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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 27, 2021

Re: FOIA-2022-00068

This is in response to your request dated October 8, 2021, under the Freedom of Information Act seeking access to FTC OIG Reports of Investigation: Case I-19-197, Case I-19-198, Case I-20-200, Case I-20-204, Case I-20-205, and Case I-20-206. In accordance with the FOIA and agency policy, we have searched our records on **October 18, 2021**.

We have located 49 pages of responsive records. I am granting partial access to these records. Portions of these pages fall within one or more of the exemptions to the FOIA's disclosure requirements, as explained below.

Some information contains information related solely to the internal personnel rules and practices of an agency. Those portions of the record are exempt from the FOIA's disclosure requirements by FOIA Exemption 2, 5 U.S.C. § 552(b)(2). *See Milner v. Dep't of Navy*, 562 U.S. 562 (2011).

Some responsive records contain staff analyses, opinions, and recommendations. Those portions are deliberative and pre-decisional and are an integral part of the agency's decision-making process. They are exempt from the FOIA's disclosure requirements by FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975).

Some of the records were obtained on the condition that the agency keep the source of the information confidential and are exempt from disclosure under FOIA Exemption 7(D), 5 U.S.C. § 552(b)(7)(D). That exemption is intended to ensure that "confidential sources are not lost because of retaliation against the sources for past disclosures or because of the sources' fear of future disclosures." *Brant Constr. Co. v. EPA*, 778 F.2d 1258, 1262 (7th Cir. 1985).



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Some of the records contain personal identifying information compiled for law enforcement purposes. This information is exempt for release under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information.

Some information is exempt from disclosure under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) protects information that 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 circumvention of the law. *See Foster v. DOJ*, 933 F. Supp. 687(E.D. Mich. 1996).

I am denying access to some names, contact information, and any other identifying information found in the record. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information. *See The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Lindsay Robinson at lrobinson@ftc.gov.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.



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You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison's role relates to comments, questions or concerns that a FOIA Requester may have with or about the FOIA Response. The FOIA Public Liaison's role does not relate to taking action in matters of private controversy nor can he resolve individual complaints.

Sincerely,

A handwritten signature in cursive script, reading "Dione J. Stearns".

Dione J. Stearns
Assistant General Counsel



Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

May 27, 2020

MEMORANDUM

FROM: Noel Rosengart
Attorney and Investigator

NOEL ROSENGART Digitally signed by NOEL ROSENGART
Date: 2020.05.27 14:33:23 -04'

TO: Andrew Katsaros
Inspector General

SUBJECT: Closing Memo (I-19-197)

The purpose of this memorandum is to administratively close investigation I-19-197 and suspend related investigative activities. In January 2019, outside of the complaint process, the OIG was first made aware of the release of nonpublic information related to an ongoing FTC investigation of Facebook, Inc. potentially by current or former FTC employees. Over the next six months, the OIG confirmed that nonpublic information about the FTC investigation of Facebook was revealed in the media on multiple occasions during fiscal year (FY) 2019. We also learned that nonpublic information about two other FTC matters was revealed in various media outlets throughout fiscal year 2019. As of the date of this memorandum, however, the OIG was unable to determine whether FTC employees disclosed the non-public information that was revealed or whether, even if FTC employees disclosed the information, such disclosure would have violated federal law or FTC policy.

I. Background

A. *FTC Office of Public Affairs*

The Office of Public Affairs (OPA) alerted our office to several of the releases of nonpublic information included in our investigation, including information released to the media on the FTC's separate investigations of Facebook and YouTube. OPA's mission is to "reach, inform, educate, and engage consumers and businesses through media and digital technologies and in collaboration with [their] internal partners to advance consumer protection and competition." The office further ensures that media outlets receive and understand the information they need to get the FTC's work into the hands of the public.

B. *FTC and the Media*

OPA is the Commission's main contact point for the media. Staff also speak with the press on a broad

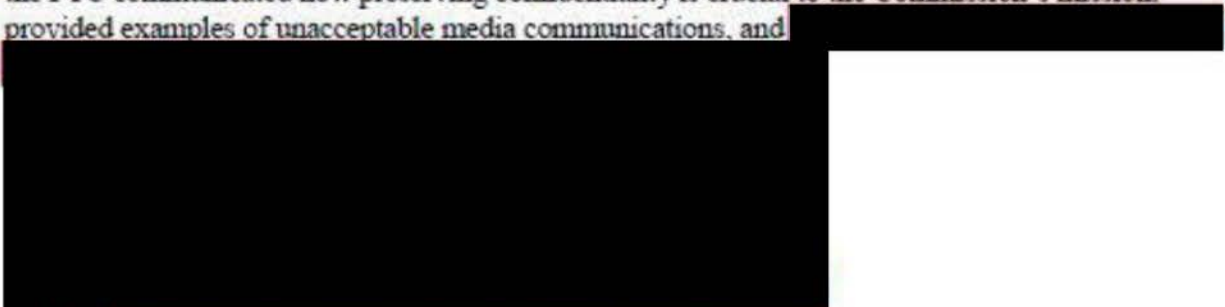
range of topics. These contacts support the Commission's initiatives to educate consumers about steps they can take to protect themselves and to educate businesses on how to comply with the FTC Act and other consumer protection and competition laws. Any discussion with the press, however, may include only information that is public or has been authorized for release to the public.

Per OPA's website, FTC staff should not initiate media contacts about investigations or other non-public law enforcement matters under any circumstances. Staff members should also not respond to any press inquiry regarding a Commission investigation or a non-public law enforcement matter without first notifying OPA and obtaining clearance to respond to the media request. If OPA clears the communication, it will log the press inquiry and work with the staff member to respond appropriately. In addition, staff should always coordinate with OPA on media communications related to the Commission's public law enforcement matters, workshops, business guidance and consumer education, and other public events.

Commissioners' offices are excepted from the notification protocols and are not required to vet their media communications with OPA. At the FTC, OPA officials, Commissioners, and Bureau Directors speak regularly and publicly to traditional and nontraditional media outlets.¹

C. March 2019 Confidentiality Refresher Briefing

As recently as March 2019, the FTC provided a briefing (in two individual sessions) to the Commissioners and their staff members on the confidentiality of FTC investigations. In this briefing, the FTC communicated how preserving confidentiality is crucial to the Commission's mission, provided examples of unacceptable media communications, and



As communicated in the briefing, confidentiality of FTC investigations is enforced through statutory (e.g., FTC Act Hart-Scott-Rodino Antitrust Improvements Act of 1976; 18 U.S.C. § 1905 (Disclosure of Confidential Information Generally); and 15 U.S.C. § 57b-2 (Confidentiality)), regulatory (e.g., 16 C.F.R. § 4.10 (Nonpublic Material) and 5 C.F.R. § 2635.703 (Use of Nonpublic Information)), and policy mandates and directives (e.g., Notice of Policy Disclosing Investigations of Announced Mergers, 62 Fed. Reg. 18,630-18,631 (Apr. 16, 1997); Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations, 63 Fed. Reg. 63,477-63,478 (Nov. 13, 1998);

¹ We took careful measures to avoid analyzing communications involving the disclosure of FTC information to Congress, as such disclosures are protected if the individual reasonably believes the disclosures evidences a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; a substantial and specific danger to public health or safety; or an abuse of authority. 5 U.S.C. § 2302(b)(8).

and Chapter 5, Section 300 of the FTC Administrative Manual (Standards of Conduct)).

D. FTC Matters Concluded in FY 2019 with Potential Nonpublic Information Released

Facebook, Inc. In a settlement announced on July 24, 2019, Facebook, Inc. agreed to pay a \$5 billion penalty, and submit to new restrictions and a modified corporate structure that will hold the company accountable for the decisions it makes about its users' privacy. This concluded the agency's investigation that originated with an FTC allegation that Facebook violated both its privacy promises to consumers and a 2012 Commission order.

Google LLC and YouTube, LLC. In a settlement announced on September 4, 2019, Google LLC and its subsidiary YouTube, LLC agreed to pay a \$170 million civil penalty to the FTC and the New York State Attorney General to settle allegations that the YouTube video sharing service illegally collected personal information from children without their parents' consent in violation of the Children's Online Privacy Protection Act ("COPPA").

UnitedHealth Group/DaVita. The FTC announced a settlement in this proposed merger on August 22, 2019, concluding a matter based on a complaint the agency itself filed. In its complaint, the FTC alleged that the proposed \$4.3 billion acquisition would harm competition in healthcare markets in two Nevada counties, Clark and Nye. Under the proposed settlement, the FTC required UnitedHealth Group to divest DaVita's HealthCare Partners of Nevada to Intermountain Healthcare.

II. Nonpublic Information Releases

Between December 2018 and July 2019, media accounts of the investigations and settlement negotiations cited insiders who had provided information off the record, seemingly to avoid the release of the nonpublic information being attributed to them. Some examples include:

- A December 30, 2018, New York Times article referencing details from nonpublic notes prepared by an FTC official on potential outcomes related to the FTC's investigation of Facebook, "according to someone who read the memo."
- A January 18, 2019, Washington Post article and a New York Times article both referencing information in a December 13, 2018, closed Commission meeting on the Facebook investigation "according to three people familiar with the deliberations but not authorized to speak on the record," per the Washington Post article.
- A February 14, 2019, Washington Post article and a separate New York Times article on the same day, both mentioning a potential multi-billion dollar fine for Facebook "according to two people familiar with the probe," per the Washington Post article.

- A March 21, 2019, Capitol Forum article revealing extensive details communicated during a March 20, 2019, closed Commission meeting on the UnitedHealth Group/Davita merger, “sources familiar with the matter said.”
- An April 2, 2019, Politico article naming Mark Zuckerberg as it suggested potential Facebook leadership changes, “According to sources close to the commission...”
- An April 18, 2019, Washington Post article potentially revealing details on FTC settlement negotiations with Facebook and naming Mark Zuckerberg as potentially accountable, “according to two people familiar with the discussions.”
- An April 24, 2019, New York Times article mentioning a potential record fine for Facebook and potentially revealing details on settlement negotiations according to “two people with knowledge of the situation, who were not authorized to speak publicly.”
- A May 1, 2019, New York Times article mentioning a potential privacy officer position within Facebook “according to people with knowledge of the talks.”
- A May 1, 2019, Politico article on a potential privacy officer position within Facebook, potentially revealing many details on negotiations by “a source close to the talks.”
- A June 3, 2019, Wall Street Journal article on federal government divisions of antitrust enforcement matters, specifically Facebook, Google, Amazon, and Apple, “according to people familiar with the matter.”
- A June 19, 2019, Washington Post article announcing the FTC’s ongoing investigation of YouTube “according to four people familiar with the matter.”
- A July 8, 2019, Bloomberg article on the potential for FTC disabling YouTube ads for children, as well as information from a call with Chairman Joseph Simons and Commissioner Noah Phillips according to a source “who requested anonymity to talk about discussions that aren’t public.”
- Separate July 12, 2019, articles from the Wall Street Journal, New York Times, Washington Post, Reuters, and Bloomberg in advance of the FTC’s announcement of its record fine of Facebook “according to people familiar with the matter.”
- A July 19, 2019, Washington Post article in advance of the FTC’s settlement with YouTube, “said two people familiar with the matter who were not authorized to discuss it on record.”
- A July 22, 2019, Washington Post article revealing inside information on how FTC regulators “wanted more from Facebook” as “described by ten people familiar with the matter.”
- A July 23, 2019, Washington Post article revealing Facebook settlement details prior to their

public release “according to two people familiar with the matter.”

III. Contacts with the Media Made by FTC Employees

The OIG

However, the OIG was unable to conclude that such contacts violated Federal Law or FTC policy, particularly because we could not confirm the content of what was discussed between FTC employees and the media contacts.

IV. Conclusion

Based on none of the releases of nonpublic information could be attributed to any current FTC employee or other individual. In light of the lack of evidence pointing to a specific FTC employee or other individual responsible for leaking nonpublic information to the media, we have decided to cease investigative efforts and administratively close this investigation. We will continue to monitor evidence involving potential leaks, and we retain the right to reopen the case upon receipt of new evidence regarding this investigation.

ANDREW KATSAROS

Digitally signed by ANDREW
KATSAROS
Date: 2020.05.27 16:28:25 -0400

Andrew Katsaros

May 27, 2020

Date



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

February 24, 2020

MEMORANDUM

TO: Andrew Katsaros
Inspector General

FROM: Noel Rosengart
Attorney and Investigator

NOEL ROSENGART Digitally signed by NOEL ROSENGART
Date: 2020.02.24 11:23:54 -0500

Odies Williams, IV
Counsel to IG and Investigator

SUBJECT: Closing Memo (I-19-198)

On December 11, 2018, Inspector General Andrew Katsaros of the Federal Trade Commission (FTC) Office of Inspector General (OIG) received a telephone call from [REDACTED], who reported that nine (9) Hewlett Packard (HP) laptops were found missing from Constitution Center (CC) Room [REDACTED] during a recently concluded accountable asset inventory conducted by [REDACTED] on December 13, 2018, [REDACTED] advised that four (EliteBook 820 G3) of the nine missing HP laptops were found traceable to external IP addresses due to the FTC's installation of CompuTrace software on these laptops. (Of the other five missing HP laptops (EliteBook Folio 1020), which did not have CompuTrace installed, two were ultimately located at the FTC and two were determined to be lost and unrecoverable.)

