  
[ogis@nara.gov](mailto:ogis@nara.gov)  
[ogis.archives.gov](http://ogis.archives.gov)

Sincerely,

A handwritten signature in black ink that reads "Sharon R. Diskin" followed by the initials "LMF".

Sharon R. Diskin  
Assistant Inspector General-Investigations

Enclosures  
cc: FCC FOIA Office





UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL

# MEMORANDUM

**DATE:** March 25, 2019

**TO:** David L. Hunt, Inspector General

**THROUGH:** Sharon R. Diskin, Acting Assistant Inspector General for Investigations, (b) (6),  
(b) (7)(C)

**FROM:** (b) (6), (b) (7)(C), Attorney Investigator

**SUBJECT:** Investigation of Allegations of Failure to Promote FCC Employee

## Background

On November 15, 2017, the Federal Communications Commission's (FCC) Office of the Inspector General (OIG) received a complaint via the OIG Hotline from (b) (6), (b) (7)(C) an FCC employee in the (b) (6), (b) (7)(C), alleging that her supervisors overlooked her for career promotions.

## Scope of Investigation

To investigate this matter, OIG investigators performed the following steps:

1. Conducted interviews:
  - a. (b) (6), (b) (7)(C) on January 11, 2018.
  - b. (b) (6), (b) (7)(C), HR Specialist (Office of Managing Director), January

(b) (6), (b) (7)(C) was present at the interview.

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OIG-I-18-0009

Case Title:  
(b) (6), (b) (7)(C)

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## REPORT OF INVESTIGATION (continuation sheet)

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11, 2018.

2. Obtained and reviewed:

- a. (b) (6), (b) (7)(C)'s Notification of Personnel Action (SF 50)
- b. Offer letter to (b) (6), (b) (7)(C) from 2013
- c. Position description (PD) Industry Analyst GS-1101-09
- d. (b) (6), (b) (7)(C) Industry Analyst job announcement posting
- e. 5 CFR § 335.102-103 Agency authority to promote, demote, or reassign.
- f. OPM's Introduction to the Position Classification Standards<sup>2</sup>
- g. OPM's The Classifier's Handbook<sup>3</sup>

### Findings

Federal service jobs are classified on a "general schedule" ("GS") scale, and a federal employee's pay is based upon their GS level.<sup>4</sup> The federal government utilizes the same standards for classifying federal employees nationwide; the difference in levels (known as "Grade") is a function of the complexity and nature of the employee's work. Grade increases are considered promotions and are linked to title, job responsibilities, education and experience. Pay steps are based on length of service within your current grade. Step increases are raises but are not considered promotions.

(b) (6), (b) (7)(C) is an FCC employee in the (b) (6), (b) (7)(C). She began her career with the FCC (b) (6), (b) (7)(C). She became a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) changed jobs within the FCC and was hired according to vacancy announcement number (b) (6), (b) (7)(C) as an Industry Analyst, Grade GS-9 with a promotion potential to GS- 9. Promotion potential identifies the highest grade to which you could be promoted without further competition.

In December 2017, (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) in Human Relations (HR) and raised concerns about the lack of promotion potential of her current position since it was limited to GS-9. (b) (6), (b) (7)(C) suggested (b) (6), (b) (7)(C) apply for an accretion-of-duties<sup>5</sup> promotion<sup>6</sup> and provided

<sup>2</sup> <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/positionclassificationintro.pdf>

<sup>3</sup> <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/classifierhandbook.pdf>

<sup>4</sup> See OPM General Schedule Classification and Pay <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/>

<sup>5</sup> Accretion of Duties is also known as "Non-Competitive Promotion Based on Reclassification".

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## REPORT OF INVESTIGATION (continuation sheet)

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her guidance regarding same if (b) (6), (b) (7) felt her duties and responsibilities exceeded those required of a GS-9. Accretion of duties is a non-competitive promotion of an employee whose position is reclassified to a higher-grade level because of additional duties and responsibilities. The supervisor or employee may apply for this type of promotion. (b) (6), (b) (7) has not provided evidence that either she or her supervisor has initiated review of her position and duties after meeting with (b) (6), (b) (7).<sup>7</sup>

### **Conclusion and Recommendations**

Given this matter involves issues that are premature, pursuing further action in this case is not warranted. We recommend no further work be performed and the file be closed.

