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Department of Energy
Washington, DC 20585

February 27, 2023

VIA EMAIL

Re: Freedom of Information Act Request, HQ-2020-00607-F.

This is a response from the Department of Energy (DOE) Office of Inspector General (OIG) to your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request sought copies of the following:

> A copy of the final report, report of investigation, and closing memo, as applicable, for the following DOE OIG investigations:
>
> 18-0001-W, 17-0015-I, 16-0119-I, 17-0072-I, 18-0002-W, 18-0004-W, 17-0043-I, 18-0004-W, 18-0008-W, 15-0127-I, 14-0103-I, 13-0048-I, 18-0009-I, 18-0012-W, 18-0011-W, 17-0001-W, 18-0013-W, 16-0065-I, 17-0091-I, 18-0027-I, 19-0002-W, 18-0061-I, 18-0038-I, 17-0079-I, 19-0004-W, 19-0013-I, 17-0002-W, 13-0013-I, 19-0006-W,17-0079-I, 18-0073-I, 17-0076-I, 18-0031-I, 15-0016-I, 04-0063-I, 19-0089-I, and 16-0115-I.

On December 15, 2021, you agreed to amend your FOIA request exclude the case files you previously received on October 19, 2021, and October 26, 2021, which pertain to the following DOE OIG investigations:

> 16-0065-I (FOIA # HQ-02021-00354-F received on 10/19/21); 19-0004-W and 19-0006-W (HQ-2021-00355-F received on 10/19/21); 18-0004-W, 18-0008-W, 18-0009-I, 18-0013-W, 18-0027-I, 18-0031-I, 18-0038-I, 18-0061-I and 18-0073-I (HQ-2021-00810-F received on 10/26/21)

The OIG completed a search of its files and identified thirty (30) documents responsive to this request. A review of the documents and a determination concerning their release has been made pursuant to the FOIA. Based on this review, we determined that certain material should be withheld pursuant to 5 U.S.C. § 552 (b)(3), 5 U.S.C. § 552 (b)(6) and 5 U.S.C. § 552 (b)(7)(C) of the FOIA, hereinafter referred to as Exemptions 3, 6 and 7(C), respectively. Specifically, the OIG has determined:

- Documents 1 through 10, 12 through 23, and 25 through 30 are being released to you with certain material withheld pursuant to Exemptions 6 and 7(C);

- Documents 11 and 24 are being released to you with certain material withheld pursuant to Exemptions 3, 6 and 7(C);

Exemption 3 protects from disclosure information "specifically exempted from disclosure by statute." In this case, the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b), provides that False Claims Act complaints brought by individuals on behalf of the United States shall be filed *in camera* and remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The information being withheld under Exemption 3 remains under seal pursuant to 31 U.S.C. § 3730(b).

Exemption 6 protects from disclosure "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . ." Exemption 7(C) provides that "records or information compiled for law enforcement purposes" may be withheld from disclosure to the extent the production of such documents "could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . ."

Names and information that would tend to disclose the identity of certain individuals have been withheld pursuant to Exemptions 6 and 7(C). Individuals involved in OIG enforcement matters, which in this case include subjects, witnesses, sources of information, and other individuals, are entitled to privacy protections so that they will be free from harassment, intimidation, and other personal intrusions.

In invoking Exemptions 6 and 7(C), we have determined that it is not in the public interest to release the withheld material. We have determined that the public interest in the identity of certain individuals who appear in these files does not outweigh these individuals' privacy interests. Those interests include being free from intrusions into their professional and private lives.

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

To the extent permitted by other laws, DOE will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

As required, all releasable information has been segregated from the material that is withheld and is provided to you. *See* 10 C.F.R. § 1004.7(b)(3).

This decision may be appealed to the Office of Hearings and Appeals within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals must be in writing and addressed to the Director, Office of Hearings and Appeals, HG-1 /L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You may also submit your appeal by email to OHA.filings@hq.doe.gov. The appeal must be clearly marked "Freedom of Information Appeal" on the envelope and letter, and if submitted by email, in the subject line of the email. *See* 10 C.F.R. § 1004.8(b).

Once your administrative remedies are exhausted, judicial review will be available to you in the United States District Court in the district in which you reside, or have your principal place of business, in the district in which the records are situated, or the District of Columbia. *See* 10 C.F.R. § 1004.8(d)(3).

If you have any questions about the processing of your request, you may contact our FOIA Public Liaison, Mr. Alexander Morris. He may be contacted to discuss any aspect of your request by phone at (202) 586-3159 or by email at Alexander.Morris@hq.doe.gov. Please know that you also have the right to seek dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services (https://ogis.archives.gov) at (202) 741-5770; (877) 684-6448 (toll free); by fax: (202) 741-5769, or by email at ogis@nara.gov.

Sincerely,

LEWE SESSIONS Digitally signed by LEWE SESSIONS
Date: 2023.02.27 12:05:07 -05'00'

Lewe Sessions
Assistant Inspector General
for Investigations
Office of Inspector General

Enclosures

DOCUMENT 1

U.S. Department of Energy
Office of Inspector General
Office of Investigations

Investigative Report to Management

17-0001-W **July 5, 2018**

This report, including any attachments and information contained therein, is the property of the Office of Inspector General (OIG) and is for ~~OFFICIAL USE ONLY~~. The original and any copies of the report must be appropriately controlled and maintained. Disclosure to unauthorized persons without prior OIG written approval is strictly prohibited and may subject the disclosing party to liability. Unauthorized persons may include, but are not limited to, individuals referenced in the report, contractors, and individuals outside the Department of Energy. Public disclosure is determined by the Freedom of Information Act (Title 5 U.S.C. Section 552) and the Privacy Act (Title 5 U.S.C. Section 552a).

U.S. Department of Energy
Office of Inspector General
Office of Investigations

July 5, 2018

MEMORANDUM FOR THE SECRETARY

FROM: April G. Stephenson
Acting Inspector General

SUBJECT: INFORMATION: Retaliation Complaint pursuant to Title 41 United States Code Section 4712. (OIG Case No. 17-0001-W)

This report serves to inform you of an investigation conducted by the U.S. Department of Energy (DOE), Office of Inspector General (OIG), Office of Investigations. The investigation concerns allegations filed by (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) under Title 41 United States Code, Section 4712, "Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information." (b)(6); (b)(7)(C) asserted that her reporting of possible waste, fraud, abuse, or mismanagement, and possible violations of law, rule, or regulation related to a Federal contract between the DOE and her employer, Battelle Memorial Institute (Battelle), operating at Pacific Northwest National Laboratory (PNNL), was a contributing factor in the reassignment of her employment. (b)(6); (b)(7)(C) was the (b)(6), (b)(7)(C) until her reassignment to the (b)(6), (b)(7)(C) (b)(6); (b)(7)(C) team, effective [redacted] 2017. (b)(6), (b)(7)(C)

In order for the complainant to prevail under Section 4712, she must establish by a preponderance of evidence that she made a protected disclosure that she reasonably believes is evidence of gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger, or a violation of law, rule or regulation. The complainant must also demonstrate that the employer was aware of the protected disclosure and that the disclosure was a contributing factor in the personnel action which was taken. The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as the proximity in time between the protected disclosure and the personnel action. Assuming that the complainant meets this burden, the burden of proof shifts to the employer, which must demonstrate, by clear and convincing evidence, that it would have taken the same personnel action in the absence of the protected disclosure.

(b)(6); (b)(7)(C) asserted that, in an email dated March 31, 2017, she disclosed information alleging that management was pressuring her and her team to change the root cause statement and was providing

This document is for [redacted]. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

changes to improperly edit the wording of the root cause statement within the Cause Analysis Report for Payment to a Fraudulent Subcontractor. In response to her alleged disclosure, (b)(6), (b)(7)(C) stated that management reassigned her.

The information gathered during the investigation suggests (b)(6), (b)(7)(C) had established by a preponderance of the evidence that she made a protected disclosure to her supervisor on March 31, 2017 and that Battelle was aware of this disclosure when it reassigned her on (b)(6), (b)(7)(C) 2017. Based on the information gathered during the investigation, we conclude that (b)(6), (b)(7)(C) communicated to her supervisor her belief that an individual Battelle senior manager was attempting to intervene in the issues management process. The information gathered during the investigation demonstrates that the disclosure followed Battelle's dispute resolution procedures. In addition, circumstantial information gathered during the investigation, such as the close proximity in time between the disclosure and her reassignment, suggests her disclosure may have been a contributing factor in the personnel action by Battelle management.

Battelle management presented oral testimonial and documentary information in support of its defense that it was justified in its reassignment of (b)(6), (b)(7)(C) to a different role within the Battelle organization with no loss of pay.

(b)(6), (b)(7)(C) most recent performance appraisal, which occurred before the disclosure, indicates performance [redacted], and specifically lists quotations from fellow employees identifying (b)(6), (b)(7)(C) [redacted] in (b)(6), (b)(7)(C) interactions with other groups. Email records support Battelle's assertion that (b)(6), (b)(7)(C) was stressed and unhappy with her position, that she was interested in pursuing other opportunities, and had communicated her interest in other positions to her supervisor. (b)(6), (b)(7)(C) also confirmed that, prior to any talk of reassignment, she requested some of her duties be given to her coworker. In addition, (b)(6), (b)(7)(C) voluntarily relinquished her remaining duties at Battelle to a coworker in favor of focusing her attention on the reassigned position. We found that it was only after (b)(6), (b)(7)(C) was unable to receive a specific description of the duties of the reassigned position that she became concerned about retaliation. Battelle management asserted that, despite the reassignment, (b)(6), (b)(7)(C) would still qualify for the same bonuses and receive the same salary. Management also stated (b)(6), (b)(7)(C) was "capped" in her career ladder in her former position as (b)(6), (b)(7)(C) and would not have been qualified to move higher within her Department. Instead, she would have had to move into a different position within a different Department to advance. Battelle management confirmed that the reassigned position was informal and intended a replacement to the duties (b)(6), (b)(7)(C) desired to be transferred to her coworker, and stated that her supervisor was continuing to work to create a more permanent position for her. In addition, a lack of retaliatory intent is also supported by several of Battelle's actions including (1) the willingness to continue funding (b)(6), (b)(7)(C) salary while she conducted the reassigned position in addition to her remaining duties, and (2) the willingness to continue funding (b)(6), (b)(7)(C) until she found another position once she relinquished the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) duties.

This document is for [redacted]. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

Based on the available information gathered during the investigation, we find that Battelle has met its burden of establishing by clear and convincing evidence that it would have reassigned (b)(6), (b)(7)(C) even if she had not made a protected disclosure.

Procedural Requirements of Title 41 U.S.C. Section 4712

Although we found that management met its burden of establishing that it would have reassigned (b)(6), (b)(7) even if she had not made a protected disclosure, the following information is provided about the procedural requirements of Section 4712. The provisions of Section 4712 stipulate that, within 30 days after receiving this report, the Secretary shall determine whether there is sufficient basis to conclude that the contractor subjected the complainant to a prohibited reprisal and shall either issue an order denying relief or shall take one or more of the following actions: (1) order the contractor to take affirmative action to abate the reprisal; (2) order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or (3) order the contractor pay the complainant for all costs and expenses, including attorneys' fees, that were reasonably incurred by the complainant in connection with bringing the complaint, as determined by the Secretary.

Additional Information Regarding Complaint

On April 24, 2018, we were informed that (b)(6), (b)(7) filed a complaint regarding the same cause of action in the United States District Court for the Eastern District of Washington. At the time of (b)(6), (b)(7)(C) filing, the Office of Inspector General had completed the investigation and was in the process of completing this report. Consequently, we proceeded with issuing the Investigative Report to Management.

Cc: Office of General Counsel
(b)(6), (b)(7)(C)
Battelle Memorial Institute

This document is for [redacted]. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

I. ALLEGATION

This report involves a complaint filed by (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) under Title 41 United States Code, Section 4712, "Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information," hereafter referred to as Section 4712. (b)(6); (b)(7)(C) asserted that her reporting of possible waste, fraud, abuse, or mismanagement, and possible violations of law, rule, or regulation related to a Federal contract between the Department of Energy (DOE) and her employer, Battelle Memorial Institute (Battelle), operating at Pacific Northwest National Laboratory (PNNL), was a contributing factor in the reassignment of her employment. (b)(6); (b)(7)(C) was the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Manager until her reassignment to the (b)(6), (b)(7)(C) (b)(6); (b)(7)(C), effective (b)(6); (b)(7)(C) 2017.

II. POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

The contract between the Department of Energy and Battelle contains a clause incorporating the provisions of Section 4712.