The inventory conducted by [REDACTED] which occurred in late November/early December 2018, included the migration of all laptops from CC-6415A to a new central location at HQ-B8. Prior to this inventory, unused FTC laptops were simultaneously maintained in two separate locations: [REDACTED]. The date of this loss, which OCIO suspected to be the result of internal theft, could not be determined. Finally, despite taking statements from FTC employees and contractors, OCASO was unable to identify any potential FTC personnel as subjects.

On December 28, 2018, OCASO closed its investigation with no identifiable subjects and the matter was referred to Dewitt Parker, Special Agent (SA), Federal Protective Services, U.S. Department of

Homeland Security. SA Parker advised the OIG that the [REDACTED]

(b) (7)(E)

[REDACTED] (b) (7)(E)

(b) (7)(E)

The OIG subsequently opened a full investigation on February 4, 2019, to, among other things, determine whether any current or former employees, contractors, and contracting companies may have been involved in a potential theft scheme. In furtherance, we ran the results from our (b) (7)(E)

On July 23, 2019, SA Parker advised the OIG that he was closing out this matter (b) (7)(E)

In light of the case closure by FPS and the following circumstances, we decided to conclude our investigative efforts:

¹ *Management Advisory on Accountable Personal Property* (M-20-01). The advisory offered the following recommendations: 1) to develop practices ensuring that accountable property roles related to the custody of assets, recordkeeping, and conducting inventories are separated; and 2) to update Chapter 4, Section 200 of the FTC Administrative Manual to reflect current positions and those duties that should be performed by separate individuals.

² *See Id.*

- the lack of evidence pointing to a specific current or former FTC employee, contractor, or contracting company;
- our determination that the remaining lost laptops contained no sensitive PII;
- our issuance of the Management Advisory to mitigate the recurrence of similar situations; and
- the FTC's planned and completed steps to better protect FTC accountable property.

Therefore, this matter is now closed. However, we retain the authority to reopen our investigation should additional evidence be identified in the future warranting further investigation.

Approved:

Andrew Katsaros, Inspector General

FEDERAL TRADE COMMISSION
OFFICE OF INSPECTOR GENERAL



REPORT OF INVESTIGATION
ALLEGATIONS OF ENGAGING IN OUTSIDE EMPLOYMENT
WITHOUT OGC APPROVAL AND VIOLATION OF TELEWORK

AGREEMENT

File No. I-19-200

ORIGINAL

January 23, 2020

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Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

REPORT OF INVESTIGATION

INVESTIGATION NUMBER: I-19-200

TITLE: Allegations of Engaging in Outside Employment without OGC Approval and Violation of Telework Agreement

INVESTIGATORS: Noel A. Rosengart, Attorney and Investigator
Odies Williams, IV, Counsel to the IG/Investigator

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PREPARED BY: Noel A. Rosengart	NOEL ROSENGART <small>Digitally signed by NOEL ROSENGART Date: 2020.01.23 11:03:55 -05'00'</small>	1/23/20
Odies Williams, IV	ODIES WILLIAMS <small>Digitally signed by ODIES WILLIAMS Date: 2020.01.23 11:37:57 -05'00'</small>	

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I. Predication

Our investigation was predicated on an April 24, 2019, referral from (b) (7)(D), (b) (7)(D), (b) (7)(D), (b) (7)(C), regarding (b) (7)(C), then (b) (7)(C) (b) (7)(C)). The complaint alleged that (b) (7)(C) operated a personal business on (b) (7)(C) recurring telework days and without prior approval of an outside employment agreement by (b) (7)(C) for the Office of the General Counsel (OGC). Specifically, (b) (7)(D) (b) (7)(D) provided the OIG information alleging that:

- (b) (7)(C) is the owner of (b) (7)(C), which was registered as a limited liability company in the State of (b) (7)(C) on (b) (7)(C).
- While working within (b) (7)(C) had recurring telework days on Tuesday and Friday of each week.
- (b) (7)(C) business hours are Monday, Wednesday, and Thursday by appointment and her showroom, which is located in her residence, is open Tuesday, Friday, and Saturday from 10:00 a.m. to 6:00 p.m.
- (b) (7)(C) has a website (b) (7)(C) and Facebook and Instagram accounts.
- (b) (7)(C) posted to her (b) (7)(C) Instagram and Facebook accounts on scheduled telework days.

II. Background

(b) (7)(C) commenced employment with (b) (7)(C) on (b) (7)(C). At the time the complaint was filed, (b) (7)(C)'s daily work hours were 8:30 a.m. to 5:00 p.m., regardless of telework status. On (b) (7)(C), (b) (7)(C) submitted a letter of resignation to (b) (7)(C) effective (b) (7)(C). The OIG subsequently learned from the Human Capital Management Office (HCMO) that (b) (7)(C) transferred to the (b) (7)(C), effective Sunday, November 10, 2019.

(b) (7)(C) is the owner and operator of (b) (7)(C). (b) (7)(C) is currently located at (b) (7)(C) (b) (7)(C), which is (b) (7)(C).¹ The phone number is (b) (7)(C). (b) (7)(C)'s business consists of a public website that sells jewelry and other accessories, as well as a showroom located at (b) (7)(C) residence, which is open by appointment only on Monday, Wednesday, and Thursday, and from 10 a.m. to 6:00 p.m. on Tuesday, Friday, and Saturday for drop-in visits.

III. Authorities

- 5 C.F.R. Subpart G, Misuse of Position
- 5 C.F.R. § 5701.101, Prior Approval for Outside Employment
- FTC Administrative Manual, Chapter 5, Section 300 (Standards of Conduct)
- FTC Administrative Manual, Chapter 3, Section 680 (Telework Program)

¹ The business was previously located at (b) (7)(C), which appears to be her former residence.

IV. Investigative Findings

The OIG determined that (b) (7)(C), from at least 2017 until [REDACTED] transfer, conducted activities for an outside personal business, [REDACTED] during her recurring weekly telework days of Tuesday and Friday, in violation of 5 C.F.R. § 5701.101, *Prior Approval for Outside Employment*, and FTC Administrative Manual, Chapter 3, Section 680, *Telework Program*. The OIG further determined that this conduct violated 5 C.F.R. § 2635.704, *Use of Government Property*; 5 C.F.R. § 2635.705, *Use of Official Time*; and the FTC Administrative Manual at Chapter 5, Section 300, *Standards of Conduct*; and that the FTC’s “limited personal use” exception was not available to shield her conduct.²

On October 23, 2019, the OIG contacted (b) (7)(C) via email to request that she present for a voluntary, subject interview regarding our administrative misconduct investigation. The purpose of the interview was to provide (b) (7)(C) an opportunity to respond to the allegations and present mitigating or rebutting evidence.³ On November 4, 2019, [REDACTED] advised the OIG via email that (b) (7)(C) had retained her as counsel regarding our investigation. On November 26, 2019, [REDACTED] after further correspondence with the OIG regarding the investigation, advised the OIG that (b) (7)(C) “declines to participate in the investigation.”

V. Analysis

We provide the following analysis supporting our conclusions:

A. 5 C.F.R. § 5701.101, Prior Approval for Outside Employment

Chapter 5, Section § 5701.101(a) provides that before engaging in any outside employment, whether or not for compensation, an employee of the FTC, other than a Commissioner, must obtain the written approval of his or her supervisor and the Designated Agency Ethics Officer (DAEO) or his or her designee. The OIG determined that (b) (7)(C) violated § 5701.101(a) by operating an outside business, [REDACTED] since at least 2017 until [REDACTED] without approval from either [REDACTED] supervisor or OGC. Evidence establishing that (b) (7)(C) operates the business includes: (1) at least one identified business transaction and related communications (discussed below in section C); (2) [REDACTED] promotions on (b) (7)(C) [REDACTED] Instagram and Facebook accounts (these social media accounts were disabled and modified shortly after the OIG contacted (b) (7)(C) for an interview and

² See FTC Administrative Manual – Chapter 1: Section 550, *Computer Security-Part II.2, Limited Personal Use*. See also memorandum from Christian S. White, former Designated Agency Ethics Official, and Patricia Bak, former Acting Chief Information Officer, to Commission, entitled: *Reissuance of Authority to Make Limited Personal Use of Government Office Equipment*, dated Jan. 6, 2011. This policy affords an exception to its employees to occasionally use government communication resources (e.g., telephone, email, calling card, conference calls, and cell phones) for personal reasons. However, employees who avail themselves of this policy must ensure that their use of government communication resources: “1. involves minimal or no additional expense to the Government; 2. does not impede your ability to complete a full day’s work, or interfere with the agency’s mission or operations; and 3. does not violate the standards of conduct or any other applicable provision of law (emphasis added).”

³ On or around October 28, 2019, the OIG attempted to access the Facebook account of [REDACTED] but it appeared to have been deleted, deactivated, or otherwise hidden. Additionally, on or around October 30, 2019, the OIG attempted to access the Instagram account of [REDACTED] but it appeared to have been converted to a private account. In a search conducted on January 14, 2020, both the Facebook and Instagram accounts for [REDACTED] were found to have been reactivated and publicly available.

were made active and publically available again prior to the issuance of this report); and (3) a [REDACTED] appearance by (b) (7)(C) on [REDACTED], a local morning television show, in a five-minute segment apparently in promotion of [REDACTED].⁴

DAEO Pankey confirmed for the OIG that (b) (7)(C) never received approval to engage in outside employment for [REDACTED], nor had she submitted the prerequisite FTC-474, *Form to Request Approval for Outside Employment and Other Activities*. Moreover, OGC records indicate that (b) (7)(C) attended an in-person OGC ethics training on July 7, 2017, and took an OGC online ethics training on September 12, 2018, the latter for which she correctly answered the corresponding quiz's questions on outside employment activities. Thus, it appears that (b) (7)(C) knew or should have known that prior supervisory and OGC approval was required to operate a private business.

B. 5 C.F.R. § 2635.704, Use of Government Property

The OIG determined that [REDACTED] used government property to communicate with FTC personnel about [REDACTED] in violation of this code section. Section 2635.704(a) provides that “[a]n employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.” Government property includes office supplies, telephones, and other telecommunications equipment and services, including FTC-issued laptops.⁵

Our review of [REDACTED] Outlook email records identified that, on February 7, 2019, an EDU contractor sent a video link of the [REDACTED] segment to [REDACTED] via her FTC email account (Attachment 1).⁶ [REDACTED] immediately sent this video link to her personal and [REDACTED] email accounts (Attachment 2). That same day, [REDACTED] also sent emails from her FTC email account to the FTC email accounts of several FTC employees containing links to her [REDACTED] website and the February 6th segment on [REDACTED] (Attachment 3). Finally, the OIG identified other [REDACTED] promotional emails [REDACTED] sent from her FTC email account to the FTC email accounts of several employees (Attachment 4).

The OIG determined that the FTC's limited personal use exception was not available to shield [REDACTED] conduct from these violations. Even though [REDACTED]s use of FTC resources (FTC laptop and Outlook) to communicate with FTC personnel could meet the exception's first two conditions (i.e., (1) involves minimal or no additional expense to the Government; and (2) does not impede one's ability to complete a full day's work, or interfere with the agency's mission or operations), we determined that [REDACTED] used governmental resources “for other than authorized purposes,” as expressly prohibited in the exception's third condition.⁷ Since [REDACTED] operation of her personal business fell outside of her official duties, and because of the inapplicability of the limited personal use exception under the circumstances, we concluded that [REDACTED] use of government resources to send emails to FTC personnel promoting [REDACTED] violated 5 C.F.R. § 2635.704.

By virtue of her violation of section 704, [REDACTED] also violated the FTC's Standards of Conduct, as stated in the Administrative Manual at Chapter 5, Section 300. These provisions, at subsection

⁵ See 5 C.F.R. § 2635.704(b)(1).

⁶ We note that our investigation did not confirm that [REDACTED] solicited the contractor to send her the link.

⁷ See FTC Limited Personal Use Policy at 1-2.

4(B)(7), *Prohibited Use*, prohibit an employee from running a personal business or engaging in other “for-profit” commercial activities using agency equipment.

C. 5 C.F.R. § 2635.705, Use of Official Time

The OIG determined that ██████ used official time to operate her personal business in violation of 5 C.F.R. § 2635.705. The regulation specifies that, “[u]nless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.” ██████ on its website at ██████ that its business hours are Monday, Wednesday, and Thursday by appointment and Tuesday, Friday, and Saturday from 10:00 a.m. to 6:00 p.m.