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<sup>6</sup> See 5 CFR 335.103(c)(3)(ii) Promotion and Internal Placement [...] A promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities.

<sup>7</sup> An accretion-of-duties promotion is started an employee or supervisor requests a desk audit where a Human Resources Specialists interviews both supervisor and employee to obtain information about the kind and difficulty of work completed. See OPM Position Classification Appeals: Employee Fact Sheet <https://www.opm.gov/policy-data-oversight/classification-qualifications/appeal-decisions/fact-sheets/mso-98-3.pdf>

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UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL

# MEMORANDUM

**DATE:** March 25, 2019

**TO:** David L. Hunt, Inspector General

**THROUGH:** Sharon R. Diskin, Acting Assistant Inspector General for Investigations, (b) (6),  
(b) (7)  
(C)

**FROM:** (b) (6), (b) (7)  
(C), Attorney Investigator

**SUBJECT:** Investigation into Relocation of Enforcement Bureau Hawaii Field Agent Office

## Introduction

In March 2018 and June 2018, the Federal Communications Commission's (FCC) Office of the Inspector General (OIG) received complaints from a Whistleblower via e-mail alleging "it is wasteful spending \$55,000 per year so a single employee can have an office in downtown Honolulu." At the time of the complaints, the Enforcement Bureau (EB) at the FCC was in the process of closing the stand-alone buildings in Waipahu, HI and moving the local field agent to an office in a commercial building located in downtown Honolulu. The move was completed in July 2018.

## Discussion

The FCC Office of Management Director (OMD) planned on relocating the FCC's Hawaii field office upon the adoption of the "Reorganization of the Enforcement Bureau's Field

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## REPORT OF INVESTIGATION (continuation sheet)

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Operations” (“Field Modernization Order”) in July 2015.<sup>1</sup> Office of Management and Budget (OMB) approved the move and funding.<sup>2</sup> OMD also briefed the National Treasury Employees Union (NTEU) Chapter 209<sup>3</sup> since the field agent is a member.

Under the Field Modernization Order, the FCC was to maintain a field office in Honolulu. At the time the order was adopted, there were two buildings located at 2 Waipio Point Access Rd., Waipahu, HI, 96797. One resident field agent, (b) (6), (b) (7) (C), was assigned to work in the office.<sup>4</sup> The FCC field agent worked in one of the buildings, while the other was used by a private citizen, under agreement with the FCC, for storage.<sup>5</sup> Also, on site is a remote antenna used by the FCC’s Public Safety & Homeland Security Bureau (PSHSB). There are no other services or personnel that use these buildings. The buildings were built in the late 1940s/early 1950s and “are not structurally sound and in desperate need of repair and modernization, if not rebuilding” according to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) It was estimated that rebuilding, including upgrading water and septic systems, would cost about \$860,000. In addition, a night guard was employed to monitor the site, costing \$75,000/year. Finally, the utility cost for Waipahu was several thousands of dollars per year. Overall, OMD estimated it would cost about \$1.5 million to renovate and improve the current FCC buildings in Waipahu.<sup>6</sup>

FCC entered into an Energy Savings Performance contract (ESPC)<sup>7</sup> with the Department of Energy (DOE) to “procure energy savings and facility improvements” for the four buildings in locations designated in the Field Modernization Order – Columbia, MD; Livermore, CA; Powder Springs, GA (Atlanta); and Honolulu, HI (Waipahu).<sup>8</sup> Honeywell International<sup>9</sup> explored cost-

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<sup>1</sup> See Order FCC 15-81. <https://docs.fcc.gov/public/attachments/FCC-15-81A1.pdf>

<sup>2</sup> There is no requirement under DOE ESPCs for OMB approval. The FCC CFO, Mark Stephens, included (b) (6), (b) (7)(C), policy analyst at OMB, due to the impact on FCC budget.

<sup>3</sup> NTEU Chapter 209, at the Federal Communications Commission, represents all Bargaining Unit Employees at the Commission.