Section 4712 provides whistleblower retaliation protection for an employee of a DOE contractor who discloses information related to a Federal contract or grant. Section 4712 states, in pertinent part:

> (a) Prohibition of Reprisals.
>
> (1) In general.-An employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
>
> (2) Persons and bodies covered. The persons and bodies described in this paragraph are the persons and bodies as follows:
>
> . . .
>
> (G) A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.
>
> (3) Rules of construction.-For the purposes of paragraph (1)-
>
> (A) an employee who initiates or provides evidence of contractor, subcontractor, or grantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
>
> (B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

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(b) Investigation of Complaints.

(1) Submission of complaint. A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor or grantee concerned, and the head of the agency.

(2) Inspector General action.

(A) Determination or submission of report on findings. Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) Extension of time. If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

Section 4712 also directs that the burdens of proof specified in Title 5, U.S.C. Section 1221 shall be followed in any investigation conducted by the OIG. That section states that, in any case involving an alleged improper personnel practice, corrective action shall be considered appropriate if the employee has demonstrated that a disclosure or protected activity was a contributing factor in the personnel action that was taken. The employee may demonstrate that the disclosure or protected activity was a contributing factor in the personnel action through circumstantial evidence, such as evidence that the official taking the personnel action knew of the disclosure or protected activity; and the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure or protected activity was a contributing factor in the personnel action. The section also states that corrective action may not be ordered if, after a finding that a protected disclosure was a contributing factor, the employer demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Section 4712 requires that, within 30 days after receiving this report, the Secretary shall determine whether there is sufficient basis to conclude that the contractor subjected the complainant to a prohibited reprisal and shall either issue an order denying relief or shall take one or more of the following actions: (1) order the contractor to take affirmative action to abate the reprisal; (2) order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal

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had not been taken; or (3) order the contractor pay the complainant for all costs and expenses, including attorneys' fees, that were reasonably incurred by the complainant in connection with bringing the complaint, as determined by the Secretary.

However, on April 24, 2018, we were informed that [redacted] filed a complaint regarding the same cause of action in the United States District Court for the Eastern District of Washington.

III. BACKGROUND

The Pacific Northwest National Laboratory (PNNL) is owned by the Department of Energy (DOE). Since 1965, the Management and Operating (M&O) contract for PNNL has been held by Battelle Memorial Institute (Battelle).

The following is a timeline of relevant events that is uncontested by the parties.

In [redacted], [redacted] was hired as a [redacted] by Battelle until completion of the program in [redacted]. Subsequently, she was promoted to the position of [redacted] in the same year and was transitioned into a full time employee under the same title in [redacted].

In [redacted] was transferred to the [redacted] where she filled the position of [redacted] until later that year when she was hired within the same department as [redacted]. Next, she was promoted to the position of [redacted] in [redacted].

In January of [redacted] was hired by Battelle under its contract to manage PNNL as a [redacted], where she worked until she was internally transferred to the [redacted] as a [redacted]. In [redacted] transferred to the [redacted] office as the [redacted]. Then, in January [redacted], she received a promotion into the position of [redacted]. Later that year, [redacted] was hired as a [redacted].

In [redacted], [redacted] received a promotion to the [redacted].

In December of [redacted], [redacted] was promoted to the position of [redacted], where she began working under [redacted] Manager of [redacted]. Then, the group was reorganized, and [redacted] began working as the [redacted] under [redacted] in the [redacted] Department in October of [redacted] and was situated as a peer of [redacted]. [redacted] was officially reclassified/promoted to the Manager position in [redacted] in further reflection of the reorganization change.

Since 2011, [redacted] received performance ratings of [redacted] or better from her managers. The final documented appraisal of her performance by [redacted] dated October 1, 2015

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– December 31, 2016, had an overall rating of (b)(6), (b)(7)(C) for the stated goals. The narrative portion of the appraisal included the following positive statements:

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

(b)(6), (b)(7)(C) was awarded a 2.5% merit salary increase on January 1, 2016. The appraisal covering the period October 1, 2015 – December 31, 2016 occurred prior to the alleged protected disclosure on March 31, 2017.

On May 2, 2016, (b)(6), (b)(7)(C) sent an email to (b)(6), (b)(7)(C) that stated her career interests and informed him that project management is her passion. She stated that her current role as the (b)(6), (b)(7)(C)

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(b)(6), (b)(7)(C) Manager is "more of an 'after the fact' type of role and is truly more of a reactionary role," and stated, "For a project controls person – unexpected events are a bit unnerving." She also stated that her skills are most useful in "planning, training and helping project managers bring work into the lab."

A function of the Cause Analysis team is to conduct analyses on various incidents within the laboratory. One such incident occurred when, in November 2016, a request was made to the Battelle Procurement Director to change the bank account for a Battelle subcontractor for electronic payments. On December 16, 2016, an invoice payment was made to the bank account of the Battelle subcontractor, and on January 12, 2017, it was discovered that the payment was made to a fraudulent entity posing as the legitimate subcontractor. Battelle senior management was notified immediately. As reported in the October 1, 2017 – March 31, 2018 OIG Semiannual Report to Congress, the underlying issue was already reviewed and addressed by management and an Investigative Report to Management was issued that determined that PNNL was targeted in a spear-phishing scheme which resulted in a PNNL subcontractor's legitimate bank routing information being changed to that of a fraudulent account. This resulted in an improper payment by PNNL of $530,000 to the fraudulent account. In response to the Investigative Report to Management, the Pacific Northwest Site Office disallowed $430,167 in costs associated with the PNNL fraudulent payment to the entity posing as a PNNL subcontractor.

In January 2017, (b)(6),(b)(7)(C) Battelle (b)(6),(b)(7)(C), requested assistance in conducting a Root Cause Analysis for the payment to the fraudulent entity. As the (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) Cause Analysis team, and a Cause Analysis Charter was issued and approved on January 26, 2017. Members of the Cause Analysis team included (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C). The Issue Owner was identified as (b)(6),(b)(7)(C).

(b)(6), (b)(7)(C) In February 2017, (b)(6), (b)(7)(C) and other [redacted] employees received emails from [redacted] with suggested improvements and critiques during an overall review of the [redacted] group. The [redacted] which was one of (b)(6), (b)(7)(C) areas of oversight and which consists of [redacted] was one of the processes critiqued. As a result of the critique, (b)(6), (b)(7)(C) emailed her supervisor (b)(6),(b)(7)(C) and told him that she was stressed out, feeling humiliated and depressed, and was really struggling to be optimistic about her current situation. (b)(6),(b)(7)(C) response emails expressed concern that (b)(6), (b)(7)(C) may be "burning out," and she and (b)(6),(b)(7)(C) agreed to meet to "determine what is best for the lab."

(b)(6), (b)(7)(C) The Battelle investigation into the improper payment to the fraudulent entity was conducted and the [redacted] Team finalized the draft Cause Analysis report in March 2017. The language of the root cause statement was:

> "Business Systems Directorate (BSD) management did not clearly define adequate controls regarding the identification, detection and response to potential fraudulent activities by

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external criminal entities in the Vendor Management Process; primarily relying on individual staff members to identify and respond to potential external threats."

As is normal procedure, (b)(6), (b)(7)(circulated the finalized draft to (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) for revision. (b)(6),(b)(7)(C) questioned the DOE expectations of prevention of external fraud and provided editorial comments, but otherwise approved the document for submission to the (b)(6), (b)(7)(C) for factual accuracy review.

Upon circulation for factual accuracy review, (b)(6); (b)(7)(C); and her team learned Battelle management was dissatisfied with the root cause statement as written. The (b)(6),(b)(7)(C) requested changes to the wording of the root cause statement from the (b)(6),(b)(7)(C) As is the normal protocol when the (b)(6),(b)(7)(C) analyst is unable to reach agreement with the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) elevated the matter to her supervisor, (b)(6); (b)(7)(C); , who discussed the conflict with (b)(6),(b)(7)(C)

On March 28, 2017, (b)(6),(b)(7)(C) Battelle (b)(6),(b)(7)(C) contacted (b)(6); (b)(7)(C); to discuss his concerns over the root cause statement, suggesting that the statement included misleading conclusions. (b)(6); (b)(7)(C); and (b)(6),(b)(7)(C) met to discuss his opposition of the root cause statement and were unable to agree. In addition, (b)(6), spoke with (b)(6), about his concerns with the root cause statement (b)(6),(b)(7)(C) agreed and attempted to reword the root cause statement and provided suggested revisions to (b)(6), (b)(7)(C)

On March 30, 2017, (b)(6); (b)(7)(C); met with (b)(6),(b)(7)(C) to discuss her 2017 goals. She and (b)(6),(b)(7)(C) discussed her struggles with the (b)(6); (b)(7)(C); role and inability to work well with (b)(6), (b)(7)(C) In addition, (b)(6); (b)(7)(C); discussed improvement of processes within her group. Specifically, she requested some of her (b)(6); (b)(7)(C); Duties, which were being led by Battelle employee (b)(6),(b)(7)(C) be transferred to since (b)(6),(b)(7)(C) and had a better relationship and were limiting (b)(6); (b)(7)(C); access. Additionally, (b)(6),(b)(7)(C) and (b)(6); (b)(7)(C); discussed (b)(6); (b)(7)(C); interests in project management and business capture, and she informed (b)(6),(b)(7)(C) she would like to explore those options as a career in the future.

On March 30, 2017, (b)(6); (b)(7)(C); emailed (b)(6), (b)(7)(C) to request he "cease and desist" communication about the root cause statement with her team. She stated she would work the issue through her dispute authority process.

In March 31, 2017, (b)(6); (b)(7)(C); wrote (b)(6),(b)(7)(C) and opposed management's efforts to "pressure" her staff into changing the root cause language in a manner she believed was inconsistent with the issues management process. Her email stated:

> "Per our [How Do I?] HDI requirements and cause analyst qualification process, this is not how we do cause analysis at our lab. We do not just let concerned stakeholders manipulate root causes at the end of the process to make us sound better."
> …

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"That (changing root causes and results at the 11th hour) was the [redacted] way. Not doing it and I am not going to have this cause analysis team think we have returned to the "old" way of doing business."

...

"I am not going to make this team sign a product they can't stand behind."

...

"My recommendation: [redacted] should take the facts and data collected to date and conduct an independent cause analysis with someone that he feels is qualified to conduct his root cause analysis."

In his response later that day [redacted] stated:

"I understand your concerns and agree that we are not going backwards. I just spoke to [redacted] and let him know that I am reviewing the report and that after spring break I will bring us together to discuss our path forward."

On April 11, 2017, [redacted] scheduled a meeting with [redacted] In the meeting he discussed an opportunity for her to work on the [redacted] wherein [redacted] might gain experience with business capture assignments. In addition, [redacted] discussed an LPPM reorganization which would fulfill [redacted] request to return [redacted] duties to [redacted] and address budget issues within Battelle. Specifically, [redacted] would no longer [redacted] team would be recombined into the [redacted] Division under [redacted] leadership, effective [redacted] 2014. In addition, [redacted] proposed [redacted] would remain at her current salary and continue her position as the [redacted], in addition to the [redacted] duties. [redacted] was upset and requested time to consider.

On April 12, 2017, [redacted] was included on several emails between [redacted] and [redacted] to alter the wording of the [redacted] statement.

[redacted] transition to work on the [redacted] was effective [redacted] 2017 with no loss of pay. In her new duties, [redacted] no longer worked within the [redacted] team.

On May 1, 2017, the final April 2017 Cause Analysis Report was issued with the following reworded root cause statement. It was approved by the [redacted] and [redacted] and the [redacted] with what [redacted] believed was inappropriate management involvement:

"BSD Management had a primary focus on controls over internal fraud risks in response to DOE's annual risk statements in the Accounts Payable area (which did not specifically address external fraud risks), and based on the majority of previous experience involving internal fraud. Consequently, the controls for the identification, detection, and response to evolving fraudulent activities by external criminal entities in the Vendor Management Process were less than adequate."

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IV. INVESTIGATIVE FINDINGS

(b)(6); (b)(7)(C) Assertion that She Made a Protected Disclosure

(b)(6); (b)(7)(C) asserts that, in her email to her supervisor on March 31, 2017, she disclosed information alleging management, specifically (b)(6),(b)(7)(C) was pressuring her and her team to change the root cause statement and was providing changes to improperly edit the wording of the root cause statement within the Cause Analysis Report for Payment to a Fraudulent Subcontractor.

As noted in the Background above, (b)(6); (b)(7)(C) stated that her team conducted an in depth, "level 2," investigation into the information for the improper payment. The team provided the draft document to (b)(6),(b)(7)(C) for revisions throughout the process, as is typical protocol. (b)(6),(b)(7)(C) provided editorial comments and approved the document, although he questioned the DOE expectations of prevention of external fraud and disliked the suggestion of "less than adequate controls." The team incorporated his editorial comments and circulated it for "factual accuracy review."