We identified evidence that ██████ communicated with customers and performed business transactions and promotional activities during official time on telework days. Specifically, between Tuesday, September 10 and Tuesday, October 1, 2019, ██████ made the following communications to a prospective customer during her official duty hours regarding a necklace purchase the customer ultimately made via the ██████ website:

- Tuesday, September 10, 2019 (Telework/Alt. Duty Station)
 - Outgoing calls from ██████ (phone number) @ 3:47 p.m. and 3:49 p.m.
- Tuesday, September 17, 2019 (Telework/Alt. Duty Station)
 - Outgoing texts from ██████ @ 2:32 p.m., 2:50 p.m., 3:31 p.m., and 3:32 p.m.
- Tuesday, September 24, 2019 (Telework/Alt. Duty Station)
 - Outgoing texts from ██████ @ 10:39 a.m., 4:09 p.m., and 4:10 p.m. (█████ texted to confirm the item was shipped to the customer that afternoon)
- Tuesday, October 1, 2019 (Telework/Alt. Duty Station)
 - Outgoing text from ██████ @ 11:17 a.m.

Additionally, our review of ██████ Outlook email records indicate that she sent several emails to FTC personnel promoting ██████ her ██████ appearance, also during her official duty hours.

Although the total official time spent on these communications appears to have been *de minimis*, these communications in furtherance of an outside personal business fell outside of her official duties and were not authorized by the FTC. Moreover, because they involved the use of public official time, the limited personal use exception was not available to shield her conduct from these violations.⁸ In sum, because ██████ operation of her personal business fell outside of her official duties, and because of the inapplicability of the limited personal use exception under the circumstances, we determined that ██████ use of government resources to send emails to FTC personnel promoting ██████ violated 5 C.F.R. § 2635.705.

The OIG also identified some inconsistencies on ██████ WEBTA records that raise additional questions and potentially create the appearance of impropriety regarding her use of official time. Specifically, in March and April 2019, ██████ traveled to North Carolina and Georgia on apparent scheduled sick leave and/or telework days as detailed below:⁹

⁸ See FTC Limited Personal Use Policy.

⁹ DeMartino approved ██████ WEBTA records for both pay periods and later advised the OIG that ██████ had no authorized work-related travel to North Carolina and Georgia.

- On March 20, 2019, ██████ requested, via email, approval from ██████ to take sick leave the following day, Thursday, March 21, 2019, stating: “I was just able to get some medical appointments in, which means I need to take sick leave tomorrow. I apologize for the short notice. I don’t have any urgent issues. I’ll submit my leave request shortly.” ██████ approved the request, in a written response via email, that afternoon (Attachment 5). ██████ WEBTA records for Pay Period 7 indicate that she did not submit a sick leave request for March 21, 2019, and was credited for eight hours of “regular work,” although her building access (AMAG records) and Outlook records indicate that she did not enter the Constitution Center facility or telework on this date. The next day on Friday, March 22, 2019, a scheduled telework day, ██████ FTC-issued smartphone records indicate that she connected to a teleconference call from Greensboro, North Carolina and sent several work-related emails. On Saturday, March 23, 2019, ██████ posted two messages from her ██████ Instagram account, which identified her location as Greensboro, North Carolina (Attachment 6). Finally, on Monday, March 25, 2019, ██████ posted on her Instagram account a picture of a female entrepreneur award from the ██████ ██████ located in Charlotte, North Carolina, dated March 23, 2019. This Instagram posting read, “Thanks to all our clients and soon-to-be-clients. The best is yet to come. Cheers to many more fabulous years!!!” (Attachment 7).
- Additionally, on April 9, 2019, ██████ submitted a WEBTA sick leave request for: “Illness/injury/incapacitation of requesting employee” for Thursday, April 11, 2019. On the afternoon of April 10, 2019, ██████ emailed ██████ stating: “I submitted a leave request yesterday for tomorrow. When you get a chance could you please approve it so I’ll Certify my timesheet?” (Attachment 8). That afternoon, ██████ approved the request and the approved time-off for sick leave was included on ██████ WEBTA records for Pay Period 8 (Attachment 9). Then on Thursday, April 11, 2019, ██████ posted on ██████ Instagram account a picture of herself in the Hartsfield-Jackson Atlanta International Airport, which identified her location as Gwinnett County, Georgia. The Instagram account posting read, “The 1996 Olympics in Atlanta was a special time for us. So a picture in the airport during our history walk in the airport was only fitting. Necklace in store. DM to purchase before they hit the website.” (Attachment 10). ██████ FTC-issued smartphone records indicate that between 9:51 a.m. and 12:13 p.m., on Friday, April 12, 2019, a scheduled telework day, ██████ made and received several calls from Atlanta, Georgia and also sent several work-related emails.

We did not confirm whether ██████ travel, social media activity, or attendance at the aforementioned events occurred during her duty hours on the days specified above. However, as noted above, the circumstances surrounding ██████ leave requests and her subsequent postings on social media raise questions and potentially create the appearance of impropriety. Due to ██████’s declination of our request for a voluntary interview, the OIG was unable to obtain any additional information or clarification from ██████ about these trips.

D. FTC Administrative Manual, Chapter 3, Section 680, Telework Program

The FTC’s Telework Program at the time provided that any employee who wished to telework had to request and receive approval in advance from their supervisor or manager or another approving official. If a request to telework was approved, the employee and supervisor or manager were

required to enter into a written Telework Agreement (FTC Form 680A), which specified the terms and conditions for teleworking. Under her FTC Form 680A, ██████ agreed to the following telework terms and conditions among others:

I. Official Duties.

While teleworking, employees are in an official duty status and must comply with all applicable policies and requirements, including the agency Deminimis Policy in conducting personal use of equipment while teleworking.

O. Standards of Conduct.

The employee agrees to conform to agency standards of conduct while on telework. See Administrative Manual Chapter 5: Section 300.

On September 15, 2015, ██████ received approval for intermittent telework from her then supervisor, ██████. On December 8, 2016, ██████ received approval from ██████ for recurring telework on Tuesday and Friday as a medically necessary reasonable accommodation.¹⁰ On December 12, 2018, and again on September 24, 2019, ██████ renewed ██████ recurring telework plan as a medically necessary reasonable accommodation.

The OIG determined that ██████ violated subsections I and O of the FTC’s telework policy by conducting ██████ business during her Tuesday and Friday telework days. Per the ██████ website, the business’ showroom, which is also ██████ residence, is open from 10:00 a.m. to 6:00 p.m. on ██████ Tuesday and Friday telework days. Postings to ██████’s Facebook and Instagram accounts establish that ██████ was in fact open for business during her official duty hours on her telework days (Attachment 11), and the evidence detailed in section C above, establishes that ██████ conducted ██████ business activities during these hours.

VI. Conclusion

The OIG determined that ██████ conducted an outside personal business, ██████ during official time on her recurring weekly telework days of Tuesday and Friday, without prior supervisory or OGC approval, in violation of 5 C.F.R. § 5701.101, *Prior Approval for Outside Employment*, and in violation of FTC Administrative Manual, Chapter 3, Section 680, *Telework Program*. The OIG further determined that this conduct violated C.F.R. § 2635.704, *Use of Government Property*; 5 C.F.R. § 2635.705, *Use of Official Time*; and the FTC Administrative Manual, Chapter 5, Section 300, *Standards of Conduct*; and that the FTC’s “limited personal use” exception was not available to shield ██████ conduct.

We again note that the OIG offered ██████ the opportunity to appear for a voluntary, subject interview to respond to the aforementioned allegations and provide any mitigating or rebutting evidence and she declined. This matter is now closed, and we are referring this report to management for informational purposes and any action deemed appropriate, while recognizing that ██████ transferred to another federal agency on ██████.

¹⁰ See Chapter 3, Section 300, *Disability Anti-Discrimination Policy and Reasonable Accommodations Procedures*.

FEDERAL TRADE COMMISSION
OFFICE OF INSPECTOR GENERAL



REPORT OF INVESTIGATION
POTENTIAL MISUSE OF FTC EQUIPMENT AND
INFORMATION SYSTEMS
BY AN FTC EMPLOYEE

File No. I-20-204

ORIGINAL

January 16, 2020

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Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

REPORT OF INVESTIGATION

INVESTIGATION NUMBER: I-20-204

TITLE: Potential Misuse of FTC Equipment and Information Systems by an FTC Employee

INVESTIGATORS: Odies Williams IV, Counsel to the Inspector General & Investigator
Noel A. Rosengart, Attorney and Investigator

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PREPARED BY:	Odies Williams IV ODIES WILLIAMS <small>Digitally signed by ODIES WILLIAMS Date: 2020.01.16 11:49:56 -05'00'</small> Noel A. Rosengart NOEL ROSENGART <small>Digitally signed by NOEL ROSENGART Date: 2020.01.16 12:33:56 -05'00'</small>	Date: 1/16/20
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I. Predication

On September 19, 2019, ██████████ Chief Administrative Services Officer, Federal Trade Commission (FTC), notified the Office of Inspector General (OIG) that the Metro Transit Police Department (MTPD) was conducting a criminal investigation of FTC employee ██████████

██████████.¹ Specifically, ██████████ relayed that MTPD had issued a ██████████ for the FTC ██████████ smartphone issued to ██████████ in furtherance of their investigation.

MTPD records and other evidence obtained by the OIG revealed that, on Wednesday, ██████████ ██████████ attempted to video record underneath the skirt of a female metro patron.² He allegedly attempted the recording at the conclusion of his metro train commute while riding an interior escalator in the L'Enfant Plaza Metro Station. ██████████ was reportedly caught in the act by a woman immediately behind him, also riding the escalator, who knew and worked with the victim. Upon being alerted, the victim chased ██████████ ultimately confronted him at the faregate near the station's 7th & D Street SW exit ("after the turnstile but before getting to the escalator"), nearest the Constitution Center building. Per the victim's request, ██████████ showed her his mobile phone and the video he recorded of her. She then reportedly demanded that ██████████ delete the recording, to which he complied, and the two individuals parted ways. The victim and witness then reported the incident to MTPD.

On the next morning (Thursday, ██████████) during his commute, ██████████ was reportedly approached by an MTPD officer by the faregate near the 7th & D Street SW exit. The officer arrested ██████████ at the scene for one count of Voyeurism based on the victim/witness report as well as video surveillance of the incident.³ ██████████'s FTC-issued ██████████ smartphone and his personal mobile phone were confiscated by MTPD per the arrest.

On September 24, 2019, ██████████ pled guilty to one count of Attempted Voyeurism-Recording, in the Superior Court of the District of Columbia. According to the Judgment and Commitment document, the court found him guilty on the same day of the one count and he was sentenced to "60 day(s) incarceration, execution of sentence suspended as to all." ██████████ was also sentenced to unsupervised probation for 3 months subject to the following special conditions:

You are not to have contact with any of the persons named above. You must remain at least 100 yards away from them, their home, and/or their places of employment. You are not to communicate, or attempt to communicate with any of these persons, either directly or through any other person, by telephone, written message, electronic message, pager, or otherwise, except through your lawyer.⁴

¹ ██████████ was transferred to the Office of the Secretary at Headquarters under the supervision of April Tabor, in January 2020.

² The MTPD arrest report is included as Attachment 1.

³ Voyeurism is defined as "distributing and disseminating a photograph, film, videotape, audiotape, compact disc, digital video disc, or any other image or series of images or sounds or series of sounds." 22 D.C. Code Sec. 3531(f)(2).

⁴ The Judgment and Commitment document is included as Attachment 2.

Based on the referral of information from the Chief Administrative Services Officer, the OIG initiated an investigation to determine whether ██████'s conduct involved the misuse of any FTC resources, as well as whether ██████ poses a risk to FTC staff or resources. Our investigation was further used to determine whether ██████ reported the confiscation of his government-issued smartphone in compliance with FTC policy.

II. Investigative Findings

The OIG utilized a number of investigative techniques during the investigation, including reviewing records from ██████'s Microsoft Outlook email account, records associated with his building access (AMAG records), and the contents of his FTC-issued ██████ smartphone, as well as his browsing history and other records from an image of ██████'s FTC laptop. We also had internal discussions with the Office of the Chief Administrative Services Officer (OCASO); the Chief Privacy Officer (CPO); the Chief Security Officer (CSO); the Office of the Chief Information Officer (OCIO); the Office of the General Counsel; and ██████'s then supervisor ██████.

████████████████████ In addition, we had external discussions with lead MTPD Detective Jamie Cudmore and Assistant U.S. Attorney (AUSA) Tamara Rubb, Sex Offense and Domestic Violence Section, U.S. Attorney's Office for the District of Columbia. Finally, we conducted a formal subject interview of ██████. Our relevant findings are discussed below.