<sup>4</sup> The mailing address for the office is Federal Communications Commission, Honolulu Resident Agent Office, POB 971030, Waipahu, Hawaii 96797-1030.

<sup>5</sup> Occupant provides mowing and landscaping services in return for space.

<sup>6</sup> See email thread between FCC and OMB Subject: (b) (6), (b) (7)(C), To: (b) (6), (b) (7)(C), EOP/OMB, From: (b) (6), (b) (7)(C) CC: (b) (6), (b) (7)(C), Mark Stephens, (b) (6), (b) (7)(C); See also Post Program Estimated Savings.pdf

<sup>7</sup> ESPCs, allow federal agencies to procure energy savings and facility improvements with no up-front capital costs or special appropriations from Congress. An ESPC is a partnership between an agency and an energy service company (ESCO). See <https://www.energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies>

<sup>8</sup> In April and May 2017, FCC OMD, (b) (6), (b) (7)(C) (FCC CFO), worked with (b) (6), (b) (7)(C), Policy Analyst at Office of Management and Budget (OMB) to receive approval on budget impacts, including GSA lease costs and expenditures. On May 18, 2017, OMB approved the plan as presented.

<sup>9</sup> Honeywell was awarded the FCC ESPC on June 28, 2017. See <https://www.energy.gov/eere/femp/awarded-doe-iduq-energy-savings-performance-contract-projects>. Project #1016.

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**FCC Office of Inspector General**

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## REPORT OF INVESTIGATION (continuation sheet)

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saving, energy-efficient options for the Hawaii property, including outfitting the current buildings with solar panels, placing a prefabricated trailer on the current site, or locating new buildings that are energy efficient and divesting the current properties. The options for maintaining the Waipahu location were an estimated one million dollars without significant return on investment.<sup>10</sup> Based on the recommendations of Honeywell, the FCC chose to leave the property and find new office space.

(b) (6), (b) (7)(C) and his team located office space that would accommodate the FCC's requirements in Honolulu, approximately 10 miles from the current buildings. Effective July 1, 2018, FCC vacated the current buildings, terminated the agreement with the other occupant, and relocated<sup>11</sup> the FCC Field Office to 1132 Bishop Street, Honolulu, HI (Bishop Place).<sup>12</sup> The PSHSB antenna remained in place at the Waipahu location because it does not require security. The rental at Bishop Place is \$55,000/year with \$12,000 in tenant improvements.<sup>13</sup> The building is Class A<sup>14</sup> office space with security, a parking space for the FCC Direction Finding (DF) Vehicle and can accommodate the necessary antennas.<sup>15</sup>

### **Findings**

We find that OMD and EB have vetted possible solutions for maintaining an office in Hawaii. The documentation provided to OMB comparing the cost of repairing and updating the Waipahu office against contemporary commercial space in Honolulu indicates the move to an established location was practical and provides required amenities at a lower cost. The Whistleblower does not consider environmental concerns as provided under the Department of Energy contract nor the requirements for security of the field agent and their equipment. The FCC ESPC will provide reduced energy and operating costs while offering the Hawaii Field Agent a safe and secure building to conduct their business.

Based on the findings above, we recommend that this matter be closed and no further action be taken on this case.

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<sup>10</sup> See FCC Sections C Price and D Small Business Plan 031317.pdf and FCC IGA Technical 031317 Final.pdf.

<sup>11</sup> The move was completed the week of July 9, 2018.

<sup>12</sup> [http://images4.loopnet.com/d2/nhqj\\_LR5tR-BNz9fFrb4OFahcN6btX\\_VYX27eIATOW/document.pdf](http://images4.loopnet.com/d2/nhqj_LR5tR-BNz9fFrb4OFahcN6btX_VYX27eIATOW/document.pdf)

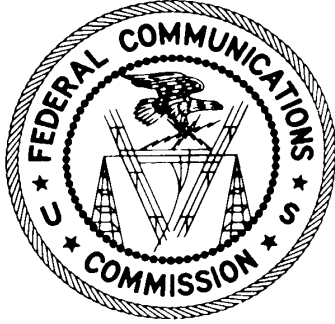
<sup>13</sup> The building is privately owned and the FCC entered a lease under GSA for the space.