(b)(6); (b)(7)(C) cited the guidelines (b)(6); (b)(7)(C) for the processing of Cause Analysis Reports. (b)(6); (b)(7)(C) provided a copy of the "Issues Management Process" that stated the following:

> "In cases where the Issue Owner does not agree with the results of the analysis, the Laboratory Senior Cause Analyst will work with the Lead Cause Analyst, line management, the Lab-level Issue Team, and other independent technical experts as necessary to resolve the issue(s). If the issue(s) cannot be resolved, the cause analysis team's results will remain the final documented root cause analysis and the lack of consensus will be documented in the Issue Tracking System (ITS)."

(b)(6); (b)(7)(C) stated the information is typically processed, and once the team reaches a conclusion, the only changes that should be allowed to be made by the Issue Owner are those related to factual accuracy. Furthermore, she stated that the (b)(6), (b)(7)(C) in this case is the only one (b)(6), (b)(7)(C) authorized to make or approve changes.

(b)(6); (b)(7)(C) stated that the (b)(6), (b)(7)(C) did not agree with some of the facts of the case or with the root cause statement as written. As is the normal protocol when the Lead (b)(6), (b)(7)(C) is unable to reach agreement with the (b)(6), (b)(7)(C) elevated the matter to her supervisor, (b)(6); (b)(7)(C) who discussed the conflict with (b)(6), (b (b)(6); (b)(7)(C) (b)(6), (b)(7)(C) met on the issue and adjusted the report to correspond with the facts (b)(6), (could support with documentation. However, (b)(6); (b)(7)(C) disagreed with (b)(6), (b) request to change the root cause statement because the fact alterations did not warrant a change to the root cause statement. (b)(6); (b)(7)(C) alleged that (b)(6), (b was "not happy with us [her team]."

(b)(6); (b)(7)(C) stated that, on March 28, 2017, (b)(6),(b)(7)(C) supervisor, came to her office to discuss the report and provided a copy of the "Contract 1830 Work Statement, C-3 Performance Expectations, Objectives and Measures," with a handwritten note that stated, "We need to talk about this and how this impacts the cause analysis." The document listed the internal or management

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control clauses that were found in the Battelle contract. After determining that (b)(6),(b)(7)(C) had not read the report, she directed him to review it and to chat with her about the facts after he had a chance to do so.

(b)(6); (b)(7)(C) told us that, shortly thereafter, (b)(6),(b)(7)(C) set up a meeting with (b)(6); (b)(7)(C) to discuss the report. In attendance at the meeting was (b)(6),(b)(7)(C) (b)(6),(b)(7)(C), (b)(6); (b)(7)(C) stated the conversation was "very terse." She stated that (b)(6),(b) was concerned about the root cause statement, suggested the root cause statement could not be finalized as worded, and requested her team to change the root cause statement. She also stated that (b)(6),(b)(7)(C) informed her that (b)(6),(b)(7)(C) "works with him on [independent audit] reports." (b)(6); (b)(7)(C) informed him that she would not change the report unless she received a good reason to change the report, citing the qualifications of her team who performed the report.

(b)(6); (b)(7)(C) informed us that (b)(6),(b)(7)(C) was also contacted by (b)(6),(b)(7)(C) to discuss the report. After the meeting, [redacted] stated that he agreed with (b)(6),(b)(7)(C) logic and was convinced to assist in changing the root cause statement, and that (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) began suggesting changes to the report and providing them to (b)(6),(b)(7)(C) for approval. After receiving several emails from (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) to adjust the root cause statement, (b)(6); (b)(7)(C) requested (b)(6),(b)(7)(C) "cease and desist" from changing the root cause statement on March 30, 2017. In this case, (b)(6); (b)(7)(C) disagreed with management's interference in the change of the root cause statement and stated that she believed the reason for changing the root cause involved the determination about whether the fraudulent payment would be allowable or unallowable.

In our interview with (b)(6),(b)(7)(C) he referenced a previous Cause Analysis report (b)(6); (b)(7)(C) conducted in which select managers requested a change of a "willful misconduct" root cause. In this case, (b)(6); (b)(7)(C) management supported the willful misconduct root cause because the data supported the findings, and the cause statement was not changed. [redacted] stated the willful misconduct Cause Analysis report was (b)(6); (b)(7)(C) first experience in dealing with unhappy management. Our interview with (b)(6); (b)(7)(C) confirmed that the previous Cause Analysis involved a "tough discussion" wherein she had to stand her ground against an (b)(6) (b)(7)(C) and support her team's root cause, and management had rallied behind her and supported her decision. (b)(6), (b)(7)(C)

On March 31, 2017, (b)(6); (b)(7)(C) escalated the issue to her supervisor, (b)(6),(b)(7)(C) as is proper protocol when there is a dispute. She provided him a copy of the draft report in dispute. She also sent him an email wherein she stated that she felt the organization was going backwards to before the time in which policies and procedures were implemented to prevent management tampering with the Cause Analysis results. (b)(6); (b)(7)(C) cited an instance in which the previous (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) retired amidst controversy. Specifically, she stated, "On information and belief," (b)(6),(b) "retired because upper management investigated and learned that he had been changing the language of Root Cause Analysis results and other subsequent deliverable results."

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Busselman's Allegation that She was Reprised Against for Whistleblowing

(b)(6), (b)(7)(C) asserted that, in response to her protected disclosure to Battelle management of what she alleged was improper interference by Battelle management regarding the wording of the root cause statement within the Cause Analysis Report for Payment to a Fraudulent Subcontractor, Battelle took retaliatory actions against her in the form of reassignment of her employment on April 17, 2017.

On April 11, 2017, (b)(6), (b)(7)(C) orally informed (b)(6), (b)(7)(C) that he decided to reorganize [redacted] to address budget issues within Battelle, which would fulfill (b)(6), (b)(7)(C) request to return [redacted] duties to [redacted] (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) that she would no longer be a manager and that her (b)(6), (b)(7)(C) team would be recombined into the [redacted] under [redacted] supervision, effective April 24, 2017. (b)(6), (b)(7)(C) also informed (b)(6), (b)(7)(C) that there was an opportunity for her to work on the (b)(6), (b)(7)(C) with (b)(6), (b)(7)(C) wherein (b)(6), (b)(7)(C) might gain experience with business capture assignments. (b)(6), (b)(7)(C) manager who was assigned to lead the (b)(6), (b)(7)(C) for that year. In addition, (b)(6), (b)(7)(C) informed her that she would remain at her current salary and continue her position as the (b)(6), (b)(7)(C) that she would still be in charge of the [redacted] process, and would remain as (b)(6), (b)(7)(C) in addition to performing her new duties within the (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) informed us that (b)(6), (b)(7)(C) told her that (b)(6), (b)(7)(C) really wanted (b)(6), (b)(7)(C) assistance on the project, and (b)(6), (b)(7)(C) informed him that he had a great person (b)(6), (b)(7)(C) who could help him. (b)(6), (b)(7)(C) stated that she was told the new position was a "really urgent, important laboratory assignment."

Emails from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C) following the April 11, 2017 discussion suggest (b)(6), (b)(7)(C) was upset and requested time to consider [redacted] proposal. (b)(6), (b)(7)(C) told us that she was in shock following the news that she and her team would be reorganized under [redacted] leadership but believed she "didn't have a choice" about accepting the (b)(6), (b)(7)(C) assignment because she was personally unable to work for [redacted] due to a hostile work environment, and she "didn't have a job." (b)(6), (b)(7)(C) stated that she later sent a "note" to her (b)(6), (b)(7)(C) about the change, stating that she "just got fired basically" and asking "what do I do?" (b)(6), (b)(7)(C) then went to speak to her mentor in person, to whom she stated that she wanted to demand her job back. (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) counseled her otherwise and informed her that she would help (b)(6), (b)(7)(C) find a place to work.

Following the April 11th meeting (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) and apologized that the conversation was such a surprise. He stated that he appreciated her need for time to consider the path forward and that he would like to talk with her when she returned to discuss the transition and her interest in supporting the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) included a draft note that he proposed sending to her [redacted] team and stated that he had made some assumptions about her continued leadership in key areas and hoped that she would consider them. The document that was attached detailed a recombination of the [redacted] team into the [redacted] under [redacted]

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leadership," and stated that (b)(6); (b)(7)(C) would continue as the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and would be taking on a business capture and proposal development role within the team working on the (b)(6) (b)(7)(C).

(b)(6); (b)(7)(C) responded to (b)(6), (b)(7)(C) and the two discussed (b)(6), (b)(7)(C) proposed organizational changes via email between April 12-13, 2017. (b)(6); (b)(7)(C) inquired whether she would report to (b)(6), (b)(7)(C) or to [redacted] She stated that she was not comfortable with [redacted] being her manager. Further, (b)(6); (b)(7)(C) wanted information on whether her salary would remain the same and apologized for being a disappointment. (b)(6), (b)(7)(C) response informed her she was not and had never been a disappointment, but that there was "a significant mismatch between her talents and skills and what was needed to be successful in the position." He informed her that his intent was to try to get (b)(6); (b)(7)(C) into a position that better suited her skills and desired career path, and inquired about whether she was interested in continuing as the (b)(6) (b)(7)(C) or (b)(6); (b)(7)(C) since she would be reporting to [redacted] in those roles, but that, in the suggested (b)(6) (b)(7)(C) role, she would report to him. He stated that her salary would be unaffected. In response, (b)(6); (b)(7)(C) thanked (b)(6), (b)(7)(C) for his honesty and stated her "analytical brain spun past reason" when he explained things to her in their meeting. (b)(6); (b)(7)(C) rejected reporting to [redacted] thus declining to remain in the (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) positions. (b)(6); (b)(7)(C) expressed interest in the new position and agreed that it was an exciting opportunity. She stated that she would like to talk with him that afternoon and was comfortable with his proposal. (b)(6); (b)(7)(C) provided the information to (b)(6), (b)(7)(C) and thanked (b)(6), (b)(7)(C) for talking her down from her "other path." Within the final email with (b)(6), (b)(7)(C) (b)(6); (b)(7)(C) stated she was "getting pretty excited," indicating that she was more positive about the reassignment.

Following the email exchanges, (b)(6); (b)(7)(C) stated she was willing to make the (b)(6); (b)(7)(C) assignment "work." (b)(6); (b)(7)(C) told us that she then met with (b)(6), (b)(7)(C) to discuss the transition, and said that he told her he would get her "hooked up" with (b)(6), (b)(7)(C) on the following day. (b)(6); (b)(7)(C) also told us (b)(6), (b)(7)(C) said that the transition information was "leaking out," and he needed her to tell her team that afternoon, and that he had already made the appointment. (b)(6); (b)(7)(C) said she told (b)(6), (b)(7)(C) that she could not do it and did not know what to say to her team, and then stated that (b)(6), (b)(7)(C) told her exactly what to say to her team and she followed his instructions. (b)(6); (b)(7)(C) told us that, following her message to the team, (b)(6), (b)(7)(C) had a discussion about the benefits of the change to the organization, and then left (b)(6); (b)(7)(C) with her team to discuss the transition. She stated that she then told her team that she could not discuss the transition at that time, left the meeting, and began crying.

Concurrently, on April 12, 2017, (b)(6); (b)(7)(C) was included on several emails between (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) to alter the wording of the root cause statement. (b)(6); (b)(7)(C) said that the fraudulent payment root cause statement was changed with assistance from (b)(6), (b)(7)(C) (b)(6); (b)(7)(C) told us that her team could not believe that they were being asked to change the report, and stated that she informed (b)(6), (b)(7)(C) that she (b)(6); (b)(7)(C) "lost my job over this so I don't know that you don't want to push it." The report was approved by the authors (b)(6), (b)(7)(C) and the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) on May 1, 2017.