Informal Interviews

On or around September 25, 2019, the OIG spoke to Detective Cudmore, MTPD, regarding the warrant to search ██████'s FTC-issued ██████ in furtherance of MTPD's criminal investigation. Detective Cudmore confirmed the contents of the police report, which is included as Attachment 1. She also specified that neither the victim nor the witness were FTC employees, and that they were both employees of another federal government agency. We note that Detective Cudmore was not able to definitively say whether ██████ used his FTC-issued smartphone or personal mobile device for the attempted recording in question, and she referred us to AUSA Rubb for additional details. Finally, Detective Cudmore relayed that ██████ had already been sentenced for the offense via a bench trial, and she instructed the OIG to contact AUSA Rubb for additional information.

On September 25, 2019, the OIG communicated with AUSA Rubb, who served as the lead district prosecutor for the criminal proceedings against ██████. AUSA Rubb was not able to reveal specific details regarding the mobile device used for the attempted recording. However, she subsequently provided via email a copy of the June 6, 2019, police report of the arresting officer, Gary Perkins (Attachment 1), as well as a copy of the Judgment and Commitment document dated September 24, 2019 (Attachment 2).

On December 23, 2019, the OIG spoke with ██████'s then supervisor, ██████, who provided the following information in substance:

- ██████ reported his ██████, arrest to ██████ on Monday, June 10, 2019, which was her first day back in the office apparently since the arrest. ██████ advised ██████ that he was arrested on a misdemeanor charge of voyeurism in the L'Enfant

Plaza Metro Station, and that his personal and work mobile phones were confiscated by MTPD. [REDACTED] also reportedly advised her that his attorney had advised him not to disclose anything further regarding the matter, and that he promised to keep her updated on the resolution of the matter.

- [REDACTED] advised her that he reported the matter to [REDACTED] and that he did not reveal the contents of their conversation to her.

On December 19, 2019, the OIG conducted an informal interview of [REDACTED], who provided the following information in substance:

- [REDACTED] called [REDACTED] shortly after his [REDACTED] arrest and again on what we later determined to be the morning of Monday, June 10th. [REDACTED] reportedly relayed broadly that something embarrassing had happened and he had been arrested by MTPD, resulting in his FTC-issued smartphone being confiscated. [REDACTED] reportedly added that he knew he needed to complete a FTC Form 476, *Loss, Suspected Loss, or Compromise of Nonpublic Information and/or of FTC-issued Equipment*, but wanted to see if this requirement still applied since he knew where the phone was (MTPD custody), and because his then supervisor, [REDACTED], was aware of the situation. [REDACTED] added that he told [REDACTED] that he did not need to complete a 476 form, which was a decision [REDACTED] reportedly made based on his first instinct to take [REDACTED] at his word, the fact that [REDACTED] supervisor apparently knew what was going on, and the fact that he saw zero risk to the privacy of FTC data [REDACTED] added that, in retrospect, he would have required [REDACTED] to complete the form.
- [REDACTED] relayed that the FTC interprets equipment losses to include confiscations by law enforcement and Transportation Security Administration (TSA) officers. In response to a question from the OIG, he acknowledged that the policy as written could potentially be interpreted different ways, and he added that a future policy rewrite will make clear that the definition of lost equipment includes confiscations, including those by law enforcement and TSA.
- [REDACTED] relayed that MTPD's confiscation of [REDACTED]'s FTC-issued smartphone did not constitute a breach or incident that would have activated the FTC's Breach Notification Response Plan because the phone was encrypted and, therefore, presented a zero percent chance of risk to the privacy of the phone's content.
- [REDACTED] described the FTC's new protocols with respect to lost equipment, effective June 2019, which he said [REDACTED]

Subject Interview

On December 6, 2019, Noel Rosengart, Attorney and Investigator, and Odies Williams IV, Counsel to the Inspector General and Investigator, conducted a compelled, sworn, under-oath interview of

⁵ The CPO added that his office was historically involved in matters involving lost equipment due to the potential risk of a data breach, a risk that was subsequently eliminated through the encryption of all FTC devices.

██████████ regarding the aforementioned allegations. Prior to the interview, the OIG executed the Kalkines Warning form which specified, among other things, that ██████████ must respond to questions posed by investigators, and that he could not be criminally prosecuted for his truthful answers or their fruits. ██████████ was represented by ██████████ during his interview. ██████████ provided the following information in words or substance:

- On June 5, 2019, around 9:15 a.m., during his morning work commute through the L'Enfant Plaza Metro Station, ██████████ reportedly used his personal mobile phone to record an "unauthorized video" of a woman metro patron. The incident reportedly occurred while he rode a descending escalator towards the Blue/Orange/Silver Line platform while heading to a nearby coffee shop. Specifically, he placed his personal mobile phone, which was recording at the time, on top of his gym bag, which he placed in a position to record "whatever [he] could get on the backside," including "under the skirt." While recording, a woman on the escalator behind ██████████ tapped him on the shoulder and asked him what he was doing, and the commotion apparently alerted the victim of the event. At that time, ██████████ decided to skip coffee and took the adjacent ascending escalator towards Constitution Center (CC). The victim "chased" ██████████ and "confronted" him at the faregate near the exit to the CC building lobby ("after the faregate but before getting to the escalator") and requested that he show her his phone and the video he recorded of her, which ██████████ asserted was merely a blurry red square. She then demanded that he delete the video and ██████████ reportedly complied, and they parted ways. ██████████ asserted that he did not know either the woman he recorded or the witness, that he had never seen either of them before, and his belief that neither were FTC employees. He also asserted that, to his knowledge, no FTC personnel witnessed the recording incident, the confrontation, or the victim's and witness' subsequent reporting of the incident.
- ██████████ added that, on the following morning (██████████) when he was exiting a faregate at the L'Enfant Plaza Metro Station, he was approached by an MTPD officer and arrested. During the arrest, the officer reportedly confiscated ██████████'s personal and FTC-issued mobile devices (but no additional FTC equipment) and continued to retain them beyond his release, which occurred the following day, Friday, ██████████.⁶
- In response to the OIG's questions about whether any FTC personnel witnessed the arrest, ██████████ relayed that he saw ██████████, during the arrest, and that he asked her to come over so she could notify ██████████, of the arrest. ██████████ asserted that he did not provide ██████████ any specifics, but that he later shared incident details with ██████████ because her husband is a criminal defense attorney. Later that day, ██████████ reportedly notified ██████████, who was acting for his then supervisor, ██████████ that he would be taking annual leave that day, but did not reveal he had been arrested. ██████████ reportedly alerted ██████████ of his arrest and the charges upon her return to the office the following Monday, June 10th.
- ██████████ also relayed that he notified ██████████ of his arrest and the confiscation of his FTC-issued smartphone on the day of his arrest (or possibly the next day). ██████████ reportedly responded by saying in substance he would have to think about the necessary next steps,

⁶ According to the MTPD arrest report, ██████████ was never placed in handcuffs, placed in a police car, or moved from the public view.

including the potential completion of an FTC Form 476, *Loss, Suspected Loss, or Compromise of Nonpublic Information and/or of FTC-issued Equipment*, and that he would let ██████ know. ██████ further confirmed to the FTC that he never completed a FTC 476 form regarding his FTC phone confiscation partly because of his belief that ██████ never required him to do so.

- ██████ relayed to the OIG that he has never: 1) used any devices to take any recordings or pictures of a sexual nature of FTC employees, contractors, interns, or visitors (FTC-affiliated individuals); 2) used an FTC-issued device to download or view, store, save, send, share, or search for videos or images of a sexual nature; 3) used any personal or work device to video record or photograph FTC-affiliated individuals without their knowledge or consent; 4) used the BCP ██████ to view, download, upload, share, send, or distribute materials of a sexual nature, adding that he has never even touched a tech lab computer; or 5) placed any cameras or recording devices in an FTC facility.⁷
- ██████ provided the OIG with the encryption password to his FTC-issued ██████ smartphone so the OIG could verify his responses regarding the device.
- In response to questions regarding ██████'s practices of coming into the office on weekends, he relayed that it is highly unusual for him to do so, but that he sometimes comes in after vacations to catch up on work. He acknowledged that he "believes" he came to the office on Sunday, June 9th, subsequent to his release from jail, and that the purpose would have been to catch up on work since he had been out the previous Thursday and Friday, adding that he also wanted to make sure he had copies of his performance reviews and resumes.⁸ He recalled staying for a couple hours. He asserted that he did not delete, modify, or remove any data from his FTC computer or other FTC-issued device during the visit. When confronted by the OIG regarding the fact that all of his emails for the January – August 2019 period had been permanently deleted from his Outlook account, he asserted that he occasionally deletes larger emails to make space in the system but never in an effort to delete evidence. He added that he has never deleted his internet browser history from any FTC device.
- ██████ also discussed the circumstances surrounding his issuance of a new FTC ██████ despite the fact that he never retrieved his ██████ after its confiscation by MTPD. He relayed that he talked to ██████ and explained why he did not have his old phone to turn in. ██████ then reportedly told ██████ to meet him during one of the planned ██████ so that Jennings could usher him through the process, which resulted in ██████ receiving a new iPhone device.
- With respect to questions regarding ██████'s licenses to practice law, he relayed that he is an ██████. He relayed that both bars were notified of his guilty plea and conviction in writing within the required timeframes.⁹

██████ was advised that images of a sexual nature include, but are not limited to, materials that are sexually explicit or sexually oriented.

⁸ An OIG review of ██████'s ██████ records confirmed that he entered the FTC's Constitution Center building on Sunday, June 9, 2019.

⁹

- ██████ expressed remorse regarding the incident and took responsibility for his actions, acknowledging that the incident was immoral and that his actions were wrong. He stated that there was no excuse for his behavior, and that the incident does not represent who he is as a person, adding that he is taking proactive steps to rectify this matter.

IT Systems Searches

Our review of ██████'s email records confirmed that all of his emails for the period of January through April 2019 had been permanently removed from ██████'s Outlook account, apparently by ██████. However, the OIG was able to access these emails via a search of his ██████ ██████ phone, which also included a search of the phone's photo/video gallery, file system, text/call history, and email folders. None of these searches yielded evidence that ██████ used the equipment to download, upload, view, store, save, send, share, or search for videos or images of a sexual nature.

We note that, due to limitations in the FTC's data-storing policies and practices, we were delayed in acquiring certain information technology records relevant to our investigation, including: ██████'s FTC Outlook email records, his FTC-issued laptop and smartphone browsing history, and a logical image of ██████'s FTC-issued laptop.¹⁰

III. Potential Violations

- 5 C.F.R. § 2635.704, *Misuse of Government Property*
- FTC Administrative Manual, Chapter 5, Section 300, *Standards of Conduct*
- FTC Administrative Manual, Chapter 5, Section 220(9), *Safeguarding Personally Identifiable Information – Reporting Requirements*

IV. Analysis

A. *Misuse of Government Property*

Our investigation determined that ██████ did not misuse his FTC-issued ██████ smartphone in violation of 5 C.F.R. § 704, *Use of Government Property*. The regulation provides as follows:

(a) **Standard.** An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) **Definitions.** For purposes of this section: (1) **Government property** includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles. (2) **Authorized purposes** are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

¹⁰ We determined that this delay did not rise to the level of a reportable event pursuant to section 5(a)(21)(B) of the Inspector General Act of 1978, as amended (5 U.S.C. App.).

The evidence establishes that ██████ did not use any government property (*i.e.*, his FTC-issued ██████ for unauthorized purposes as it relates to the ██████, video recording incident that resulted in his misdemeanor conviction for Attempted Voyeurism-Recording. None of the documents or information provided by MTPD or the U.S. Attorney’s Office, including the arresting officer’s report, establish that ██████ used his FTC device in furtherance of the event. This position is supported by the results of the OIG’s and OCIO’s searches of ██████’s smartphone and other government-issued equipment, which were determined to contain no evidence of stored or deleted video recordings from the incident. Additionally, ██████ asserted to the OIG during his under-oath interview that he used his personal mobile device for the attempted recording as opposed to his FTC device. Thus, the only nexus we identified between ██████’s FTC-issued smartphone and the June 5th incident was the fact that the phone was confiscated by MTPD pursuant to his arrest, as discussed below, and potentially the close proximity of the incident and subsequent arrest to the FTC. As a result, we did not substantiate a violation of 5 C.F.R. § 2635.704.¹¹

B. Safeguarding Personally Identifiable Information (PII) – Reporting Requirements

We did not substantiate that ██████ violated Chapter 5, Section 220, *Safeguarding Personally Identifiable Information*, of the FTC Administrative Manual by failing to report the June 6, 2019, MTPD confiscation of his FTC-issued smartphone to the appropriate FTC authorities. Subsection 9, *Reporting Requirements*, of the policy provides in relevance that:

A. If you become aware of the potential loss or compromise of nonpublic information/CUI or PII, whether public or nonpublic, in any form (e.g., encrypted or unencrypted, paper or electronic), report it immediately to your manager and to the ESD at (202) 326-3500 or HelpDesk@ftc.gov. Contractors are required to notify both their COR and the ESD. If the incident occurs during off hours, leave a voice message with or send an email to the ESD. Individuals must provide the ESD with the following information:

- (1) Your name and contact information.
- (2) A detailed description of the incident, including, if applicable, how the information was disclosed (unauthorized access, theft, loss of information).
- (3) If applicable, the types of CUI or PII that were exposed (names, addresses, phone numbers, SSNs).
- (4) If the information was protected and how (e.g., password protected, encrypted).
- (5) Date and time of occurrence.
- (6) If law enforcement was notified and any case number.