<sup>14</sup> <http://www.boma.org/research/pages/building-class-definitions.aspx>

<sup>15</sup> The field agent cannot bring the DF vehicle home and it must be left at a secured location.

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UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL

# MEMORANDUM

**DATE:** November 8, 2018

**TO:** David L. Hunt, Inspector General

**FROM:** (b) (6), (b) (7)(C) Investigator

**THROUGH:** (b) (6), (b) (7)(C), Acting Assistant Inspector General for Investigations

**SUBJECT:** Fraudulent Request for Proposal (RFP), Request for Quotation, and Purchase Order (PO) provided to Information Technology (IT) vendors

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## Overview and Background

In response to referrals from Federal Communications Commission (FCC or Commission) management and a hotline complaint, the FCC Office of Inspector General (OIG) conducted an investigation into a fraudulent Request for Proposal (RFP), Request for Quotation (RFQ) and Purchase Order (PO) that were provided to information technology (IT) vendors. The fraudulent RFP, RFQ and PO were sent to IT vendors using an email address designed to create the appearance that they were from the FCC Managing Director and from an official with the FCC's Enterprise Acquisition Center (EAC). We reviewed the email correspondence and purchase documents and determined that the fraud schemes appear to involve the same individual or individuals. The objective of the fraud schemes appears to involve obtaining quotations for IT equipment and then convincing vendors that a valid PO has been issued by the FCC so that vendors will ship goods to a facility in Riverdale, GA.

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## REPORT OF INVESTIGATION (continuation sheet)

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### **Investigation**

To conduct the investigation, the FCC OIG investigator:

1. Obtained and reviewed email correspondence from IT Vendors forwarded from FCC management.
2. Contacted IT vendors to obtain email correspondence with the subjects.
3. Reviewed email correspondence between the IT vendors and subjects. Examined email header information to identify source IP addresses associated with the messages sent by subjects to IT vendors.
4. Sent a preservation letter and administrative subpoena to (b) (7)(A) for all customer and subscriber account information for (b) (6), (b) (7)(C), (b) (6), (b) (7), and (b) (6), (b) (7). Reviewed the subpoena return from (b) (7)(A) (C).
5. Sent administrative subpoenas to (b) (7)(A)

### **Conclusion and Recommendation**

Since our preliminary investigation did not provide any evidence that the fraud schemes involved defrauding FCC programs or operations, FCC OIG has no basis for further investigating this matter and we recommend that this case be closed.

However, because we believe the matter may be of interest to other law enforcement entities, we provided a summary of the case, including the results of our preliminary investigation, to an agent with the Federal Bureau of Investigation (FBI) Washington Field Office Cyber Task Force. (See Attachment 1) In addition, we used an online portal to refer the matter to the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) directorate.

(b) (7)(A), (b) (6), (b) (7)(C)

Case Number:  
OIG-I-18-0020

Case Title:  
Fraudulent Request for Proposal (RFP)





UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL

# MEMORANDUM

**DATE:** April 2, 2019

**TO:** David L. Hunt, Inspector General

**FROM:** (b) (6), (b) (7)(C) Investigator

**THROUGH:** Sharon Diskin, Acting Assistant Inspector General for Investigations; (b) (6), (b) (6), (b) (7)(C)

**SUBJECT:** Allegations that source selection information and procurement sensitive information related to the (b) (6), (b) (7)(C) contract was inappropriately accessed and/or shared with contract bidders or others in violation of 48 CFR 3.104-4 and 41 USC § 2102

## Overview

In response to requests from Federal Communications Commission (FCC or Commission) management, the FCC Office of Inspector General (OIG) conducted an investigation into allegations that source selection information and procurement sensitive information related to the (b) (6), (b) (7)(C) was inappropriately accessed and/or shared with contract bidders or others in violation of 48 CFR 3.104-4 and 41 USC § 2102. Our investigation did not substantiate the allegations.