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(b)(6); (b)(7)(C) transition to work on the (b)(6) (b)(7)(C) was effective [redacted] 2017. In her new duties, (b)(6); (b)(7)(C) no longer worked within the (b)(6), (b)(7)(C)

(b)(6); (b)(7)(C) told us that she did not receive a formal job title or a formal "charge code" for the (b)(6) (b)(7)(C) assignment, and when she asked (b)(6), (b)(he directed her to continue charging her salary to the [redacted] charge code number. (b)(6); (b)(7)(C) stated that she believed continuing to charge her salary to [redacted] would constitute timecard fraud, so she requested the scope and information on what she needed to do from (b)(6), (b)(7)(C), but was "given the runaround." She stated that she kept attempting to email (b)(6), (b) and set up appointments with him, to no avail. In addition, she stated that she never received a formal job requisition or a "Welcome to the Team," notice from (b)(6), (b)

(b)(6); (b)(7)(C) told us that, when she was unable to gain the information she required from (b)(6), (b) (7)(C) she confided in (b)(6), (b) who told her to speak with her new coworkers for assignments. She stated that she spoke with several individuals, including (b)(6), (b)(7)(C) who gave her research assignments. (b)(6); (b)(7)(C) told us that she used those research charge codes for her timecard billing during that time. In addition, (b)(6); (b)(7)(C) told us that when she spoke with (b)(6), (she was told that there were possibilities with resume collection and integration, but (b)(6); (b)(7)(C) stated it did not sound very good to her. Furthermore, (b)(6); (b)(7)(C) stated that, due to her inability to reach (b)(6), (b) (7)(C) she never had an opportunity to understand what the assignment was for (b)(6) (b)

(b)(6); (b)(7)(C) asserted that, following her transition to (b)(6) (b) (b)(6), (b) (7)(C) questioned whether she was able to find work and told her that she needed to find work before October 1, 2017. In addition, (b)(6); (b)(7)(C) told us that information was circulating about budget concerns and potential layoffs. (b)(6); (b)(7)(C) told us that, on May 1, 2017, while inquiring about the details of the position with (b)(6), (b)(6), (b)(7)(C) told her that the (b)(6) (b) assignment was not real. Specifically, (b)(6); (b)(7)(C) said (b)(6), told her, "There really isn't anything there. They need to rework some stuff. . . but I'll give you some stuff to do." As noted in the Background, (b)(6); (b)(7)(C) previously requested some of her duties be transferred to [redacted] and informed her supervisor of her interests in business capture. During the course of the investigation, we discovered (b)(6), (b) offered the (b)(6) (b)(7)(C) role to (b)(6); (b)(7)(C) as a supplement for the unwanted duties and as an opportunity for (b)(6); (b)(7)(C) to gain experience in business capture. (b)(6), (b nformed us the role was temporary until he could find (b)(6); (b)(7)(C) a more permanent position.

(b)(6); (b)(7)(C) told us that she reached out to her network of contacts within Battelle for job assignments. Eventually, (b)(6); (b)(7)(C) received some work and began charging her hours to the assignments on which she worked.

On June 12, 2017, (b)(6); (b)(7)(C) sent a note to the Laboratory Director to inform him that she believed she was removed from her job in retaliation for "standing up for Laboratory approved processes and for [her] team so that management would not improperly change root cause findings." In the email,

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(b)(6); (b)(7)(C) requested that her position and authorities be reinstated, and that her team be protected from "future improper pressure by management." (b)(6); (b)(7)(C) provided a deadline of June 16, 2017, after which she stated that she planned to begin the process to fix the retaliation herself.

(b)(6); (b)(7)(C) Burden of Proof

In order to make a *prima facie* case, a complainant must establish, by a preponderance of the evidence that she made a protected disclosure, that management was aware of the disclosure, and that the protected disclosure was a contributing factor in the personnel action. The complainant may prove each of these elements by either direct or circumstantial evidence. An analysis of each of these evidentiary burdens follows.

The first element that (b)(6); (b)(7)(C) has to meet is to establish, by a preponderance of the evidence, that she made a protected disclosure. (b)(6); (b)(7)(C) asserted that she disclosed information to her supervisor that she reasonably believed constituted management misconduct related to changing the wording of the root cause statement within the Cause Analysis Report for Payment to a Fraudulent Subcontractor.

(b)(6); (b)(7)(C) asserted that, within her email to her supervisor (b)(6), (b) she communicated specific information that the Battelle (b)(6), (b)(7) had attempted to change the language of the root cause statement and began to exert pressure on her team to change the language of the statement. Specifically, the email stated her team could not "let concerned stakeholders manipulate root causes at the end of the process to make us sound better."

We interviewed (b)(6), who participated in the Cause Analysis Report for Payment to a Fraudulent Subcontractor (b)(6) confirmed she and her team received requests to alter the root cause statement from (b)(6), in association with (b)(6), after the draft was circulated for factual accuracy, and that the team felt pressured and "sick to our stomachs, mostly because you're dealing with the CFO." (b)(6); (b)(7)(C) confirmed that her team often receives pressure to change information, but that this case was "out of the ordinary," and that she has "never seen a case before where there was that much back and forth." She also confirmed that (b)(6); (b)(7)(C) elevated the issue to her supervisor after (b)(6); (b)(7)(C) and (b)(6), (b) were unable to reach agreement. However, asserted that, in the end, the report (b)(6), (b) that was signed was a statement she could "stand behind." Therefore, she approved the changes to (7)(C) the report.

We interviewed (b)(6), (b) (7)(C) who received the email escalating the dispute to his attention. The supervisor confirmed (b)(6); (b)(7)(C) raised concerns about (b)(6), (b)(7)(C) direction to change the root cause statement (b)(6), (b) recalled that (b)(6); (b)(7)(C) requested his assistance to determine a solution to the problem as was the normal protocol in the event of a dispute. (b)(6), (b) stated that he mediated the concerns at her request.

The Battelle Issues Management Process Procedures do not specifically state that the root cause, root cause code, or root cause statement cannot be changed. Instead, it provides recourse in the event the issue owner does not agree with the results of the analysis, and dictates a chain of command in order to "resolve the issue." The process of resolution of the issue is not identified and

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is therefore open to interpretation. Moreover, the review for factual accuracy by the Issue Owner does not identify what exactly should or should not be changed, or whether the root cause can be included in the review.

Based on the available information gathered during the investigation we conclude that (b)(6); (b)(7)(C) communicated to her supervisor her good faith belief that an individual Battelle senior manager was attempting to intervene in the issues management process in a manner she believed was inconsistent with the issues management process.

We conclude that (b)(6); (b)(7)(C) has established, by a preponderance of the evidence, that the information she conveyed to Battelle management constituted a protected disclosure under Section 4712.

The second element that (b)(6); (b)(7)(C) has to meet is to establish, by a preponderance of the evidence, that Battelle management was aware that she made a protected disclosure.

Battelle management does not dispute that it knew that (b)(6); (b)(7)(C) elevated her concerns to her management chain for dispute resolution. Specifically, as depicted in the Issues Management Procedure, (b)(6); (b)(7)(C) avenue of recourse in the event of a dispute was to elevate the matter within her management chain; in this case to (b)(6), (b)(7)(C) was the recipient of her communication and intervened as requested to reach consensus and resolution.

Based on the available information gathered during the investigation, we conclude that (b)(6); (b)(7)(C) has established that Battelle management had knowledge of a protected disclosure.

The third element that (b)(6); (b)(7)(C) must meet is to establish that her protected disclosure was a contributing factor in the decision by Battelle management to reassign her employment. Although our review did not uncover any direct evidence that (b)(6); (b)(7)(C) protected disclosure was a contributing factor in the decision to reassign her employment, the very close temporal proximity between (b)(6); (b)(7)(C) email indicating opposition to requests by senior Battelle managers to change the root cause in March 2017, and the completion, on [redacted] 2017, of the reassignment of (b)(6); (b)(7)(C) employment is sufficient evidence that her concerns were more likely than not a contributing factor in the decision to take that action. (b)(6), (b)(7)(C)

Based on the information gathered during the investigation, we conclude that (b)(6); (b)(7)(C) has established that her protected disclosure was a contributing factor in the decision by Battelle management to reassign her employment.

Management's Burden of Proof

Once the complainant has met her burden of proof, the burden shifts to the employer to demonstrate, by clear and convincing evidence, that it would have taken the same personnel action absent the protected disclosure.

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Battelle Management's Description of Events Immediately Prior to [redacted] Reassignment

In our interview with [redacted] he told us that, when he began his position as manager [redacted] was a team leader [redacted] and reported to [redacted] for lab performance systems at the time. He said, in November 2015, he decided to [redacted] duties into those for Performance Analysis and Reporting, which he considered long term analysis, and those for Assessment and Issues Management, which he considered analysis of urgency. [redacted] stated he gave [redacted] the "opportunity" to lead the group by elevating the [redacted] group to be equal to that to [redacted].

[redacted] stated, in March 2016, [redacted] informed him that she was really struggling in her position, and that she did not like the immediacy of her duties. In addition, he said she informed him that she did not feel her duties were where her strengths lay, and wanted to talk about finding something different to do. [redacted] asserted that he and [redacted] then started meeting once a month to discuss progress and determine how he could help.

As noted in the Background section of this report, in May 2016, the year before the Cause analysis issues and alleged retaliation, [redacted] alerted [redacted] via email of her alternate career interests, and informed him that project management was her passion. In that email, she stated that her current role as the [redacted] is "more of an 'after the fact' type of role and is truly more of a reactionary role." She stated: "For a project controls person – unexpected events are a bit unnerving". She also stated that her skills were most useful in planning, training and helping project managers bring work into the lab."

In our interview with [redacted] he asserted that, in his meetings, he and [redacted] identified the utility of getting her a mentor, and later engaged [redacted] as the mentor. [redacted] stated that, following the connection between [redacted] and [redacted] was positive, and told him that the she and her mentor were working on identifying the roles that would be productive for [redacted] career.

When we asked about her performance, [redacted] stated that [redacted] was struggling in her position. [redacted] stated [redacted] had a hard time dealing with consensus, wanted things to be "black and white," and wanted her team and to be "the last word on things." [redacted] told us [redacted] approached her position as an auditor position, wherein her group would audit an occurrence, make a determination, write a report, and have the report finalized. However [redacted] stated her job was not an auditor position, instead her team was "supposed to be a tool of management that is used in continuous improvement." [redacted] stated [redacted] struggled with working with people to complete her duties, and with reaching a consensus. As noted in the Background section of this report, [redacted] noted several opportunities for growth in [redacted] performance appraisal. Many of the recommendations surrounded her interactions with other

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groups. Specifically, he stated, "My only caution is that we all remember that [redacted] is a tool of management and the intent of [redacted] activities is to inform and catalyze improvements rather than playing audit 'gotcha'."

[redacted] stated that, when he was called to assist with the Cause Analysis report, it was clear to him that [redacted] did not try to reach a consensus. Instead [redacted] stated [redacted] took the position of, '[redacted] says this, so that's the way it's going to be." He stated his perception was that [redacted] did not try to understand the different points of view and wanted to "stubbornly support her team." He stated that, as a manager, [redacted] should instead have figured out what to do when not everyone agrees.

[redacted] asserted that he had a mid-year performance review with [redacted] at the end of March 2017, before her vacation and the reassignment. He stated that [redacted] informed him that in working with [redacted] she identified an interest in working with projects and in business capture. In addition, he stated [redacted] was considering leaving the laboratory to go back to school for a degree in business capture in order to later work in business capture. [redacted] also stated that, during the meeting, she continued to inform him that she was still struggling, and was particularly struggling with the assessment program [redacted] informed us that [redacted] told him she could not do all of her duties, and requested he take the [redacted] and the [redacted] and assign them to [redacted]

In our interview with [redacted] he informed us that he told [redacted] that he could return those select duties to [redacted] but that in removing half of her duties, there would not be enough scope for a [redacted] role. He stated he informed her that if she only wanted half of her job, then he would have to think about a different role for her to encompass a full time position. Following the conversation, [redacted] stated [redacted] went on her spring vacation.

In our interview with [redacted] he told us that during [redacted] vacation, he contemplated her request. Email records show that, on April 4, 2017, [redacted] received an email notification of the [redacted] from [redacted] and [redacted] offered help in any way required. [redacted] stated he coordinated with the current business capture employees, [redacted] and [redacted] to acquire an opportunity for [redacted] on the [redacted] that would give her the opportunity to gain business capture experience. [redacted] stated [redacted] told him he was very busy, but there would be "turnaround space" for [redacted] to use to work on the [redacted] assignments. [redacted] stated that he was willing to continue paying for [redacted] time while she worked on the [redacted] review, as he still had the budget to support her. On April 11, 2017, [redacted] informed [redacted] that he would tell [redacted] of the opportunity to work on the [redacted]

[redacted] stated he met with [redacted] when she returned from vacation, and informed her that he would reassign the [redacted] duties to [redacted] as [redacted] requested, and as a result of the lessened duties, he would remove [redacted] from the [redacted] role. In that capacity, [redacted] would be a team lead over the remaining [redacted] duties, and would report to [redacted] He also informed her of the [redacted] opportunity that

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she could work on in addition to her remaining duties. (b)(6), told us became emotional and left the meeting. (b)(6), (b stated, after a follow-up discussion with Human Resources wherein he learned may have heard nothing except his decision to remove her from the position, he sent her a follow up email detailing the meeting and offering her a chance to meet once she had a chance to process the information.

From April 12-13, 2017, and (b)(6), (discussed his proposed organizational changes via email. apologized for being a disappointment and rejected reporting to thus declining to remain in the positions. (b)(6), (b)(7)(C)
(b)(6), (b informed her she was not a disappointment, and believed there was a "significant mismatch between [her] talents and skills and what is needed to be successful in [the position," and told her his intent was to "get her into a position that better suits both her skills and desired career path." expressed interest in the new position and agreed that it was an exciting opportunity.

(b)(6), informed us that he told that due to her declination of continuing in the remaining duties under his management and her decision to focus full-time on business capture, he would only be able to use his budget to fund her salary through the end of the fiscal year. He stated he told her she would need to obtain another opportunity for funding before October 1, 2017. In addition, he stated he was working with (b)(6), to assist in finding a permanent position before the fiscal year ended, however, he received the allegation of retaliation from before the position could be acquired.