B. In addition, you must complete FTC Form-476, *Incident Reporting Form*, no later than 72 hours after the incident occurs.¹²

The FTC Administrative Manual at Chapter 4, Section 800, *Physical Security – Incident Reporting*

¹¹ Because we did not substantiate a violation of 5 C.F.R. § 2635.704, we also did not substantiate that ██████ conduct related to his FTC-issued smartphone violated the standards of conduct, as specified in Chapter 5, Section 300, of the FTC Administrative Manual.

¹² ██████ relayed that reportable events under these procedures include instances of device confiscations by law enforcement and TSA personnel. In response to a question from the OIG, ██████ acknowledged that the policy as written could potentially be interpreted as exempting such confiscations because the devices would be secured via the agency’s evidence storage procedures, and the fact that access by law enforcement is deemed an authorized use. ██████ added that the revised version would make clear that the definition of lost includes confiscations, including those by law enforcement and TSA.

(updated June 2019), designates the CSO as the FTC official responsible for managing the FTC's Physical Security Program, which includes protecting the agency from events involving lost equipment. Per the policy, the CSO is required to consult and coordinate with the CPO to ensure compliance with the Privacy Act of 1974 and other applicable privacy laws, regulations, and policies. The policy at subsection 800(6)(V), *Incident Reporting*, states that:

(1) An incident reporting program is an essential element in any security program. The timely reporting of ... losses ... or other security incidents is important. A timely report increases the possibility of recovering the property, minimizing damage, and apprehending the perpetrator. Any staff who discovers, witnesses, or has knowledge of a criminal, dangerous, or unauthorized practice or condition, or a violation of security regulations shall immediately report the matter to Physical Security personnel at ftcsecurity@ftc.gov or (202) 326-2501 or -2508. Additionally, if the incident involves a suspected or actual loss, damage, or compromise of the FTC's information systems, equipment, or other assets (e.g., personally identifiable or other sensitive information, such as non-public information or Controlled Unclassified Information), staff are required to report it immediately to their manager and to the Help Desk at (202) 326-3500 or email HelpDesk@ftc.gov.

Our investigation determined that [REDACTED] did not properly report the loss of his FTC-issued smartphone by virtue of his failure to submit a Form 476, which would have alerted all of the appropriate individuals of the event (*i.e.*, OCASO via the CSO, the CPO, the Acting Chief Information Privacy Officer, the Enterprise Service Desk/IT Helpdesk, and his supervisor).¹³ Thus, [REDACTED] notifying only his supervisor and the CPO regarding his FTC smartphone's confiscation did not meet agency reporting requirements, and his failure to submit a Form 476, among other things, prevented OCASO from being able to properly account for the equipment and take any necessary steps to protect the Commission.

[REDACTED]'s noncompliance with the reporting policy is mitigated by the fact that he received an apparent policy exception from [REDACTED], who reportedly told [REDACTED] during an early June 2019 telephone conversation that he did not need to submit a Form 476 at that time based on the fact that: 1) [REDACTED] knew where the phone was (in MTPD custody); 2) [REDACTED]'s then supervisor, [REDACTED], was aware of the situation; and 3) [REDACTED] saw zero risk to the privacy of FTC data, since [REDACTED]'s FTC-issued [REDACTED] device was encrypted.¹⁴

We note that OCASO is responsible for addressing losses of IT equipment; therefore, [REDACTED] alone did not have the authority to excuse [REDACTED] from the requirement to complete a Form 476.¹⁵ Nonetheless, we found [REDACTED]'s reported belief that [REDACTED] actions excused his requirement to submit the form to have been reasonable under the circumstances.

¹³ Per the new agency procedures effective June 2019, the offices and officials responsible for addressing lost IT equipment receive push notifications of the lost devices via the Office of the Executive Director listserv (OED-LostDeviceReporting-DL@ftc.gov).

¹⁴ The OIG found no evidence of a "breach" or "incident," as defined in Office of Management and Budget Memorandum 17-12 at 9 and included in the FTC's Breach Notification Response Plan at 5. The phone remained in the custody of MTPD, where it would have remained stored and secured in accordance with their evidence maintenance policies. The phone remained in MTPD's possession until September 30, 2019, when custody of the phone was transferred to the FTC's Physical Security Office (PSO). On December 14, 2019, custody of the phone was transferred to the OIG, which still maintains custody of the device in accordance with our evidence storage policy.

¹⁵ We were notified that [REDACTED] been counseled by management for his actions, and the OIG does not intend to conduct any further investigative activity of [REDACTED] actions with respect to this event. However, we will review the existing policies to determine whether to recommend any revisions to the policies for reporting IT equipment losses.

V. Conclusion

Our investigation determined that [REDACTED] did not misuse his FTC-issued [REDACTED] smartphone in violation of 5 C.F.R. § 704, *Use of Government Property*. Additionally, we did not substantiate that he violated Chapter 5, Section 220, *Safeguarding Personally Identifiable Information*, of the FTC Administrative Manual by failing to report the loss of his FTC-issued smartphone upon its confiscation by the Metro Transit Police Department. This matter is now closed, and we are providing this Report of Investigation to management for consideration and any action deemed appropriate.

We will continue to review the relevant policies and procedures to determine whether any policy clarifications are needed to directly address confiscations of FTC-issued IT equipment by law enforcement, and/or to address the limitations in the FTC's data-storage policies and practices, which delayed our ability to secure certain information technology records relevant to our investigation.

FEDERAL TRADE COMMISSION
OFFICE OF INSPECTOR GENERAL



REPORT OF INVESTIGATION
ALLEGATIONS OF ENGAGING IN OUTSIDE EMPLOYMENT
WITHOUT OGC APPROVAL AND MISUSE OF RESOURCES

File No. I-20-205

ORIGINAL

May 26, 2020

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Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

REPORT OF INVESTIGATION

INVESTIGATION NUMBER: I-20-205

TITLE: Allegations of Engaging in Outside Employment without OGC Approval and Misuse of Government Resources

INVESTIGATORS: Noel A. Rosengart, Attorney and Investigator
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I. Predication

This investigation was predicated on a November 1, 2019, referral from [REDACTED], alleging that [REDACTED], was misusing Federal Trade Commission (FTC) resources and official time and engaging in outside employment without approval from her supervisor or the FTC's Office of the General Counsel (OGC). Specifically, [REDACTED] stated that:

1. [REDACTED] is recording and uploading videos to her YouTube site, [REDACTED] during work hours on her telework days of Monday and Friday;
2. [REDACTED] is promoting her outside business ventures in some of these videos in potential violation of OGC's outside employment rule; and
3. [REDACTED] is misusing FTC resources by writing a novel (potentially containing sexually explicit content) and working on [REDACTED] and some of her outside business ventures during her official duty hours.

II. Background

[REDACTED], who is currently a [REDACTED] commenced employment with [REDACTED]. Due to her [REDACTED] status, [REDACTED] has never received or been required to take or attend any ethics training. [REDACTED] has been her direct supervisor since she began the position in 2006.

Since 2006, [REDACTED] duty hours have been 8:00 a.m. to 4:30 p.m. From around fiscal year 2014 until January 8, 2020, [REDACTED] had an active telework agreement and teleworked regularly, receiving approval for recurring telework twice a week on May 11, 2017. On January 8, 2020, [REDACTED] revoked [REDACTED] telework agreement for inadequate productivity.

In 2011, an OIG investigation found that [REDACTED] misused a government printer and computer to research, write, and print two books she self-published in [REDACTED]. During the investigation, [REDACTED] admitted to misusing government resources and provided a written statement attesting to such.¹ [REDACTED] subsequently received a 14-day suspension for her conduct.

Following her suspension, in November 2011, OGC approved [REDACTED]'s request to engage in an outside employment activity, likely related to writing and publishing books.² On September 29, 2014, [REDACTED] requested outside employment approval from OGC to earn commission as an online travel consultant for [REDACTED]. In her request, [REDACTED] certified that [REDACTED] "would not depend in any way on information obtained as a result of my official government position," nor would she "use any official time or any Government property, resource, or facilities not available to the general public in connection with this outside employment."³ On October 2, 2014, [REDACTED] received approval from OGC.

¹ Attachment 1. September 30, 2011 OIG Interview Written Statement (3 pages).

² Designated Agency Ethics Officer (DAEO) Lorie Pankey advised the OIG that [REDACTED] received approval for some type of outside employment and/or activity, but that OGC did not have electronic copies at that time.

³ Attachment 2. August 29, 2014, Request to Engage in Outside Employment (3 pages).

III. Facts

A. Outside Employment and Activities

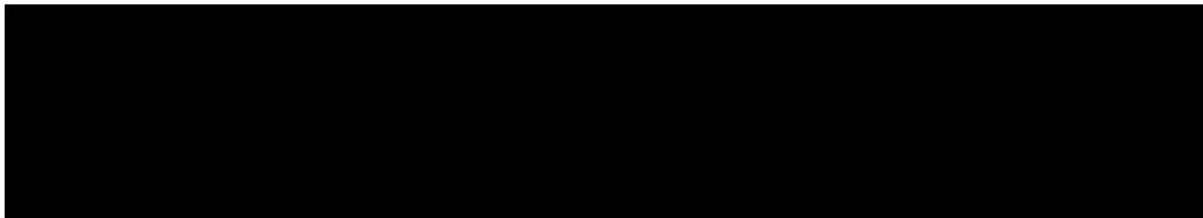
1. [REDACTED] operates [REDACTED], which is directly connected to, and used to promote various other endeavors. [REDACTED] activities include: (1) an [REDACTED] YouTube channel,⁴ with more than 850 uploaded videos since June 29, [REDACTED] with the first uploaded video apparently recorded from her FTC office on that date, and approximately 2,000 current subscribers; (2) an email address;⁵ (3) an [REDACTED] website;⁶ (4) two Twitter accounts that are used in furtherance of [REDACTED] YouTube Channel;⁷ (5) an [REDACTED]-associated Facebook Account named [REDACTED]⁸ (6) an [REDACTED] Instagram account;⁹ and (7) an [REDACTED] Pinterest account.¹⁰ The [REDACTED] website and [REDACTED] YouTube channel are used by [REDACTED] to promote [REDACTED].

As recently as May 8, 2020, the [REDACTED] homepage included the following language:

Welcome to [REDACTED]

We hope you can find everything you need. Coaching With [REDACTED] is focused on providing high-quality service and customer satisfaction – we will do everything we can to meet your expectations. With a variety of offerings to choose from, we’re sure you’ll be happy working with us. Look around our website and if you have any comments or questions, please feel free to contact us. We hope to see you again! Check back later for new updates to our website. There’s much more to come!