Case Number: OIG-I-18-0023	Case Title: Procurement Case
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## REPORT OF INVESTIGATION (continuation sheet)

### Background

On August 2, 2018, FCC OIG was contacted by (b) (6), (b) (7)(C) regarding concerns about IT employees or contractors using elevated network privileges to access and read sensitive information related to FCC contracts. On August 9, 2018, Jay Keithley, former FCC OIG Assistant Inspector General for Investigations, spoke with Matthew Berry, FCC Chief of Staff. During that conversation, Berry indicated that (b) (6), would be referring allegations related to this matter. Later on August 9, 2018, Keithley spoke with (b) (6), about the allegations and the investigation was initiated.

On August 13, 2018, the FCC OIG (b) (7)(C), (b) (6) investigator participated in a teleconference with (b) (6), (b) (7)(C) (b) (6). During (b) (6) teleconference, (b) (6), (b) (6) indicated (b) (6) believes staff from the FCC's Information Technology Center (ITC) or contractor staff working with ITC have used elevated network privileges to obtain access to procurement sensitive documents and email correspondence related to the FCC's (b) (6), (b) (7)(C). (b) (6) further stated this information may have been provided to a losing bidder. (b) (6), (b) (6) also provide a timeline of events related to the contract and indicated (b) (6) had prepared a memorandum documenting (b) (6) concerns. In a subsequent meeting, (b) (6), (b) (6) provided the memorandum documenting (b) (6) concerns and provided additional supporting documentation.

### Investigation

To conduct the investigation, the FCC OIG (b) (6), (b) (7)(C) investigator:

1. Obtained and reviewed Outlook mailboxes and Office 365 archived email for (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

<sup>1</sup> At the time of the teleconference, (b) (6), (b) (7)(C) (b) (6)

<sup>2</sup> The Source Selection Memorandum for the (b) (6), (b) (7)(C) was signed by (b) (6) on July 16, 2018 awarding the contract to (b) (6), (b) (7)(C) (b) (6),

<sup>3</sup> (b) (6) at the time the investigation was started. (b) (6), (b) (6)

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2. Obtained and reviewed network shares (private network storage) for (b) (6), (b) (7)(C) [REDACTED]
3. Obtained and review images of FCC-issued computers for (b) (6), (b) (7)(C) [REDACTED]
4. Prepared a timeline of activity based upon review of email correspondence and contract documents. This timeline was provided to (b) (6), (b) (7)(C) for review and discussed during OIG's interview with (b) (6), (b) (7)(C).
5. Prepared an analysis of the (b) (6), (b) (7)(C) agency protest submitted on July 27, 2018. This analysis was provided to (b) (6), (b) (7)(C) for review and discussed during OIG's interview with (b) (6), (b) (7)(C).
6. Interviewed (b) (6), (b) (7)(C) [REDACTED]

### Conclusion

Despite a thorough and comprehensive investigation, we did not find any evidence that source selection information or procurement sensitive information related to the FCC's (b) (6), (b) (7)(C) contract was inappropriately accessed and/or shared with contract bidders or others in violation of 48 CFR 3.104-4 and 41 USC § 2102. Although we identified one instance in which a member of the Technical Evaluation Team (TET) shared source selection information with ITC management officials<sup>4</sup>, we do not believe that this action warrants action by Commission management because of the minor nature and scope of the disclosure and because the disclosure had no effect on the bidding or selection processes.

### Recommendations

Based on our findings, we would recommend no further investigation into this issue at this time.

<sup>4</sup> We identified an email message from [REDACTED] (b) (6), (b) (7)(C) to [REDACTED] (b) (6), (b) (7)(C) on July 16, 2018 in which (b) (6), directly quoted a sentence from the Source Selection Memorandum (SSM). Although (b) (6), was appropriately provided a copy of the SSM as a member of the Technical Evaluation Team (TET) for the procurement, (b) (6), was not authorized to share any information from the SSM with (b) (6), (b) (7)(C).