(b)(6), (b) confirmed that at the time the (b)(6) (b) (7)(C) opportunity was offered to it was a temporary assignment, not a formal position. He stated the is a review done every three years that requires eight months of planning, wherein a proposal is written to explain why Battelle should continue managing the facility on behalf of the Department. In addition, (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
confirmed that reaction to the (b)(6) (b) position after her reassignment was "hot and cold." He told us that she alternated between thanking him and telling him she liked the career path, and being miserable due to her small turnaround space and inability to gain (b)(6), (b)(7)(C) attention. (b)(6), (b) stated he gave her guidance to help. He stated she eventually discovered a new position for herself within the as a (b)(6), (b)(7)(C)

(b)(6), (b) stated that, had not been interested in the (b)(6) (b) opportunity, he would have talked with her to determine what additional responsibilities she would have. Moreover, (b)(6), (b stated he was no longer comfortable leaving her with "important responsibilities" such as accountability for the , because she told him she did not want to do it.

In our interview (b)(6), (b informed us that informed him via email that she would be moving out of her current office and into the (b)(6) (b) area because it was too hard for her to be with her old team. He stated he informed her that the (b)(6) (b) space was not a formal office, only a turnaround area, therefore she could move if she wanted, but (b)(6), (stated he would keep her office open should she want it in the future.

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(b)(6), told us that his decision to reassign (b)(6); (b)(7)(C) was completely driven by "the fact that we had been talking for nearly a year about the fact that she was unhappy in this position and she was struggling, and she knew she was struggling." Moreover, he stated, the mid-year review conversation wherein she told him she no longer wanted half of her duties and requested he assign them to (b)(6), (b)(7)(C) in addition to her interests in pursuing business capture, led him to believe he needed to "do something different."

In our interview, (b)(6), stated he believed (b)(6); (b)(7)(C) allegations that she was removed from her position due to the Cause Analysis report were "completely untrue." He stated (b)(6); (b)(7)(C) during their meetings about her reassignment, never mentioned the "causal [analysis]." In addition, he stated the allegation that (b)(6); (b)(7)(C) was pressured or asked to change the causal analysis was completely untrue. (b)(6), (indicated that there is a difference between the "root cause," "root cause code," and "root cause statement." He indicated the root cause and root cause codes come directly from DOE and stated that the codes never changed from those in the draft report. He also indicated, however, that the change requests from management surrounded the wording of the root cause statement, and were routine requests. In addition, he stated that the inclusion of (b)(6), in the discussion about the Cause Analysis report was not unusual because (b)(6), was (b)(6), (b)(manager. He stated that when (b)(6), (b)(7)(issue owner, was unable to reach consensus she went to (b)(6), in the same way that (b)(6); (b)(7)(C) contacted (b)(6), (b) when she was unable to reach agreement.

(b)(6), asserted that, despite the reassignment, (b)(6); (b)(7)(C) would still qualify for the same bonuses, and receive the same salary. In addition, he stated in her former position as (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) was "capped" in her career ladder, and would not have been qualified to move higher into his position. Instead, he stated she would have had to move into a different position in a different group to advance.

In our interview with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) he explained the general Cause Analysis reporting process. According to (b)(6), (b)(7)(C) DOE cause codes come from an "ORPS manual" (Occurrence Reporting Processing System) and are standardized, and attached to the root cause in what he terms the "gray box," which is the root cause statement. (b)(6) confirmed that when changes are requested in the Cause Analysis reports, it is up to the team's discretion to accept or deny those change requests. (b)(6) informed us that Cause Analysis reports are often opposed, and told us that each causal analyst in Battelle has been pressured or "beat up" by management when managers are unhappy with the reports. Moreover, (b)(6), (b)(7)(C) stated no one is ever happy with the Cause Analysis reports when the results tell the issue owner their program or process is flawed.

(b)(6), stated it is not uncommon that changes are requested regarding the root causes; however, the Cause Analysis teams are usually less amenable to changing root causes unless the facts change enough to justify the change. Specifically, he stated, "there's an iterative process between the team and the issue owner" when conducting causal analysis, and that it is not uncommon for management to get involved for various reasons. He also stated that many individuals like to "wordsmith" the root cause statements, and it is up to the team's discretion to change them.

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In our interview, (b)(6) related that he met with (b)(6), more than once to discuss (b)(6), (b)(7)(C) requested changes in the Cause Analysis report. Specifically, (b)(6), stated there was no discussion about the root causal "codes," as (b)(6), agreed with the determination. (b)(6) told us (b)(6), (opposition focused on the wording of the "root cause statement," and informed us that part of (b)(6), (concerns with the root cause statement surrounded the allowability or unallowability of funds for the fraudulent payment. (b)(6) told us (b)(6), was concerned that the financial side of DOE would misinterpret the report as it was written and would not fully understand that causal analysis reports are intended to fix problems, not to make determinations of allowability or culpability. (b)(6), told us that he understood (b)(6), (point of view.

Office of Inspector General Analysis

Battelle management presented oral testimonial and documentary information in support of its defense that it was justified in its reassignment of [redacted] to a different role within the Battelle organization. (b)(6), (b)(7)(C)

Although the performance appraisals indicate that [redacted] received [redacted] performance ratings over a long period of time, the notes contained within the most recent performance appraisal prior to the disclosure indicate performance [redacted] and specifically list quotations from fellow employees identifying [redacted] in [redacted] interactions with other groups. Additionally, email records support Battelle's claims that [redacted] was stressed and unhappy with her position, and that she was interested in pursuing other career opportunities before the protected disclosure took place. In fact, [redacted] confirmed requesting that some of her duties be given to her coworker, [redacted] We also note that in the interview with [redacted] she confirmed she had had a discussion with [redacted] regarding removal of her less desired duties and discussed switching careers immediately prior to her reassignment, though [redacted] stated that she did not plan to leave so quickly. (b)(6), (b)(7)(C)

Email records confirm [redacted] response to her removal from the [redacted] position and subsequent reassignment was originally negative, however after the information regarding the role was relayed, she stated she was excited to pursue the opportunity. She also voluntarily relinquished the remaining [redacted] duties which would have required her to report to [redacted] in favor of focusing her attention on the reassigned position. It was only after she was unable to receive a specific scope for the reassigned position that she became unhappy. (b)(6), (b confirmed that the position was informal and was intended as a replacement to undesired duties that [redacted] requested be reassigned to [redacted] and stated that he was continuing to work to create a more permanent position for her. (b)(6), (b)(7)(C)

Our interview with (b)(6), and [redacted] indicated that, due to the nature of salary funding at Battelle, employees whom management wish to remove are not typically "fired." Instead, individuals are typically reassigned into roles where acquisition of salary funding is difficult. However, we find that due to the nature of the original proposal to [redacted] wherein she would continue duties under (b)(6), (b)(budgetary umbrella, and therefore fund her salary through (b)(6), (b)(7) department, [redacted] was not placed in the position where she would be required to find immediate funding. Subsequently, when [redacted] voluntarily relinquished the remaining

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(b)(6), (b)(7)(C) duties, (b)(6), (b)(7)(C) offered to fund her work until the end of the fiscal year, at which time he hoped a more permanent position would be determined. The willingness of Battelle management to continue funding (b)(6); (b)(7)(C) salary while she completed the (b)(6), (b)(7)(C) work in addition to the remaining (b)(6), (b)(7)(C) duties and the willingness to continue funding her salary until she found another position once she relinquished the (b)(6), (b)(7)(C) duties, indicated a lack of retaliatory intent. In (b)(6); (b)(7)(C) case, she could have stayed in (b)(6), (b)(7)(C) group with the remaining duties not assigned to (b)(6), (b)(7)(C) and therefore remained under (b)(6), (b)(7)(C) budget beyond the end of the fiscal year. Instead (b)(6); (b)(7)(C) elected to leave her position and accepted the (b)(6), (b)(7)(C) role full-time, despite being told her decision to no longer work for (b)(6), (b)(7)(C) would mean she would need to seek alternative funding once she reached the end of the fiscal year.

Our interviews relayed a distinction between "root cause," "root cause code," and "root cause statement." The Battelle employees and managers we interviewed agreed that the root cause and root cause code are standardized by management. However, the (b)(6), (b)(7)(C) statement is written by the Cause Analysis team and is based on the facts of the analysis. The Issues Management Process Procedures does not specifically state that the root cause, root cause code, or root cause statement cannot be changed. Instead, it provides recourse in the event that the Issue Owner does not agree with the results of the analysis and dictates a chain of command in order to "resolve the issue." The process of resolution of the issue is open to interpretation. Moreover, the review for factual accuracy by the Issue Owner does not identify what exactly should or should not be changed or whether the root cause can be included in the review. Therefore, we are unable to support the original "disclosure" that management improperly interfered in the Cause Analysis report.

Based on our evaluation of the available information gathered during the investigation, we conclude that Battelle has demonstrated, by clear and convincing evidence, that it would have reassigned (b)(6); (b)(7)(C) employment in the absence of her protected disclosure.

Conclusion

Based on the available information gathered during the investigation, we conclude that (b)(6); (b)(7)(C) has established by a preponderance of the evidence that information she conveyed to her management regarding the interference in the Cause Analysis Report for Payment to a Fraudulent Subcontractor by select Battelle managers, constituted a protected disclosure within the definition of Section 4712. Available information also suggests that Battelle management was aware of these disclosures, and that there is circumstantial evidence to suggest (b)(6); (b)(7)(C) disclosure may have been a contributing factor in the decision by Battelle management to reassign her employment on (b)(6), (b)(7)(C) 2017. Finally, available information suggests that Battelle management has proved by clear and convincing evidence that it would have taken the personnel action absent (b)(6); (b)(7)(C) disclosure.

V. RECOMMENDATIONS

Based on the findings in this report, the OIG provides no recommendations to the Secretary regarding (b)(6); (b)(7)(C) allegation of reprisal.

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DOCUMENT 2

U.S. Department of Energy
Office of Inspector General
Office of Investigations

Investigative Report to Management

17-0002-W

October 9, 2018

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U.S. Department of Energy
Office of Inspector General
Office of Investigations

October 9, 2018

MEMORANDUM FOR THE SECRETARY

FROM: April G. Stephenson
Acting Inspector General

SUBJECT: INFORMATION: Retaliation Complaint Pursuant To Title 41 United States Code Section 4712. (OIG Case No. 17-0002-W)

This report addresses a complaint filed by (b)(6), (b)(7)(C) ((b)(6), (b)(7)(C) under Title 41 United States Code, Section 4712, "Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information." Dr. (b)(6), (b) asserted that his reporting of possible waste, fraud, abuse, or mismanagement, and possible violations of law, rule, or regulation related to a Federal grant between the Department of Energy (DOE) Office of Science and his former employer, Z Softech Solutions, LLC (ZSS), was a contributing factor in the termination of his employment as the (b)(6), (b)(7)(C) at ZSS, effective (b)(6), (b) 2017.

In order for the complainant to prevail under Section 4712, he must establish by a preponderance of evidence that he made a protected disclosure that he reasonably believed was evidence of gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger, or a violation of law, rule, or regulation. The complainant must also demonstrate that the employer was aware of the protected disclosure and that the disclosure was a contributing factor in a subsequent personnel action. The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as the proximity in time between the protected disclosure and the personnel action. Assuming that the complainant meets this burden, the burden of proof shifts to the employer who must demonstrate, by clear and convincing evidence, that the same personnel action would have been taken absent the protected disclosure.

Dr. (b)(6), (b) asserted that, on April 14, 2017, he reported concerns about ZSS grant fund usage and his pay to the DOE office overseeing the grant. On (b)(6), (b) 2017, ZSS management terminated Dr. (b)(6), (b) He claimed the (b)(6) termination was in retaliation for his April 14 protected disclosure.

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The information gathered during the investigation suggests that Dr. (b)(6), (b) has established by a preponderance of the evidence that he made a protected disclosure to the DOE Department of Energy on April 14, 2017; however, the available evidence also indicates that ZSS was not aware of this disclosure when it terminated him on (b)(6), (b) 2017. In fact, Dr. (b)(6), (b) stated that when he informed his supervieor of his contact with DOE, he purposely misinformed her of the nature of the contact, further supporting our conclusion that ZSS management was not aware of the protected disclosure. The testimonial information gathered during the investigation suggests, despite the close proximity in time between his disclosure and the termination of his employment, Dr. (b)(6), (b) has not met his burden of proving that his protected disclosure was a contributing factor in his termination.

ZSS management provided oral testimony and documentary information in support of its defense that Dr. (b)(6), (b)(7) termination was justified and not related to the April 14 protected disclosure.