The following products and services, among others, were available from the [REDACTED] website as recently as May 8, 2020:



Also on the Home page were a link to an inoperable Coaching Page for [REDACTED] and links to an Instagram, Twitter, LinkedIn, Pinterest, and Facebook account. The [REDACTED] webpage was created in 2017 and contains:

⁴ [REDACTED]

- an “About Me” page which contains a biography on [REDACTED];¹²
- a “Thank You!” page containing links to a [REDACTED] Travel Certificate and Airfare & Vacation Getaway complements of [REDACTED] and listing [REDACTED] website, [REDACTED] and its phone number([REDACTED]);¹⁵
- a “Coaching Products” page which links directly to [REDACTED] and lists [REDACTED] audio workbooks for purchase at various costs;
- a “My YouTube Channel” page which contains a link to [REDACTED] YouTube Channel;¹⁵ and
- a “Contact” page which states [REDACTED] is a tree that has many branches. We specialize in ghost writing/editing [REDACTED] book group travel [REDACTED] Coaching ([REDACTED]) and wreath making.”¹⁶

[REDACTED] started an [REDACTED] YouTube Channel on October 4, 2014, with the following description: “Welcome to my channel! Every week I will be bringing you videos that cover: Coaching, Travel, Catching Up With Me and Vlogs. Enjoy!”¹⁷ Since at least September 2015, [REDACTED] has used her [REDACTED] YouTube channel, [REDACTED]-associated social media accounts, and [REDACTED]¹⁸ to promote various outside activities, including [REDACTED]

With respect to the volume of [REDACTED] YouTube activity, [REDACTED] herself developed an Excel spreadsheet in which she identifies 168 “coaching” videos and 178 “travel” videos that she posted to her [REDACTED] YouTube Channel. The OIG acquired this spreadsheet from [REDACTED] personal network folder on November 14, 2019.¹⁹ At the time of this ROI, the OIG identified that [REDACTED] indeed had a playlist of at least 179 “travel” videos and 168 “coaching” videos uploaded on her [REDACTED] YouTube Channel.²⁰ Furthermore, a number of these videos were specifically related to her outside employment and activities, including:

- approximately 20 videos with [REDACTED] in the video title;
- approximately 17 videos with [REDACTED] in the video title; and
- at least two videos referring to her writing activities, dated February 6, 2017²¹ and October 14, 2019.²²

The OIG first contacted [REDACTED] for a voluntary subject interview on February 4, 2020. On

12

[REDACTED]

18 This website provides a link to [REDACTED] webpage and contains various coaching packages.

19 Attachment 3. Spreadsheet of [REDACTED] s video counts as of 06-26-2019 (1 page).

20

[REDACTED]

22 Attachment 4. [REDACTED] d describes in detail the content of two of the novels she is writing, Kanes Mate and Coles Mate, during a [REDACTED] ([REDACTED] 5 pages).

travel forms, and flyers identified on [REDACTED]'s FTC-issued laptop or personal network drive.³⁹

The OIG obtained other documents entitled “[REDACTED]’s Updated Bio,” “My Press Kit,” and “My About Me Page” from her FTC laptop and personal network folders.⁴⁰ In “My Updated Bio,” [REDACTED] states in an introductory paragraph that she is the owner of [REDACTED] and also a certified life coach, certified mediator, and author of three published books. Under the title “[REDACTED]’s Coaching Products,” [REDACTED] lists eighteen coaching workbooks and audio files, and four workshops. Finally, [REDACTED] provides contact information for her [REDACTED] YouTube Channel; an email account, [REDACTED]; a website, [REDACTED] and her phone and facsimile number.

In “My Press Kit,” [REDACTED] again cites her publications and coaching products and references her social media accounts and the number of followers each has [REDACTED] also includes pricing and a description of her fees for various types of speaking engagements. [REDACTED] further includes contact information for another email account, [REDACTED]”).

In “My About Me Page,” [REDACTED] states that she is: (1) CEO/Owner/Life Coach-Speak Life Coaching Group; (2) CEO/Owner/Published Author - [REDACTED] Writings; and (3) CEO/Owner/Travel Agent - First Class Travel Service. She provides an email and website link for each business. [REDACTED] also lists four coaching products for sale with links to [REDACTED].⁴¹ Finally, [REDACTED] provides her LinkedIn and Facebook accounts for [REDACTED] and her YouTube and Instagram accounts for [REDACTED].

B. [REDACTED] Use of Government Resources

The investigation found that [REDACTED] has used a significant level of FTC resources for each of the non-work-related activities identified in Section III (A). [REDACTED] saved nearly 600 files related to (1) [REDACTED] (2) [REDACTED] Writings; (3) [REDACTED] and (4) [REDACTED] on her FTC laptop and FTC personal network drive. She also has sent numerous emails attaching files related to these activities from her FTC email account to her personal email accounts, most notably to [REDACTED]. Information contained in some of these files and emails indicates that [REDACTED] is attempting to profit from her outside activities.

With respect to [REDACTED] [REDACTED] has used FTC resources in numerous instances. For example, the “Work Books” folder on her personal network drive contained two MP3 audio workbooks related to [REDACTED] entitled [REDACTED] and [REDACTED] both of which were saved to the folder on April 21, 2017. This folder also contains material and workbooks related to [REDACTED] workshops, including a [REDACTED] registration form listing pricing options. [REDACTED] also has these and other work books for sale on her [REDACTED] website. Because [REDACTED] did not respond to our interrogatories, we were unable to acquire information on why it appeared that [REDACTED] was recording or saving these materials to her FTC-issued laptop.

³⁹ Attachment 7. Information saved on [REDACTED] (4 pages).

⁴⁰ These documents appear to have been last saved by [REDACTED] on November 23, 2019, February 14, 2019, and July 6, 2017, respectively.

⁴¹ [REDACTED]

Additionally, on September 16, 2019, [REDACTED] sent an email to her FTC account from [REDACTED] that originated from “Team Anchor” (updates@anchor.fm), advising her that: “Your podcast, [REDACTED] is now available on **PocketCasts:** [REDACTED]”⁴² This email also stated, “You can always find all the links to your podcast on your Anchor profile, at [REDACTED]”⁴³

With respect to [REDACTED] Writings, several stories and books that [REDACTED] has written or drafted, including: [REDACTED] [REDACTED] were found on [REDACTED]’s personal network folders. Some of these stories were also found in her FTC email account as Microsoft Word attachments. Each of these stories contain explicit language, sexual references, and explicit descriptions of sexual acts.

On February 4, 2019, [REDACTED] emailed drafts of [REDACTED] [REDACTED] from her FTC email to her [REDACTED] ⁴⁴
On January 29, 2020, [REDACTED] emailed a draft of [REDACTED] from her FTC email to her [REDACTED] [REDACTED] stating in the text, “I need to add 10 more chapters on here!”⁴⁵ On February 4, 2020, [REDACTED] emailed a draft of [REDACTED] from her FTC email to her [REDACTED] ⁴⁶ On February 6, 2020, [REDACTED] emailed [REDACTED] from her FTC email address to her [REDACTED] address.⁴⁷ Because [REDACTED] did not respond to our interrogatories, we were unable to obtain an explanation on the extent to which FTC resources were used to develop these writings.

[REDACTED] also sent various email messages to her FTC email account from her [REDACTED] with the subject line “Print” that appear related to [REDACTED] and [REDACTED]. These emails include: (1) a pdf file in an email dated February 19, 2020; (2) a pdf file in an email dated February 22, 2020; (3) four pdf files in one email dated February 25, 2020; and (4) four pdf files in another email on February 25, 2020.⁴⁸

[REDACTED] also sent four emails from another email account, [REDACTED], to her FTC email on November 18, 21, 22, and 25, 2019.⁴⁹ Each of these emails contained a picture that [REDACTED] appears to have sent to later upload as a screenshot for her [REDACTED] YouTube channel. The OIG determined that following each email [REDACTED] on November 18, 21, 22, and 25, 2019, she uploaded a [REDACTED] YouTube Video that same day containing the picture in the email.⁵⁰

The “Video Notes” folder on [REDACTED] personal network drive contained approximately 170 files that have been added since January 2016. Each file contained notes for an upcoming [REDACTED] video. On approximately 15 occasions in 2019, [REDACTED] emailed the [REDACTED] video notes from her FTC email account to her [REDACTED] Gmail. [REDACTED] then

⁴² [REDACTED]

⁴³ *Id.*

⁴⁴ Attachment 8. February 14, 2019 email from [REDACTED] to [REDACTED] Gmail with four attachments (26 pages).

⁴⁵ Attachment 9. January 29, 2020 email from [REDACTED] to [REDACTED] Gmail with one attachment (61 pages).

⁴⁶ Attachment 10. February 4, 2020 email from [REDACTED] to [REDACTED] Gmail with two attachments (one included here, the other was repeated from Attachment 9) (128 pages).

⁴⁷ Attachment 11. February 6, 2020 email from [REDACTED] to [REDACTED] Gmail with one attachment (9 pages).

⁴⁸ Attachment 12. Four email messages from [REDACTED] Gmail to [REDACTED]’s FTC email with attachments (80 pages).

⁴⁹ Attachment 13. Four email messages from [REDACTED] to [REDACTED]’s FTC email (4 pages).

⁵⁰ Attachment 14. Images captured by the OIG with related links (3 pages).

used these notes when recording her [REDACTED] Videos on her [REDACTED] YouTube channel. For example, on March 18, 2019, [REDACTED] saved a document to the “Video Notes” folder titled “Video Notes For The Week Of 04-22-19” and then emailed it from her FTC email to her [REDACTED] Gmail.⁵¹ On April 22, 2019, [REDACTED] uploaded a video to her [REDACTED] YouTube channel called [REDACTED]. The video contains much of the same content as the “Video Notes For The Week Of 04-22-19” file in the Video Notes folder.⁵² This pattern has been repeated on numerous occasions during [REDACTED]’s tenure with the FTC. Because [REDACTED] did not respond to our interrogatories, we were unable to acquire her explanation as to why such a large volume of files dedicated to [REDACTED] resided on her personal FTC network folder and why she used her FTC account to send these emails to her [REDACTED] Gmail.

Between June 29, 2015, and January 8, 2016, several [REDACTED] YouTube episodes, totaling over 30 minutes, also appear to have been recorded in [REDACTED]’s FTC office.⁵³ The OIG provided [REDACTED] with a screenshot of a [REDACTED] video posted on July 24, 2015, entitled, [REDACTED]. [REDACTED] Mayo identified the background in the video as [REDACTED]’s FTC office. Because [REDACTED] did not respond to our interrogatories, we were unable to obtain her explanation for why these videos appear to have been recorded from her FTC office.

C. OIG Interview of [REDACTED] and Request for Interrogatory Responses

On February 28, 2020, [REDACTED] appeared before the OIG for a voluntary, sworn, under-oath interview.⁵⁴ [REDACTED] was not represented at her interview by counsel. Prior to questioning [REDACTED], OIG investigators provided [REDACTED] with written Garrity warnings⁵⁵, which [REDACTED] and the OIG signed. The OIG then placed [REDACTED] under oath, and provided [REDACTED] with verbal Garrity warnings. During the beginning of the interview, OIG investigators asked [REDACTED] about whether she had sought and/or received outside employment approval for certain outside employment or activities. [REDACTED] acknowledged that she had requested and received outside employment approval for [REDACTED]. [REDACTED] stated that she has not sought OGC approval for [REDACTED] and it was “just something I made up.”⁵⁷

When asked by OIG investigators if she had recently submitted any other outside employment approval requests, [REDACTED] responded that she had submitted a request to [REDACTED] for “just stuff that I do to cover myself.”⁵⁸ Upon further questioning, [REDACTED] stated that the request was not for an organization or entity and refused to provide any title, background, or further information.⁵⁹ OIG investigators then provided [REDACTED] with a copy of the request she submitted to [REDACTED] which stated in relevant part: “I hereby request authorization to engage in outside employment for my YouTube

⁵¹ Attachment 15. April 18, 2019, email from [REDACTED] to [REDACTED] Gmail (21 pages).

⁵² Attachment 16. Transcript of YouTube video from April 22, 2019, [REDACTED] (3 pages).

⁵³ Attachment 17. Screen captures of [REDACTED] YouTube videos possibly produced in FTC space (8 pages).

⁵⁴ Attachment 18. Transcript of February 28, 2020, interview (43 pages)

⁵⁵ The “Garrity Warning” acknowledges that the subject is attending the interview voluntarily, that the subject has the right to remain silent, and that any answers the subject provides may be used against the subject in a criminal or administrative proceeding.

⁵⁶ Interview Transcript 19:14-20:1.

⁵⁷ Interview Transcript at 25:21, 28:9-10.

⁵⁸ Interview Transcript 29:19-20.

⁵⁹ Interview Transcript 29:21-30:8.

channel, [REDACTED]”⁶⁰

After being presented with the request, [REDACTED] acknowledged that the request was for [REDACTED].⁶¹ When asked to describe [REDACTED], [REDACTED] stated that it “just encompasses anything I choose to do... It’s anything that I choose to put under there.”⁶² [REDACTED] then confirmed that she had a website, email, Instagram, and Pinterest accounts, and a YouTube channel for [REDACTED]. She acknowledged that she realizes no income from [REDACTED], but discusses [REDACTED] and [REDACTED] on her [REDACTED] website, social media accounts, and YouTube channel.⁶³ In particular, [REDACTED] stated that her [REDACTED] YouTube channel is about a variety of topics: “It can be picking up dog crap on the corner; it can be talking about travel; it can be talking about you all if I choose to do that. But my channel covers whatever I choose to talk about.”⁶⁴

[REDACTED] refused to answer many of the OIG’s questions about her outside employment and activities, specifically [REDACTED]. The OIG investigators ultimately had to terminate the interview early due to [REDACTED]’s lack of cooperation and unprofessional conduct, which included: (1) [REDACTED] tossing her Garrity Warnings Form at an OIG investigator after signing it; and (2) raising her voice, arguing with OIG investigators, and using profane language throughout the interview.⁶⁵

Within a few hours after terminating [REDACTED]’s interview, [REDACTED] sent the OIG investigators an email apologizing for her interview behavior, adding that she would be willing to provide a written statement.⁶⁶ In response, on March 12, 2020, the OIG sent three documents to [REDACTED] to provide to [REDACTED]: (1) a Kalkines Warning Form for FTC Employees⁶⁷; (2) a Memorandum to Compel; and (3) OIG Written Interrogatories (the “interrogatories”). The documents informed [REDACTED] that she must respond to the interrogatories by March 19, 2020. [REDACTED] confirmed her receipt of the documents later that day and told [REDACTED] that she planned to respond to the interrogatories the next day to “get it out of the way.”⁶⁸

On March 23, 2020, the OIG informed [REDACTED] in writing that the OIG had not received [REDACTED]’s responses to the interrogatories that were due on March 19, 2020. The OIG reminded [REDACTED] that the responses were mandatory and notified her that [REDACTED]’s failure to respond subjected [REDACTED] to any administrative action that FTC management deemed appropriate. As of the date of this ROI, [REDACTED] has not responded to the interrogatories, requested an extension, or presented any extenuating circumstances that have prevented her from responding. [REDACTED] did not take any leave between

⁶⁰ Attachment 19. February 11, 2020, email message from [REDACTED] with attached request for outside employment (2 pages).