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(b) (6), (b)

(7)(C)

[REDACTED]

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UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL



# MEMORANDUM

**DATE:** August 20, 2019

**TO:** David L. Hunt, Inspector General

**THROUGH:** Sharon Diskin, Assistant Inspector General for Investigations, (b) (6),  
(b) (6), (b) (7)(C)

*Sharon R. Diskin*

**FROM:** (b) (6), (b) Attorney-Investigator

**SUBJECT:** OIG-E-19-0008 – YAVAPAI-NAU-ETC

## Background

This investigation stems from a whistleblower complaint submitted directly to the Federal Communications Commission - Office of Inspector General (FCC-OIG) hotline. The complaint alleged Yavapai County Education Service Agency (YCESA), an Arizona not-for-profit E-rate consultant, sought help from Education Technology Consortium (ETC), an E-rate service provider, prior to filing the YCESA's client school districts' FCC Form 470s. After the YCESA client school districts filed their respective FCC Form 470s, ETC bid and won the E-rate projects. The whistleblower complaint alleged this practice was in direct violation of the E-rate program's competitive bidding process.

The whistleblower, a (b)(6) & (b)(7)(C), explained to OIG that (b) (6), (b) (6), (b) (6)

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REPORT OF INVESTIGATION (continuation sheet)

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(b) (6), (b) (7)(C) . (b) (6), the whistleblower decided, (b) (6), (b) (7)(C)

[REDACTED]

After the whistleblower received (b) (6), (b) (7)(C) . The whistleblower alleged the (b) (6), (b) (7)(C)

[REDACTED]

In addition to contacting the (b)(6) & (b)(7) , the whistleblower (b) (6), (b) (7)(C)

[REDACTED]

On January 9, 2019, the whistleblower sent an email to the FCC-OIG hotline to report this activity.

**Findings**

After reviewing the whistleblower complaint, FCC-OIG interviewed the whistleblower. The whistleblower provided information about (b) experiences with the E-rate program, YCESA and ETC. The whistleblower also named some (b) client schools of YCESA and ETC.

FCC-OIG investigators thereafter reviewed E-rate funding information and Universal Service Administrative Company (USAC) documentation related to ETC. Investigators reached out to different E-rate applicants based on information provided by the whistleblower and E-rate funding data related to work performed by ETC.

FCC-OIG investigators spoke with administrators from different E-rate applicant schools to learn about their E-rate application process and to test the whistleblower's allegations. Investigators found differing levels of involvement from ETC, ranging from ETC having no involvement at the school to ETC coming onsite to a school's campus to provide consultation in anticipation of a Request for Proposal (RFP). One administrator mentioned paying ETC for consultation services. Multiple administrators mentioned ETC bid the lowest prices in response

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## REPORT OF INVESTIGATION (continuation sheet)

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to the FCC Form 470 bid requests and also provided great service.

After communicating with several school administrators, FCC-OIG investigators spoke with (b)(6) & (b). (b)(6) & (b) explained that ETC is a not-for-profit consortium that consists of member school districts. (b)(6) & (b) generally works with ETC's member schools but also provides assistance to non-member schools in the Northern Arizona area.

(b)(6), (b) recalled working with someone at YCESA to assist a school district to determine its technology needs. (b)(6) & (b) said there was no fee charged for this consultation because ETC does not charge that kind of fee. (b)(6) & (b) also said ETC did not submit an E-rate bid on that specific school district's FCC Form 470 due to it being a possible competitive bid violation.

(b)(6) & (b) suspected client schools may have used the advice (b)(6) & (b) provided during the course of ETC's preexisting contracts with client schools to help formulate technology needs and wants for E-rate projects. (b)(6) & (b) contends he always advised clients he could not assist them with creating an RFP. (b)(6) & (b) further explained if he suspected his advice would be used by a school to create an RFP, (b)(6) & (b) would notify the school that ETC could not help them with preparing an RFP. (b)(6) & (b) stated ETC never expects to be selected as the winner of an E-rate bid just because a school is a member of ETC.

### **Conclusion and Recommendation**

Although it may appear that ETC violated E-rate rules regarding open and competitive bidding process, this appearance is due to ETC's prior existing relationship with its clients and its member schools. ETC may have communicated with E-rate applicants about technology needs during the course of its preexisting relationship as a service provider for various school districts, but ETC does not appear to have drafted the client school's RFPs or FCC Form 470s. Additionally, E-rate applicants were likely inclined to select ETC for E-rate projects because ETC was able to submit the lowest priced bids due to its structure as a cooperative.