The documentation we received indicates Dr. (b)(6), (b) failed to perform research for the grant. Specifically, Dr. (b)(6), (b)(7) testimony stated that his work is mostly done in his head, and his claims that much of a scientist's work can be done just by thinking and while sleeping suggests a lack of tangible and documented research conducted by Dr. (b)(6), (b) In addition, email documentation shows that, in one case, Dr. (b)(6), (b) provided research to his supervisor, (b)(6), (b)(6), (b)(7)(C) of ZSS, which he previously conducted for his dissertation in 2009—research conducted years before the period of the employee agreement with ZSS. In another email, (b)(6), (b)(7) requested Dr. (b)(6), (b) to provide research on a particular topic, and in his response, Dr. (b)(6), (b) stated that he reviewed her information but wanted to discuss a different topic. In each case, the lack of documentation provided by Dr. (b)(6), (b) to (b)(6), (b)(7) supports (b)(6), (b)(7)(C) claim that no relevant research was conducted during Dr. (b)(6), (b)(7) employment.

The documentation we received also supports concerns by (b)(6), (b)(7) over the potential release of confidential information when Dr. (b)(6), (b) sought to engage Ph.D. students of a university external to ZSS in performing work with (b)(6), (b)(7) Though (b)(6), (b)(7) initially agreed to the arrangement, Dr. (b)(6), (b)(7) insistence that information should be freely shared indicated that he ignored her instructions to keep certain information confidential. Dr. (b)(6), (b)(7) sharing of confidential information presented such a problem for (b)(6), (b)(7) that she reached out directly to the university of the Ph.D. students to ensure confidential information would not be shared.

Based on the available evidence presented by ZSS, we find that ZSS has met its burden of proof in demonstrating by clear and convincing evidence that Dr. (b)(6), (b) would have been terminated regardless of his protected disclosure.

Procedural Requirements of Title 41 U.S.C. Section 4712

The provisions of Section 4712 stipulate that, within 30 days after receiving this report, the Secretary shall determine whether there is sufficient basis to conclude that the contractor subjected the complainant to a prohibited reprisal and shall either issue an order denying relief or shall take one or more of the following actions: (1) order the contractor to take affirmative action

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to abate the reprisal; (2) order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or (3) order the contractor to pay the complainant for all costs and expenses, including attorneys' fees, that were reasonably incurred by the complainant in connection with bringing the complaint, as determined by the Secretary.

CC: Office of Hearings and Appeals
Office of General Counsel
Dr. (b)(6), (b)(7)(C)
Z Softech Solutions, LLC

This document is for [redacted] Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

I. ALLEGATION

This report addresses a complaint filed by [redacted] (Dr. [redacted] on July 25, 2017 under Title 41 United States Code, Section 4712, "Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information." Dr. [redacted] asserted that his reporting of possible waste, fraud, abuse, or mismanagement, and possible violations of law, rule, or regulation related to a Federal grant between the Department of Energy (DOE) Office of Science and his former employer, Z Softech Solutions, LLC (ZSS), was a contributing factor in the (b)(6), (b)(7)(C) termination of his employment as the [redacted] at ZSS, effective [redacted] 2017. (b)(6), (b)(7)(C)

II. POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

Section 4712 provides whistleblower retaliation protection for an employee of a DOE contractor who discloses information related to a Federal contract or grant. Section 4712 states, in pertinent part:

> (a) Prohibition of Reprisals.
>
> (1) In general.-An employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
>
> (2) Persons and bodies covered. The persons and bodies described in this paragraph are the persons and bodies as follows:
>
> ...
>
> (D) A Federal employee responsible for contract or grant oversight or management at the relevant agency.
>
> ...
>
> (G) A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.
>
> (3) Rules of construction.-For the purposes of paragraph (1)
>
> (A) an employee who initiates or provides evidence of contractor, subcontractor, or grantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
>
> (B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

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(b) Investigation of Complaints.

(1) Submission of complaint. A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor or grantee concerned, and the head of the agency.

(2) Inspector General action.

(A) Determination or submission of report on findings. Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) Extension of time. If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

Section 4712 also directs that the burdens of proof specified in Title 5 U.S.C., Section 1221 shall be followed in any investigation conducted by the Office of Inspector General (OIG). That section states that, in any case involving an alleged improper personnel practice, corrective action shall be considered appropriate if the employee has demonstrated by a preponderance of evidence that a disclosure or protected activity was a contributing factor in the personnel action that was taken. The employee may demonstrate that the disclosure or protected activity was a contributing factor in the personnel action through circumstantial evidence, such as evidence that the official taking the personnel action knew of the disclosure or protected activity, or that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure or protected activity was a contributing factor in the personnel action. The section also states that corrective action may not be ordered if, after a finding that a protected disclosure was a contributing factor, the employer demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Section 4712 requires that, within 30 days after receiving this report, the Secretary shall determine whether there is sufficient basis to conclude that the contractor subjected the complainant to a prohibited reprisal and shall either issue an order denying relief or shall take one or more of the following actions: (1) order the contractor to take affirmative action to abate the reprisal; (2) order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay),

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employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or (3) order the contractor pay the complainant for all costs and expenses, including attorneys' fees, that were reasonably incurred by the complainant in connection with bringing the complaint, as determined by the Secretary.

III. BACKGROUND

Z Softech Solutions, LLC (ZSS) is a Small Business Innovation Research (SBIR) grant recipient awarded by the DOE Office of Science, tasked with developing cyber tools for High-Performance Computing (HPC) Environments and HPC cloud workloads.

The following is a timeline of relevant events that is uncontested by the parties:

In (b)(6), (b)(7)(C), Dr. (b)(6); (b)(7)(C) graduated with his Ph.D. in [redacted]. His dissertation discussed, (b)(6); (b)(7)(C) [redacted]. (b)(6), (b)(7)(C)

In 2016, Dr. (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) ZSS, met at a Cybersecurity Conference they were both attending at [redacted] in South Carolina. (b)(6), (b)(7)(C)

On February 21, 2017, ZSS was awarded a grant, [redacted] with a period of performance of February 21, 2017 through November 20, 2017, on a project titled, [redacted]. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) ZSS's Phase 1 proposal objective stated that they would be "developing and enhancing existing technology software via the Pacific Northwest National Laboratory's (PNNL's) [redacted]." (b)(6), (b)(7)(C)

On February 21, 2017, Dr. (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) had a telephone discussion during which (b)(6); (b)(7)(C) and Dr. (b)(6); (b)(7)(C) discussed potential employment of Dr. (b)(6); (b)(7)(C) by ZSS.

On [redacted] 2017, (b)(6); (b)(7)(C) sent Dr. (b)(6); (b)(7)(C) an offer of employment. The offer identified the position as a (b)(6); (b)(7)(C) [redacted] for coordination of Department of Energy Small Business Technology Transfer (STTR)/SBIR Grant Research," and identified his job responsibilities, the 9 month duration of the project, and his salary to be paid with Phase 1 grant funding. (b)(6), (b)(7)(C)

On (b)(6), (b)(7)(C) 2017, Dr. (b)(6); (b)(7)(C) signed his employment agreement, with the start date set as (b)(6), (b)(7)(C) 2017. The agreement included the following clause:

> "Dr. (b)(6); (b)(7)(C) agrees to perform faithfully, industriously, and to the best of Dr. (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) ability, experience and talents, all of the duties that may be required by the express and implicit terms of this Agreement, to the reasonable satisfaction of ZSS."

The employment agreement required Dr. (b)(6); (b)(7)(C) to provide ZSS with all information, suggestions, and recommendations regarding ZSS business that he "has knowledge that would be

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of benefit to" the company. The agreement included a confidentiality clause which stipulated that Dr. [redacted] was prohibited from disclosing, either directly or indirectly, to any third party, any vital information that was valuable, special, and unique, without the written consent of ZSS. Should Dr. [redacted] do so, he would be considered in violation of the agreement. In addition, the agreement included an "unauthorized disclosure of information" clause. The clause stated that, if it appeared that Dr. [redacted] had disclosed or threatened to disclose information in violation of the agreement, ZSS would be entitled to an injunction to restrain Dr. [redacted] In the case of termination by ZSS, Dr. [redacted] would be entitled to compensation for 30 days beyond the termination date, unless Dr. [redacted] was in violation of the agreement. If Dr. [redacted] was found in violation of the agreement, ZSS was entitled to terminate him without notice and with compensation only to the date of termination.

In early May 2017, Dr. [redacted] expressed payroll concerns to [redacted] He informed [redacted] that he should not be paid as a part-time employee because he could complete his full 40 hours of work while also conducting his teaching position at [redacted] University. He informed her he would work 24-30 hours during the weekend and 10-16 hours after work during the week. Several days later, between May 13-18, 2017, Dr. [redacted] continued to have issues with his salary but was told by [redacted] that the issues should be adjusted by the next payroll cycle. In addition, [redacted] directed Dr. [redacted] to handle his concerns via the payroll "portal." (b)(6), (b)(7)(C)

On May 20, 2017, Dr. [redacted] provided [redacted] with an email containing links to online videos depicting Cryptography and Steganography and a PowerPoint presentation he created discussing [redacted] processes which Dr. [redacted] believed would benefit ZSS; however, [redacted] informed us that the material Dr. [redacted] provided in that email was not relevant to the grant. (b)(6), (b)(7)(C)

On May 26, 2017, [redacted] requested deliverables from Dr. [redacted] Specifically, according to email documentation, she asked Dr. [redacted] to look at the problems and recommendations for Cybersecurity related to the DOE HPC systems and Software research analysis she sent to him on April 28, 2017. [redacted] also requested an algorithm and white papers. In response, Dr. [redacted] stated that he had reviewed the information [redacted] provided but preferred to discuss [redacted] (b)(6), (b)(7)(C) [redacted] (b)(6), (b)(7)(C) " There is no documentation to indicate Dr. [redacted] ever provided the requested deliverables.

On May 30, 2017, Dr. [redacted] and [redacted] discussed via email the potential recruitment of Ph.D. students at University of Maryland to work on the ZSS project wherein Dr. [redacted] asked [redacted] if she had any objections to sharing information about the project. [redacted] thanked Dr. [redacted] and requested only the proposal be shared with the professor of the University of Maryland students. [redacted] told Dr. [redacted] that she would complete a unilateral non-disclosure agreement with the students once they came on board. Dr. [redacted] responded that he would "share the proposal and any related document and information with Ph.D. students, scientists, professors, institutions, and schools (such as University of Maryland and [redacted] University or any other institution)." He also stated, "this is great for the project, DOE, and (b)(6), (b)(7)(C)

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definitely for 'you' and your company too. I see zero concern/worry about this and you should be very happy for that." (b)(6); (b)(7)(C) thanked Dr. (b)(6); (b)(7)(C) again but requested that he not share (b)(6), (b)(7)(C) data sets and patent information, or solutions per the DOE's Cyber problems. She stated that the proposal would be sufficient and that more could be shared once the students were under the NDA. (b)(6); (b)(7)(C) stated that she was excited about the possibility of working with University of Maryland but was cautious due to the nature of her business and relationships with other entities.

On (b)(6), 2017, Dr. (b)(6); (b)(7)(C) was terminated. The termination letter stated that ZSS lost confidence in Dr. (b)(6); (b)(7)(C) ability to perform. It stated that the concern about his work began (b)(6), (b)(7)(C) when he accepted a position at [redacted] University" because he "failed to execute the responsibilities of his job [at ZSS] as outlined in the offer of employment and in direct violation of the employment agreement." Specifically, the letter stated that he had not put forth best efforts to the reasonable satisfaction of the company for the following reasons: ZSS management had "not received a whitepaper, other research documentation or any other progress on or related to the DOE's Cyber Security Problems and Solutions" sent to him in April; ZSS management had "not received the promised report or analysis of the Department of Energy's [redacted] (b)(6), (b)(7)(C) technology"; and Dr. (b)(6); (b)(7)(C) had failed to "respond to email requests for status updates and other communication in a timely manner." In addition, the letter stated that he "may have used ZSS resources, connections and intellectual property to advance [his] own business interests, generate new business and connections, [and] engage in contract work with other clients while an employee and/or agent of [the] company."

IV. INVESTIGATIVE FINDINGS

Dr. (b)(6); (b)(7)(C) Assertion that He Made a Protected Disclosure

(b)(6); (b)(7)(C) asserts that, on April 14, 2017, he reported concerns via telephone about payroll and ZSS's "draw downs of funds" to (b)(6); (b)(7)(C), a DOE contract employee with CTR management working on behalf of the Office of Science. (b)(6); (b)(7)(C) duties included helping to process grants and answering questions and emails on the grants process. Dr. (b)(6); (b)(7)(C) stated that he revealed to (b)(6); (b)(7)(C) on April 25, 2017 that he called DOE about financial and budgeting questions, including questions about changes to the budget for the project. As a result, he alleged that (b)(6); (b)(7)(C) became angry at him for speaking to DOE. Dr. (b)(6); (b)(7)(C) also asserted that he contacted (b)(6); (b)(7)(C) again on May 15, 2017 to update her and inform her that he was allegedly denied hardware and software lists by (b)(6); (b)(7)(C). Additionally, he stated that he contacted (b)(6); (b)(7)(C) again on May 30, 2017 to discuss concerns and to inform (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) found out about the call and asked why he was calling DOE. Dr. (b)(6); (b)(7)(C) alleged that he contacted DOE again on May 31, June 1, and June 2, though he that stated when he called, he was sometimes unable to reach anyone and left a voicemail.