⁶¹ Interview Transcript 33:6-9.

⁶² *Id.*

⁶³ Interview Transcript 37:10-39:1; 38: 4-18.

⁶⁴ Interview Transcript 36:9-12.

⁶⁵ After interviewing [REDACTED], the OIG, per standard practice, referred the case to U.S. Department of Justice (DOJ). DOJ declined prosecution. Following the declination, the OIG continued its investigation as an administrative misconduct investigation.

⁶⁶ Attachment 20. February 28, 2020, email message from [REDACTED] to OIG (1 page).

⁶⁷ The “Kalkines Warning Form” notifies employees of their duty to cooperate in OIG administrative investigations, and that the information provided may be used against them in administrative proceedings, but not in criminal proceedings. The OIG provided [REDACTED] a “Kalkines Warning Form” rather than a “Garrity Warning Form” because DOJ already had declined prosecution.

⁶⁸ Attachment 21. April 20, 2020, email message from [REDACTED] to OIG (3 pages).

March 12 and 20, 2020 and ██████ knows of no other extenuating circumstances that would have prevented ██████ from timely responding to the interrogatories.⁶⁹

██████ continued to post content to her various ██████ and ██████ social media accounts, including recording and uploading videos to her ██████ YouTube channel, after the date of her OIG interview and after the date when her interrogatories were due to our office.

IV. Authorities

- 5 C.F.R. § 2635.704 (Use of Government Property);
- 5 C.F.R. § 5701.101 (Prior Approval for Outside Employment);
- FTC Administrative Manual, Chapter 1, Section 310 (Appropriate Use of Information Technology);
- FTC Administrative Manual, Chapter 5, Section 100 (Inspector General Activities); and
- FTC Administrative Manual, Chapter 5, Section 300 (Standards of Conduct).

V. Investigative Findings

The OIG found evidence to support the following:

- A. Failure to cooperate with the OIG by being disruptive and unprofessional during an interview and failing to respond to compelled interrogatories, in violation of FTC Administrative Manual (the “Manual”) at Chapter 5, Section 100, *Inspector General Activities*;
- B. Failure to obtain prior outside employment approval for ██████ and ██████, in violation of 5 C.F.R. § 5701.101; and
- C. Misuse of government property by using government resources to engage in outside employment activities in violation of 5 C.F.R. § 2635.704, *Use of Government Property*; Manual at Chapter 5, Section 300, *Standards of Conduct* & Chapter 1, Section 310, *Appropriate Use of Information Technology*.

VI. Analysis

A. Failure to Cooperate with the OIG

The OIG obtained ample evidence to support that ██████ violated the provisions in Manual Chapter 5, Section 100, *Inspector General Activities*. Section 100 requires FTC employees to cooperate with OIG investigations and to respond to questions posed by OIG investigators unless the employees have been advised that they are the subject of a criminal investigation. Failure to cooperate with the OIG may result in discipline.

First, during the OIG’s February 20, 2020 interview, ██████ tossed her Garrity Warnings Form at an OIG investigator after signing it, raised her voice, and used profane language. Because of ██████’s unprofessional and disruptive behavior, the OIG investigators ultimately had to terminate the interview early. Notably, ██████ apologized for her behavior in an email she sent to the OIG investigators just hours after the interview.

⁶⁹ *Id.*

Second, ██████ failed to respond to the OIG’s March 12, 2020 compelled interrogatories, even though ██████ offered in her February 20, 2020 apology email to provide a written statement to the OIG. Of note, the OIG included a Kalkines Warning Form in the packet with the compelled interrogatories because DOJ had declined to prosecute ██████’s case. The Kalkines Warning Form notified ██████ that she was required to cooperate and informed her that her answers would not be used against her in a criminal prosecution.

██████ acknowledged to ██████ that she received the documents on March 12th and stated that she planned to respond the following day. However, on March 19, 2020, the day the interrogatories were due, ██████ had still not responded to the OIG.

On March 23, 2020, the OIG informed ██████ in writing that the OIG had not received ██████’s mandatory responses to the interrogatories that were due on March 19, 2020. As of the date of this ROI, ██████ has not responded to the interrogatories or requested an extension. Additionally, ██████ did not take any leave between March 12th and March 19th, and ██████ knows of no reason that would have prevented ██████ from responding.

B. Failure to Obtain Approval for Outside Employment

The OIG also obtained a significant amount of evidence to support a violation of 5 C.F.R. § 5701.101, which provides that before engaging in any outside employment,⁷⁰ whether or not for compensation, an FTC employee, other than a Commissioner, must obtain the written approval of his or her supervisor and the Designated Agency Ethics Officer (DAEO) or his or her designee. Manual Chapter 5, Section 300, Part 3 explains that prior approval is required whenever the outside activity: 1) involves compensation; 2) involves the provision of personal services to a for-profit entity; or 3) involves the provision of professional services.

Here, ██████ never requested approval to engage in outside employment activity for ██████ and only submitted an outside employment request for ██████ to ██████ on February 11, 2020, approximately one week after the OIG contacted her for an interview. ██████ did not take action on ██████’s ██████ request because this investigation was already underway. ██████ was aware of the requirement to obtain approval for outside employment activities as she had requested approval for ██████

The evidence supporting a finding that ██████ qualifies as “outside employment” includes: (1) an Internal Revenue Service Employer Identification Number issued to ██████ on July 17, 2017; (2) a “MyCityMe” webpage; (3) a Twitter account; (4) a Facebook Account named “Coach ██████,” which describes ██████ as a Personal Coach and contains a phone number, ██████ website link, Messenger link, and a symbolic price range for services; (5) ██████ coaching

⁷⁰ 5 C.F.R. § 5701.101(c) defines employment as “any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether or not for compensation. It includes but it is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee. Prior approval is not required, however, to participate in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.”

workbooks, audio files, and workshops for sale on [REDACTED] (6) a link to her [REDACTED] coaching page and coaching products for sale on www.[REDACTED].m; (7) a LinkedIn account; (8) an email address; and (9) the “My About Me Page” on [REDACTED] FTC computer stated that she is the CEO/Owner/Life Coach of [REDACTED] Coaching Group.

The evidence also supports a finding that [REDACTED] is an outside activity. The [REDACTED] website has products available for sale and the [REDACTED] website and YouTube channel promote activities that [REDACTED] has either attempted to profit from or acquired OGC approval for, including [REDACTED]

C. Misuse of Government Property

The OIG also obtained a significant amount of evidence showing that [REDACTED] misused government property, in violation of 5 C.F.R. § 2635.704 (*Use of Government Property*), and the Manual’s *Standards of Conduct* and *Appropriate Use of Information Technology* sections. C.F.R. § 2635.704(a) provides that “[a]n employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.” Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest and includes office supplies, telephones, government issued computers, and other telecommunications equipment and services.⁷¹

The Manual, which relies on 5 C.F.R. § 2635, prohibits employees from using government property for any purpose other than official government business except for “limited personal use”.⁷² The “limited personal use” exception, however, specifically excludes “[r]unning a personal business or engaging in other ‘for-profit’ commercial activities,” engaging in “illegal, inappropriate, or offensive activity,” and “viewing, downloading, storing, transmitting, or copying either electronically or from a hard copy, materials that are sexually explicit or sexually oriented.”⁷³

Here, the evidence overwhelmingly shows that [REDACTED] violated Section 2635 and the Manual by misusing government resources to “[r]un[] a personal business [and] engag[e] in other ‘for-profit’ commercial activities.”

First, in subsection B. above, the evidence established that [REDACTED] and [REDACTED] were personal businesses and/or commercial activities that [REDACTED] attempted to profit from. Because of [REDACTED] and [REDACTED]’s business and commercial status, any use, even limited, of FTC resources would not be considered “limited personal use” and would violate 5 C.F.R. § 2635.704 and the Manual.

Yet, the evidence shows that [REDACTED] routinely used FTC resources for [REDACTED] and [REDACTED]. She saved hundreds of files related to [REDACTED] and [REDACTED] on her FTC laptop and personal drive on FTC’s network, including her [REDACTED] workbooks and workshop registrations and more than 170 files of “Video Notes” that she used to record her [REDACTED] YouTube videos.

Likewise, she routinely emailed items related to [REDACTED] and [REDACTED] between her FTC email account and her personal email and [REDACTED] Gmail account. Particularly notable, she sent multiple

⁷¹ See 5 C.F.R. § 2635.704(b)(1).

⁷² Manual at Ch. 5, § 300(4), Ch. 1, § 310(4).

⁷³ *Id.*

emails from her [REDACTED] Gmail to her FTC email with PDF attachments containing [REDACTED] material. The subject line of these emails was “Print.” Based on the PDFs and the subject line of the emails, it is reasonable to assume that she intended to print these items from her FTC laptop. She also sent multiple emails from her personal email to her FTC email with pictures attached. The same day as each email, the picture she attached to the email showed up as a screen shot in that day’s [REDACTED] YouTube video.

In addition, between 2015 and 2016, the evidence supports that [REDACTED] made several [REDACTED] YouTube videos from her FTC office.

The evidence also overwhelmingly supports that [REDACTED] violated Section 2635 and the Manual by using government resources to engage in “illegal, inappropriate, or offensive activity,” and “view[], download[], stor[e], transmit[], or copy[] either electronically or from a hard copy, materials that are sexually explicit or sexually oriented.”

On [REDACTED]’s FTC personal network folder, the OIG found several [REDACTED] books and stories, which all contained explicit language, sexual references, and explicit descriptions of sexual acts. As recently as February 2020, [REDACTED] sent multiple emails between her FTC email and [REDACTED] Gmail with the inappropriate and sexually explicit stories/books. Because of the sexually explicit and inappropriate nature of these stories and books, the “limited personal use” exception does not apply.

Significantly, [REDACTED] must have been aware of federal regulations and FTC policies regarding use of government resources because [REDACTED] admitted during the OIG’s 2011 investigation that she had misused government resources when she used a government printer and computer to research, write, and print two books she self-published in [REDACTED] and [REDACTED]. [REDACTED] received a 14-day suspension for this conduct, which would have put her on notice of prohibited uses of government resources. Additionally, [REDACTED] demonstrated her understanding regarding the proper use of government resources when she certified in her outside employment request for [REDACTED] that she would not “use any official time or any Government property, resource, or facilities not available to the general public in connection with this outside employment.”

VII. Conclusion

The OIG found significant evidence that [REDACTED] violated:

1. 5 C.F.R. § 2635.704, *Use of Government Property*;
2. 5 C.F.R. § 5701.101, *Prior Approval for Outside Employment*;
3. Manual Chapter 5, Section 100, *Inspector General Activities*;
4. Manual Chapter 5, Section 300, *Standards of Conduct*; and
5. Manual Chapter 1, Section 310 *Appropriate Use of Information Technology*.

This matter is now closed, and we are referring this report to management for any action deemed appropriate.

FEDERAL TRADE COMMISSION
OFFICE OF INSPECTOR GENERAL



REPORT OF INVESTIGATION
ALLEGATION OF VIOLATION OF
FINANCIAL CONFLICTS STATUTE
BY CURRENT FTC EMPLOYEE

File No. I-20-206

ORIGINAL

March 20, 2020

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Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

REPORT OF INVESTIGATION

INVESTIGATION NUMBER: I-20-206

TITLE: Allegation of Violation of Financial Conflicts Statute by Current FTC Employee

INVESTIGATORS: Jessica Hill, Program Analyst
Noel A. Rosengart, Attorney and Investigator

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PREPARED BY: Jessica Hill JESSICA HILL
Noel Rosengart

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I. Predication

On March 3, 2020, the Federal Trade Commission (FTC) Office of Inspector General (OIG) received a referral from [REDACTED] Office of General Counsel (OGC), regarding a possible violation of 18 U.S.C. § 208(a), *Acts Affecting a Personal Financial Interest*, by [REDACTED]. According to [REDACTED], on February 9, 2020, [REDACTED] Assistant Director, [REDACTED] contacted [REDACTED] about potential conflicts [REDACTED] had identified during [REDACTED] review of the Annual Financial Disclosure Report (OGE Form 450) [REDACTED] filed via FDOonline on January 7, 2020. In particular, [REDACTED] was concerned about [REDACTED]'s "stock in companies that are relevant to [REDACTED]'s [REDACTED], including [REDACTED] stock "in a target [REDACTED] and "a third-party witness [REDACTED]." The following day, February 10, 2020, [REDACTED] advised Regina Duarte, Ethics Specialist, OGC, that the current value of [REDACTED] stock holdings were: [REDACTED] in [REDACTED]; [REDACTED] in [REDACTED] and a combined amount of \$ [REDACTED] in [REDACTED]. Also on February 10th, Craig Bannon, Alternate DAEO, contacted [REDACTED] and confirmed that the alleged conflict pertains to the [REDACTED] and [REDACTED].