We recommend the file be closed, and we recommend stronger advisories be developed to draw clearer lines between a service provider engaging in its normal duties versus providing information that applicant schools may use in future E-rate applications. For example, USAC could include language on the FCC Form 470 prohibiting E-rate applicants from receiving assistance with the form from any potential bidders.

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UNITED STATES GOVERNMENT  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF INSPECTOR GENERAL

# MEMORANDUM

**DATE:** March 12, 2019

**TO:** David L. Hunt, Inspector General

**THROUGH:** Sharon Diskin, Acting Assistant Inspector General  
for Investigations and Counsel  
(b) (6), (b) (7)(C)

**FROM:** (b) (6), (b) (7)(C), Investigatory Attorney  
(b) (6), (b) (7)(C), Investigatory Attorney

**SUBJECT:** i-Wireless Communications Deceased Subscriber Investigation

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## ***Introduction***

The Federal Communications Commission (FCC) Office of Inspector General (OIG) investigated allegations that i-Wireless Communications (i-Wireless or the company) enrolled deceased individuals into the Universal Service Fund (USF) Low Income Program (Lifeline).

Case Number: OIG-LI-18-0015	Case Title: i-Wireless Communications
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## ***Background***

In October 2017, OIG completed an Eligible Telecommunications Carrier<sup>1</sup> (ETC) wide analysis to determine whether ETCs enrolled deceased subscribers into the National Lifeline Accountability Database (NLAD) since early 2014 by comparing a publicly-available copy of the 2013 Social Security Administration's Death Master File with a company's NLAD enrollments. OIG determined i-Wireless had enrolled approximately 224 deceased subscribers into NLAD. On November 29, 2017, OIG sent i-Wireless a subpoena to request documents and information related to the company's enrollment of deceased individuals in the Lifeline program. i-Wireless had 26 deceased subscribers actively enrolled in NLAD when the subpoena was sent.

## ***Findings***

Investigators subpoenaed the company and collected documents and other information relevant to the enrollment of the deceased individuals into Lifeline. In addition, investigators analyzed the company's subscriber base and collected enrollment documents for other high-risk accounts. Investigators determined the following:

- Shortly after the November 2017 subpoena, i-Wireless confirmed the company had disconnected all remaining 26 deceased subscribers actively enrolled in NLAD. Moreover, i-Wireless examined the deceased enrollment data and informed OIG there was no pattern of repeated enrollments of deceased individuals by any sales agents. OIG confirmed this representation.
- OIG reviewed the applications and eligibility documents associated with the enrollment of the deceased subscribers by the company. OIG discovered indicia of fraud including expired IDs, applications missing any proof of eligibility, suspicious subscriber/company agent signatures, and dark/blurry or otherwise difficult to read IDs and eligibility proofs. Such application fraud should have been clear to the company and its agents.
- In addition, OIG analyzed the company's total subscriber base and enrollment data which revealed indicia of other suspect accounts. OIG selected a percentage those high-risk accounts and reviewed the supporting customer information, including applications. There were no

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<sup>1</sup> An eligible telecommunications carrier designation was designed to determine carrier eligibility to receive federal universal service funding to support low income customers (Lifeline). 47 CFR Sec. 54.201.

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apparent problems with the company's enrollment data or supporting application documents.

- i-Wireless also produced policies and procedures related to sales agent training and Lifeline application approval process. The company adopted these policies and procedures in January 2015 with further revision in December 2016. The company's enrollment of deceased subscribers primarily occurred prior to implementation of the policies and training guides.
- Nevertheless, OIG estimates i-Wireless sought approximately \$30,000 in Lifeline subsidies for the deceased subscribers enrolled by the company. OIG determined i-Wireless and its agents could have easily detected this fraud.

### ***Conclusion and Recommendations***

The OIG investigators determined there was a potential monetary loss of over \$30,000 to the USF. (b) (7)(E)

In addition, OIG will not pursue criminal referrals against any sales agents responsible for the enrollments, as no criminal pattern exists.

Accordingly, we recommend closing this investigation with a referral to the Agency and USAC to recover the Lifeline subsidies paid to i-Wireless for providing Lifeline service to the deceased subscribers.

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