Dr. (b)(6); (b)(7)(C) alleged that he and (b)(6); (b)(7)(C) had an oral agreement to begin unofficially working for (b)(6); (b)(7)(C) on February 17, 2017, although the start of his official employment agreement was not until March 27. In our interview, he stated that he had never been in a (b)(6); (b)(7)(C)

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(b)(6); (b)(7)(C) role previously but, from the beginning, was not used to the lack of specific information provided to him by (b)(6); (b)(7)(C) Dr. (b)(6); (b)(7)(C) stated that he provided a lot of information on how to do the work for the grant to (b)(6); (b)(7)(C) but, in order to build a custom solution, he required specific information and rarely received it. Specifically, on May 3, 2017, Dr. (b)(6); (b)(7)(C) asserted that he requested hardware and software lists from (b)(6); (b)(7)(C) On May 4, 2017, she responded that she would request the information he needed but that it might take a few days for the Government to provide it. According to documentation provided by Dr. (b)(6); (b)(7)(C), he requested the lists again on May 9, 2017 and May 15, 2017.

During our interview with Dr. (b)(6); (b)(7)(C) he stated that (b)(6); (b)(7)(C) gave him no assignments and that he was the only one who knew what needed to be done for the project. However, he also stated that he was unable to do any physical work. Dr. (b)(6); (b)(7)(C) stated that whenever he asked for specific information about the technology, his requests for more information yielded responses in which (b)(6); (b)(7)(C) allegedly told Dr. (b)(6); (b)(7)(C) that he did not need to provide her with "a real solution," just "something in general" and "something generic." Dr. (b)(6); (b)(7)(C) alleged that he felt (b)(6); (b)(7)(C) was someone who focused only on receiving the grant and not on delivering a solution. Consequently, Dr. (b)(6); (b)(7)(C) alleged that he contacted DOE prior to signing his contract and told them that something very suspicious was going on and wanted them to be aware. Dr. (b)(6); (b)(7)(C) stated that he only signed the contract so that he could "do a good solution for the government." During our interview, we attempted to clarify the date of Dr. (b)(6); (b)(7)(C) alleged contact with DOE prior to signing the contract, but he was unable to provide an actual date or the identity of the individual to whom the alleged disclosure was made.

Despite the lack of specific information or assignments, Dr. (b)(6); (b)(7)(C) insisted that he still worked his full hours, stating, "I was really consuming myself, you know, about how [we] can secure, um, the Department of Energy. And that thinking is part of this work, by the way." He stated that a scientist's research is thinking, and therefore, he was able to work more hours because he was always thinking about the problem, even while sleeping.

During our interview, Dr. (b)(6); (b)(7)(C) stated that the negotiation with ZSS over salary began prior to signing his contract, that he and (b)(6); (b)(7)(C) had several discussions about it because the original proposed salary was unsuitable, and that he had refused to sign an incorrect salary. When Dr. (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) agreed on a salary, he signed the employment agreement. After signing his contract, Dr. (b)(6); (b)(7)(C) stated that he became concerned about (b)(6); (b)(7)(C) usage of the funds she received from the DOE, since he believed that he was not being paid appropriately. Dr. (b)(6); (b)(7)(C) continued to address his payroll issues through (b)(6); (b)(7)(C) and eventually reached out directly to the ZSS payroll office. He claimed that once he successfully reached the ZSS payroll company to fix his issues, (b)(6); (b)(7)(C) terminated him.

In our interview with (b)(6); (b)(7)(C) she confirmed that her first contact with Dr. (b)(6); (b)(7)(C) was on April 14, 2017 about payroll concerns, as well as Dr. (b)(6); (b)(7)(C) concerns with ZSS's "draw downs of funds." She stated that she verbally provided the information to her supervisor, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C), who then contacted the DOE SBIR legal department in Chicago. (b)(6); (b)(7)(C) stated that her next discussion with Dr. (b)(6); (b)(7)(C) was on [redacted] 2017, when he notified (b)(6), (b)(7)(C)

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her of his termination and repeated his concerns about the allegedly inappropriate "draw downs of funds" by ZSS. Again, [redacted] stated that she informed [redacted] who then reached out to the Program Manager. [redacted] stated that she received an email from Dr. [redacted] on June 7, 2017 with his description of events, including allegations that he received checks that did not match his salary. In his correspondence to [redacted] after he had been terminated, Dr. [redacted] stated that he decided to call DOE in early April after he did not get paid as agreed, and after he heard [redacted] say, "We do not have to make a real solution, but just help in publication." In the [redacted] 2017 correspondence, Dr. [redacted] stated that he reached out to DOE back in April because he believed [redacted] was attempting to receive funding without doing research, which he believed was fraud. [redacted] did not identify the additional allegations as concerns that were raised by Dr. [redacted] in the April call.

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

In our interview with Dr. [redacted] we attempted to narrow down the dates of Dr. [redacted] disclosures and what exactly was disclosed; however, Dr. [redacted] stated that he was unable to recall the dates and exactly what he alleged within each call. Instead, he directed us to look at the original complaint documentation provided to our office by his attorney and often stated that he told DOE and [redacted] on several occasions that he believed she was "committing a fraud." Despite Dr. [redacted] verbal assertion that he contacted the DOE in March prior to signing his contract, his original complaint to our office stated that his first report to the Government was via telephone on April 14, 2017. No documentation was provided by Dr. [redacted] to support his assertion of the additional calls to DOE on May 15, 2017, May 30, 2017, May 31, 2017, June 1, 2017, and June 2, 2017.

Dr. [redacted] Allegation that He was Reprised Against for Whistleblowing

Dr. [redacted] asserted that, in response to his protected disclosures to DOE regarding his payroll concerns and allegations of fraud, ZSS took retaliatory actions against him in the form of terminating his employment and including allegations in his termination letter that he was in violation of his employment agreement, which withheld any additional compensation beyond his termination date.

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

On [redacted] 2017, Dr. [redacted] received an email from [redacted] informing him that he would be terminated, effective immediately. The email also included his Letter of Termination that noted Dr. [redacted] was terminated due to a loss of confidence by ZSS in Dr. [redacted] ability to perform and, as depicted in the background section of this report, listed several reasons for his termination. Following receipt of the termination letter, on [redacted] 2017, Dr. [redacted] again contacted [redacted] and informed her that he had been terminated and that he continued to have concerns about the "draw downs of funds."

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

Dr. [redacted] stated that he received no complaints from [redacted] about his work products. He stated that he was available for scheduled meetings and often spoke with [redacted] for hours over the phone or via "Skype." He also stated that [redacted] was often too busy and canceled meetings with him. Specifically, Dr. [redacted] verbally quoted an email from [redacted] in which she thanked him for being patient with her and, on another occasion, allegedly stated that Dr.

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[redacted] was "a game changer." Dr. [redacted] believes this proves his positive performance and that [redacted] praised his work on the project.

In his complaint, Dr. [redacted] stated that [redacted] was aware of his calls to the DOE. Specifically, he stated that around April 25, 2017, he told [redacted] that he called the DOE about financial and budget questions, and Dr. [redacted] alleged that [redacted] was upset about his calls with the DOE. Dr. [redacted] complaint stated that, on May 31, 2017, [redacted] "found out about" his subsequent calls to the DOE and allegedly asked Dr. [redacted] why he was calling. Dr. [redacted] stated that he refused to answer [redacted] question.

In our interview with him, Dr. [redacted] stated that he believes the close proximity between his calls to DOE and ZSS payroll, and his termination indicate reprisal. Specifically, Dr. [redacted] stated that his termination happened immediately after he called the DOE to report what he believed was fraud and contacted ZSS payroll to discuss his salary concerns. Dr. [redacted] informed us that he was not sure whether his termination was within a couple of days or on the same day of his calls to DOE and ZSS payroll. Dr. [redacted] was unable to provide any documentation to support his assertions about [redacted] knowledge and/or conduct. In our interviews with [redacted] and other SBIR officials, we were told that no one informed [redacted] about any of Dr. [redacted] allegations. In addition, Dr. [redacted] believes the reasons listed in the termination letter are false. His complaint to DOE stated that the reasons listed in the termination letter were made to "conceal the real reasons for firing Dr. [redacted] and to "swindle Dr. [redacted] out of 1.5 months' pay under the termination clause of his agreement."

Dr. [redacted] Burden of Proof

In order to make a *prima facie* case, a complainant must establish by a preponderance of the evidence that he made a protected disclosure of information that he reasonably believes is evidence of gross mismanagement, a gross waste of Federal funds, an abuse of authority, a substantial and specific danger to public health or safety, or a violation of law rule or regulation. A complainant must also establish that management was aware of the disclosure and that the personnel action was taken as a result of the protected disclosure. The complainant must prove each of these elements by at least circumstantial evidence. An analysis of this evidentiary burden follows.

Element #1

The first element that Dr. [redacted] has to meet is to establish by a preponderance of the evidence that he made a protected disclosure.

Dr. [redacted] asserted that he disclosed information to DOE that he reasonably believed constituted fraud related to ZSS grant fund usage. According to the documentation provided, Dr. [redacted] asserted that, in his telephone calls to DOE beginning on April 14, 2017, he reported concerns with "draw downs of funds" by ZSS, payroll issues, and that [redacted] insisted he provide general results instead of specific results.

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Specifically, [redacted] confirmed that Dr. [redacted] contacted her office multiple times, and the documentation from [redacted] indicated that Dr. [redacted] reported concerns with payroll and [redacted] "draw downs of funds." Despite the lack of documentation of Dr. [redacted] alleged protected disclosure prior to signing his contract, and lack of documentation of his contact with DOE on May 15, 2017, May 30, 2017, May 31, 2017, June 1, 2017, and June 2, 2017, there is documentation to conclude that Dr. [redacted] communicated to DOE his concerns about [redacted] grant fund usage on April 14, 2017. We conclude that the information Dr. [redacted] conveyed to DOE constituted a protected disclosure under Section 4712.

Based upon the available information gathered during the investigation, we conclude that Dr. [redacted] has established by a preponderance of the evidence that he made a protected disclosure under Section 4712 to the DOE Office of Science.

Element #2

The second element that Dr. [redacted] has to meet is to establish by a preponderance of the evidence that ZSS management was aware that he made a protected disclosure.

Dr. [redacted] stated that [redacted] was aware of his conversations with the DOE because he informed her of those conversations on April 25, 2017. However, Dr. [redacted] stated that he intentionally misinformed [redacted] about the subject matter by informing her that he had been asking questions about changes to the budget for the project, which he stated was part of his conversation. He also stated that [redacted] became angry when hearing about his conversations with DOE and that she continued to ask why he was calling DOE and about what information he reported. There is a lack of documentation to support Dr. [redacted] alleged communication to [redacted] of his conversations with the DOE or ZSS payroll or his assertions about [redacted] state of mind.

In our interview with her, [redacted] stated that she was not aware of any actual conversations between Dr. [redacted] and the DOE or the ZSS payroll office, despite her documented assertion that she often directed him to contact ZSS payroll with his payroll concerns. We asked [redacted] about any complaints Dr. [redacted] may have voiced. [redacted] stated that the [redacted] has full autonomy, is similar to that of a project manager, and primarily leads the project and provides direction, keeping the timeline and milestones going. In addition, the [redacted] often engages with the DOE and PNNL on the behalf of the company. When asked if Dr. [redacted] ever contacted the DOE, [redacted] informed us that she encouraged him to reach out and gave him all of the contacts at the DOE. [redacted] also informed us that Dr. [redacted] voiced negative comments about the efficacy of the [redacted] Technology to her once she began requesting deliverables, though Dr. [redacted] had no proof to back up his statement. [redacted] admitted that ZSS never even got the software due to PNNL's copyright. Despite the lack of specific software, [redacted] alleged that Dr. [redacted] stated it "sucked," and [redacted] questioned his pronouncement since he had not seen the technology. She stated that she requested he prove his assertion that it was not a good product and provide information to support it. She stated that he

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

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allegedly told her that he did not read the information on [redacted] and could not provide her with the information. Specifically, [redacted] stated that she wanted Dr. [redacted] to reach out to a specific DOE contact to get insight on the [redacted] Technology, but to her knowledge, Dr. [redacted] never reached out to the DOE contact.