[REDACTED] subsequently confirmed to OGC that [REDACTED] had been working as a [REDACTED] on most aspects of these two investigations since [REDACTED] after transferring to [REDACTED] from [REDACTED] and that [REDACTED] stock holdings had not substantially changed since [REDACTED] transfer. [REDACTED] also reported these stock holdings on the OGE Form 450 [REDACTED] submitted on January 7, 2020, after [REDACTED] had transferred to [REDACTED]. Finally, the memorandum specifies that [REDACTED] did not request or obtain a waiver to participate in the matters in which [REDACTED] had a financial interest in, pursuant to 18 U.S.C. § 208(b)(1) and (3).

Section 208 states that "whoever, being an ... employee of the executive branch ... participates personally and substantially as a Government officer or employee ... in a ... particular matter in which, to his knowledge, he ... has a financial interest— [s]hall be subject to the penalties set forth in section 216 of this title." Chapter 5, CFR Part 2640 provides additional detail on the statutory interpretation of § 208, including exemptions and waivers, and it states the prohibition applies if the particular matter will have a direct and predictable effect on that interest." OGC determined that all the elements of a violation of § 208(a) were established and that no exemption or waiver was applicable to [REDACTED]'s situation.

OGC also recommended that the OIG consider several mitigating factors, including that [REDACTED] was unfamiliar with screening [REDACTED] cases for financial conflicts prior to transferring from [REDACTED] to [REDACTED]; [REDACTED] did not participate in this matter for [REDACTED] own financial gain; immediately sought guidance from OGC and recused [REDACTED] from these matters when advised about the potential conflicts; promptly divested [REDACTED] stock holdings to reduce the aggregate value of [REDACTED] stocks below the \$15,000 *de minimis* threshold; and fully cooperated with [REDACTED] supervisor and OGC regarding this matter.

II. Potential Violations

- 18 U.S.C. § 208(a) – Acts Affecting a Personal Financial Interest
- 5 CFR Part 2640 – Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208

III. Investigative Findings

On March 10, 2020, Jessica Hill, Program Analyst, and Noel Rosengart, Attorney and Investigator, interviewed ██████████ regarding the aforementioned allegations. ██████████ was not represented by counsel at ██████████ interview. Prior to the interview, ██████████ and the OIG executed the Garrity Warning form.

During the interview, ██████████ stated that ██████████ transferred to the ██████████ from the ██████████ sometime around fall 2019. As an attorney at ██████████ is supervised by ██████████ and participates in investigations of ██████████. At ██████████ was supervised by ██████████ and participated in ██████████.

Sometime in December 2019, ██████████ stated that ██████████ submitted ██████████ OGE Form 450 to OGC. Per OGC records, ██████████ filed this report on January 7, 2020. Around the second week of February 2020, ██████████ was contacted by ██████████ via email, about some potential financial conflicts ██████████ identified in ██████████'s ownership in ██████████ stocks and ██████████ participation in the ██████████. ██████████ stated that ██████████ asked ██████████ if ██████████ had contacted OGC about whether it was permissible for ██████████ to own those three stocks and work on the investigations.

The following day, ██████████ contacted Regina Duarte, Ethics Specialist, by email and then via telephone, to provide ██████████ with specifics about ██████████ ownership of the stocks in question and ██████████ work on ██████████. Duarte then referred ██████████ to Craig Bannon, Designated Alternative Ethics Officer (DAEO), for further follow-up. Prior to submission of ██████████ OGE 450, ██████████ did not believe ██████████ had any financial conflicts with respect to any stocks ██████████ owned and any investigations ██████████ was working because: 1) this was the first time ██████████ submitted a OGE 450 form as part of an enforcement division; 2) ██████████ ownership of these stocks had never created a conflict while working at ██████████ and 3) ██████████ ownership in these stocks had never changed in value to ██████████ knowledge while at the FTC, so "█████████ didn't expect it to be different."

That same day, Bannon explained to ██████████ how ██████████ stock ownership in these companies could be a technical violation of 18 U.S.C. §208(a). ██████████ stated that ██████████ was most interested in remedying the conflict so ██████████ could return to ██████████ casework as quickly as possible. Bannon advised ██████████ to recuse ██████████ from ██████████, which ██████████ stated ██████████ did immediately. A few days later, Bannon advised ██████████, following his consultation with ██████████ that ██████████ needed to divest ██████████ stock holdings below the \$15,000 *de minimis* threshold in order to recommence working on the investigation. ██████████ stated that upon receiving this advice, ██████████ divested all stock holdings in ██████████ to zero value and returned to work on this investigation only upon receiving approval from ██████████ and Bannon.² In total, ██████████ estimated that the amount of time from identification of the potential conflict to ██████████ return to this investigation was approximately five days.

¹ ██████████ advised the OIG that ██████████ did not personally work on the ██████████, but that ██████████ and ██████████ effectively merged in late 2019.

² ██████████ advised the OIG that ██████████ did not know the exact dollar figures of each of these stocks until their divestiture.

██████████ is aware of and attends annual OGC ethics training. ██████████ believes ██████████ most recent training session last year featured questions and answers, and that the topic of financial conflicts of interest was covered. In response to the OIG regarding ██████████ knowledge of the financial conflicts authorities - 18 U.S.C. § 208(a) and 5 CFR Part 2640 - ██████████ stated ██████████ is aware of the substance of these provisions, but not the specifics and monetary thresholds. For example, ██████████ knew there was a general prohibition against employees working on particular matters in which they owned stock, but did not know the specific dollar threshold until Bannon advised ██████████. Also, ██████████ stated that ██████████ did not receive prior approval to work on ██████████ or seek an exemption or waiver because ██████████ was unaware of the conflict, as ██████████ was not familiar with working on these matters having just recently commenced employment at ██████████

IV. Analysis

The OIG conducted an independent review of whether ██████████ violated § 208, which prohibits an executive branch employee from “participat[ing] personally and substantially as a Government officer or employee ... in a ... particular matter in which, to his knowledge, he ... has a financial interest...” The OIG reached the same conclusion as OGC, which determined that ██████████’s conduct violated § 208, and that no applicable exemption or waiver existed under § 208(b)(1) or (3). In an effort to avoid duplicating efforts, our analysis below includes some language from OGC’s referral memorandum (included as an attachment), as augmented by our additional findings.

Financial Interest

The OIG determined that ██████████ had a financial interest in ██████████ in which ██████████ worked. Section 2640.103(b) states that:

[t]he term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

██████████’s financial interest in ██████████ stems from the fact that ██████████ held stock in ██████████ and ██████████ when ██████████ participated in this investigation. The nexus between ██████████ and ██████████, and ██████████ stock is discussed below.

Knowledge of the Financial Interest

The OIG determined that ██████████ had or should have had knowledge of ██████████ financial interest in ██████████, and ██████████ as required by § 208. Case law has established that an individual need not have specific intent to violate § 208. *See U.S. v. Lord*, 710 F.Supp. 615, 617 (E.D. VA. 1989). Thus, the fact that ██████████ should have known of ██████████ financial interest in ██████████ and ██████████ should suffice. ██████████ knew ██████████ had stock ownership in ██████████, and ██████████ prior to working on ██████████ by disclosing these

stocks holdings on the most recent OGE 450 form [REDACTED] submitted in January 2020. Additionally, [REDACTED] should have known the § 208 prohibitions from the in-person OGC ethics trainings [REDACTED] completed on September 5, 2019, which covered the topic of financial conflicts of interest.³

Particular Matter

The OIG determined that [REDACTED]'s financial interest was in a "particular matter," as described in 5 CFR § 2640.103(a)(1), which states:

[t]he term "particular matter" includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.... The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

A "particular matter" may include participation in an investigation as described in part by 5 CFR §2640.103(a)(2):

Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

[REDACTED] engaged in a particular matter when [REDACTED] worked extensively as a [REDACTED] on FTC [REDACTED] between [REDACTED].

Personal and Substantial Participation

The OIG determined that [REDACTED]'s participation on the matter in question was personal and substantial. 5 CFR § 2640.103(a)(2) states that:

[t]o participate 'personally' means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate 'substantially' means that the employee's involvement is of significance to the matter.... Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

[REDACTED]'s direct participation in [REDACTED] as a [REDACTED] occurred for approximately six months from around [REDACTED]. Additionally, [REDACTED] stated that [REDACTED] conducted interviews of interested parties, issued a voluntary information request to [REDACTED], and engaged in negotiations with [REDACTED] regarding document production. However, [REDACTED] stated that at no time did [REDACTED] participate in [REDACTED] for [REDACTED] own personal gain.

³ Prior to this incident, [REDACTED] stated that [REDACTED] did not closely monitor [REDACTED] stock holdings.

Direct and Predictable Effect

The OIG determined that ██████'s participation had a direct and predictable effect on ██████ personal financial interests, as prohibited by § 208. An effect is deemed *direct* "if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest." Section 2640.103(a)(3)(i). An effect is deemed *predictable* "if there is a real, as opposed to speculative, possibility that the matter will affect the financial interest." Section 2640.103(a)(3)(ii). Of significance here, a particular matter "may have a direct and predictable effect on an employee's financial interests in or with a nonparty," which can include a third party information provider.⁴

In the present case, we determined that the matter had a "direct" effect on the financial interests of ██████ because there was a "close causal link" between the Commission's decisions or actions regarding the ██████ and their expected effect on the value of ██████'s ██████ stock holdings. ██████ clearly has a financial interest in ██████, because there is a real possibility that the investigation will affect ██████ financial interests as the target of the investigation. Finally, Section 208 imputes ██████'s financial interests in this particular matter to ██████ because ██████ owns ██████ stock. As a result, we determined that the potential impact of ██████ on ██████'s financial interest in ██████ was predictable and went beyond mere speculation.⁵

Therefore, the OIG determined that all of the elements of § 208(a) have been established.

Exemptions and Waivers

The OIG did not identify any exemptions or waivers that would permit ██████ to participate on matters related to ██████. 5 CFR § 2640.202 states that:

An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from ██████ ownership of publicly traded securities that qualify for the applicable *de minimis* exemption(s) under 5 C.F.R. § 2640.202. For such matters, the *de minimis* exemptions are no more than \$15,000 for the aggregate value of the employee's stock in all parties to the matter, *id.* at § 2640.202(a), and no more than \$25,000 for the aggregate value of the employee's stock in all companies affected by the matter (including parties and nonparties), *id.* at § 2640.202(b).

The documents ██████ provided to OGC establish that the aggregate value of ██████ financial interest in the ██████ was approximately ██████ when ██████ started working on the investigation, which is in excess of the allowable threshold of \$15,000, thus rendering the *de minimis* exception inapplicable.

Mitigating Factors

██████ advised the OIG that ██████ participation while working on this matter in which ██████ had financial conflicts was inadvertent, and we did not identify any evidence to the contrary. ██████

⁴ See the notes section of 5 CFR § 2635.402(b)(1), *Disqualifying Financial Interests*.

⁵ With respect to whether the effect is predictable, "[i]t is not necessary... that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial." 5 C.F.R. § 2640.103(a)(3)(ii).

provided evidence establishing that, upon learning of the conflict, [REDACTED] immediately recused [REDACTED] from the investigations, divested all stock holdings so [REDACTED] could remedy the conflict and rejoin case team, and then at that time was allowed by OGC to resume [REDACTED] participation. Finally, [REDACTED] stated that [REDACTED] now understands the importance of monitoring [REDACTED] stock portfolio with respect to investigations [REDACTED] is working on, as well as the particulars of financial conflict of interest law.

V. Department of Justice Consultation

On March 17, 2020, the OIG consulted with [REDACTED], Trial Attorney, Department of Justice, Public Integrity Section (PIN), in an informal referral of [REDACTED]'s potential § 208 violation.⁶ [REDACTED] concluded that there was no criminality on the part of [REDACTED], noting that [REDACTED] saw no intent on the part of [REDACTED] and that [REDACTED] was not used to screening for conflicts and took immediate corrective action. As a result, PIN declined to open a case on this matter.

VI. Disposition

Based on our consultation with PIN, and PIN's subsequent declination, this matter is now closed, and we are providing this Report of Investigation to management for consideration and any action it deems appropriate.

⁶ We note that it is not PIN's practice to provide formal declinations on case referrals.