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

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

When we inquired further about any contact [redacted] was aware of between Dr. [redacted] and the DOE, [redacted] referenced a point in time at the beginning of Dr. [redacted] employment when she and [redacted] were in touch with DOE to discuss his salary. [redacted] admitted that Dr. [redacted] often complained to her about his hours and pay; however, she alleged that she was not aware of concerns about fraud or misuse of funds he may have made directly to DOE.

When asked, [redacted] stated that she was never informed about any concerns of fraud or misuse of funds that Dr. [redacted] may have reported to DOE. Documentation provided by [redacted] establishes that she directed Dr. [redacted] to ZSS's payroll company portal when he had issues on May 18, 2017. The lack of documentation supporting any knowledge by [redacted] of Dr. [redacted] protected disclosures, coupled with the documentation in which [redacted] instructed Dr. [redacted] to reach out to ZSS payroll to discuss any salary concerns instead of reaching out to her, does not meet the burden of proof that [redacted] may have terminated him for reaching out to ZSS payroll.

We interviewed [redacted] and [redacted] the [redacted] SBIR and STTR programs at DOE, to determine whether Dr. [redacted] allegations may have been disclosed to [redacted] In our interview with [redacted] he stated that he was first informed of Dr. [redacted] allegations after Dr. [redacted] termination. Furthermore, when asked whether his office would contact ZSS about any complaints received, he stated that his office would not reach out to the grantees but would refer any information to the DOE office in Chicago. In our interview with [redacted] he stated that the first contact his office received of complaints by Dr. [redacted] was not until summer 2017, following Dr. [redacted] termination. In the allegations his office received, [redacted] stated that Dr. [redacted] claimed he was required to submit false reports. [redacted] was confused by the pronouncement because his office was not receiving any reports at that time and that the proposal had already been submitted; therefore, Dr. [redacted] could not be referring to information within the proposal. Both [redacted] and [redacted] stated that their actions following receipt of Dr. [redacted] claims centered on ensuring the PI was replaced. They stated that their actions did not involve reaching out to ZSS. Our interview with [redacted] the [redacted] for ZSS's grant, indicated that [redacted] was not sure about the date of his first contact with Dr. [redacted] but believed it was not until after Dr. [redacted] termination.

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

We interviewed [redacted] within the Operations Division Office in the Acquisition and Assistance (ACQ-B) SBIR program with the DOE Office of Science, who stated that, with the exception of awarding the application, he was unaware of any issues with the grantee company and only learned of [redacted] allegations when his office was informed of the PI change following [redacted] termination. He also informed us that his contact directly with [redacted] did not occur until after [redacted] termination at a

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Phase 1 PI meeting progress review with her and Dr. [redacted] replacement around [redacted], 2017. (b)(6), (b)(7)(C)

Based on the available information gathered during the investigation, we conclude that Dr. [redacted] has not established that ZSS management had knowledge of a protected disclosure.

Element #3

The third element that Dr. [redacted] must meet is to establish that his protected disclosure was a contributing factor in the decision by ZSS management to terminate his employment. Although our review did not uncover any documentation that Dr. [redacted] disclosure was a contributing factor in the decision to terminate his employment, the very close temporal proximity between Dr. [redacted] call to DOE, on April 14, 2017, and the termination, on [redacted] 2017, of Dr. [redacted] employment is sufficient circumstantial evidence that his concerns were more likely than not a contributing factor in the decision to take that action. However, based on our interviews with SBIR officials, there is no reason to believe that [redacted] had any knowledge of any disclosure, and therefore, the disclosure could not have been a contributing factor in the termination decision. (b)(6), (b)(7)(C)

Based on the information gathered during the investigation, we conclude that Dr. [redacted] has not established that his protected disclosure was a contributing factor in the decision by ZSS management to terminate his employment due to the lack of knowledge by ZSS management of his protected disclosure to DOE. We conclude that Dr. [redacted] has not met his burden of proof.

Management's Burden of Proof

Despite our conclusion that Dr. [redacted] did not satisfy his burden of proof, we reviewed the documentation and testimony of ZSS management to determine whether ZSS management would have taken the same personnel action absent Dr. [redacted] protected disclosure. ZSS management provided written records and interview testimony to support its position that the termination of Dr. [redacted] employment was not retaliatory.

ZSS Management's Description of Events Immediately Prior to Dr. [redacted] Termination

(b)(6), (b)(7)(C) On [redacted] 2017, [redacted] emailed Dr. [redacted] to inform him that he would be terminated, effective immediately. The email also included his Letter of Termination that noted Dr. [redacted] was terminated due to a loss of confidence by ZSS in Dr. [redacted] ability to perform and, as depicted in the background section of this report, listed several reasons for his termination.

In our interview, [redacted] addressed various issues with Dr. [redacted] work performance and claimed that Dr. [redacted] inconsistencies were seen early on. These issues included Dr. [redacted] work hours and work products. Early in his employment, [redacted] informed [redacted] that he could be paid on a full-time basis, 40 hours per week, and would do so by working 24-30 hours on the weekend and 10-16 hours after school during weekdays. Since [redacted] knew Dr.

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[redacted] was available primarily on evenings and weekends, and otherwise upon request, she adjusted her own schedule to coincide with Dr. [redacted] and was flexible with most meetings she requested he attend. Specifically, [redacted] stated that she often had nighttime calls with Dr. [redacted] on Skype. However, [redacted] stated that Dr. [redacted] was often unfocused in the meetings and liked to discuss topics that were often irrelevant to the project, did not meet project specifications, or were completely outside the scope of DOE programs. [redacted] stated that Dr. [redacted] would stray off topic in meetings or would provide information to her that was merely a retelling of information she told him. In her email documentation, [redacted] referenced a request that she had made to Dr. [redacted] to attend a meeting she had scheduled with a client. She indicated that Dr. [redacted] was unavailable for the meeting. In an email dated May 9, 2017, [redacted] stated her concern over Dr. [redacted] availability when she expressed her need for him to attend a training call. According to the emails, a call time was set by a client for training, and in response to the client's request about whether it would be possible to have the meeting, Dr. [redacted] stated, "I think & hopefully it will be OK!" As stated in the background section of this report, in response to his message, [redacted] stated, "I thought that your school was okay with you working on this project during the day and [in] addition to you working over the weekend? I am concerned regarding your availability per your school and your upcoming research with [redacted] I am hoping that these concerns are unfounded on my part."

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

[redacted] stated that she had concerns with inconsistencies in the information on Dr. [redacted] resume. She informed us that on calls with clients, [redacted] discussed basic information such as basic development code, or basic information about high performance computing, and Dr. [redacted] did not know the discussed information, though his resume listed high performance computing.

[redacted] stated that, throughout [redacted] employment, issues allegedly continued. In our interview, [redacted] stated that she provided documents to Dr. [redacted] for review and research purposes. [redacted] stated that, in some cases, Dr. [redacted] would state that he had not received certain documentation she provided to him, although she knew he did. [redacted] informed us that she sent her documents to him via "Box Cloud," an online file sharing service, and that the service informed her when [redacted] accepted the documents. Documentation was gathered during the investigation supporting the assertions made by [redacted] regarding the documents she sent via "Box Cloud."

When asked about [redacted] work products, [redacted] stated that, in most cases, she did not receive deliverables from Dr. [redacted] and had to ask several times. [redacted] informed us that she had received her first deliverable from Dr. [redacted] in May that merely restated information she sent him. In addition, [redacted] stated that when Dr. [redacted] eventually provided a research product to her, she found that the project was something he had already completed for his dissertation, contained the exact same presentation that was listed on his website, and discussed [redacted] Email documentation supports [redacted] assertion that she received information on [redacted] from Dr. [redacted] on May 20, 2017. In our interview, [redacted] stated that she informed Dr. [redacted] that she could not accept the document because it was not relevant to the project, and it was not what she paid him to do. Dr. [redacted] allegedly got upset

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

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

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and insulted the project they were working on. [redacted] stated, he wanted "us to do research on what he had already researched for his dissertation, which mean[s] he did not do any work for me." [redacted] informed us that Dr. [redacted] voiced negative comments about the [redacted] (b)(6), (b)(7)(C) Technology to her once she began requesting deliverables, though she stated he had no proof to back it up. Furthermore, [redacted] stated that ZSS never even got the software due to copyrighting by PNNL, and despite the lack of specific software, Dr. [redacted] stated that it "sucked." [redacted] stated that she questioned his pronouncement since he had not seen the project and requested he prove his assertion and provide her with information to support it. [redacted] told us that Dr. [redacted] told her he did not read the information on [redacted] and (b)(6), (b)(7)(C) could not provide her the requested information.

[redacted] informed us that Dr. [redacted] was often rude to her, disgruntled, and combative. In addition, she stated that she asked Dr. [redacted] to give her "at least something for Department of Energy." She stated that whenever she attempted to focus Dr. [redacted] and request deliverables, he would get defensive and tell her she's too "jittery" or "panicky," or tell her not to worry or stress because, "you don't want to look old." She stated, "He was very rude to me on the phone. And I think because I was a woman, he just did not want to take direction from me." She stated that colleagues would ask questions and Dr. [redacted] would not get as upset with them, but when [redacted] asked the same questions, he would "go off."

We asked [redacted] about any commendation or praise she may have given Dr. [redacted] She admitted that she often gave Dr. [redacted] a platform with which to voice his many ideas, even when off topic. [redacted] stated that she praised Dr. [redacted] on his research in [redacted] (b)(6), (b)(7)(C) Specifically, she informed us that she told him "this is great stuff" because "you don't want to demean somebody's work." She stated that she "was trying to keep him motivated, because that's his dream." [redacted] stated that Dr. [redacted] also kept showering her with commendation, and often told her that he believed her company would go far; however, [redacted] suggested that she did not care much about his commendation and stated that she just wanted the work done. When asked if she ever confronted Dr. [redacted] and told him that he was not meeting goals or performance expectations, [redacted] informed us that she constantly told him, and in those instances, Dr. [redacted] became combative. She stated that in her most recent meeting with Dr. [redacted] during which he complained about his payroll problems, she told him that they were not meeting deliverables, and he told her that she was panicking and became combative.

According to email documentation provided by [redacted] she became concerned about Dr. [redacted] lack of adherence to the confidentiality policy after May 30, 2017 when Dr. [redacted] informed her that he would be including another school's graduate students in her work. As stated in the background section of this report, [redacted] stated that she was thankful that Dr. [redacted] would engage graduate students in the work. However, she quickly became concerned about confidentiality and directed Dr. [redacted] to ensure the students signed non-disclosure agreements before viewing anything more than her company proposal. Despite [redacted] order via email to share only the proposal, Dr. [redacted] informed her that he would share the proposal and any related document or information amongst various individuals on the campus,

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and informed [redacted] that he could see zero concern or worry about it. [redacted] again instructed him within the email to share only the proposal. During our interview, [redacted] told us that she was worried about the confidentiality of the information Dr. [redacted] may have shared and worried that, based upon his statements to her, Dr. [redacted] had already shared sensitive information. She informed us that she reached out to the unspecified school to ensure it did not share any information given to them by Dr. [redacted]

[redacted] also informed us about an incident when Dr. [redacted] went to [redacted] University for a week and spoke to the chair of the department and informed the chair that he was working on [redacted] project. [redacted] stated that she directed Dr. [redacted] not to share any information with [redacted] University. [redacted] stated that Dr. [redacted] told her that it would benefit her company and was on her behalf. He allegedly requested [redacted] to come over and speak to [redacted] University. However, [redacted] stated that Dr. [redacted] visit was not on her behalf because Dr. [redacted] was not able to effectively tell her what he was doing at the university. She stated that based upon his assertion that the [redacted] University visit would benefit her company, she believed that he was using her company to get work at [redacted] University.

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

[redacted] stated that she eventually decided to terminate Dr. [redacted] employment due to his combativeness and once she realized he did not have any documentation or anything significant to back up his assertions that [redacted] was a bad product.

Office of Inspector General Analysis

ZSS management presented oral testimonial and documentary information in support of its defense that it was justified in its termination of Dr. [redacted]

Due to the short duration of his employment with ZSS, there are no available performance reports to support either positive or negative performance. However, the documentation we have received supports some of the information listed in the termination agreement. The termination agreement stated that [redacted] lost confidence in Dr. [redacted] ability to perform, and that ZSS had not received a whitepaper, other research documentation, or any other progress on or related to the project.

We discovered inconsistencies in Dr. [redacted] oral testimony when we reviewed the documentation provided by [redacted] In our interview with Dr. [redacted] he stated that he never received requests for deliverables from [redacted] The email documentation on May 26, 2017 explains a request from [redacted] for Dr. [redacted] to provide whitepapers with research and analysis independent of what she provided in her proposal and research for DOE. Instead of agreeing to the assignment put forth, Dr. [redacted] informed her that he wanted to discuss a different topic. There are no emails that support any work or research completed by Dr. [redacted] In addition, email documentation supports that [redacted] submitted information on the [redacted] technology to Dr. [redacted] and requested a response, and submitted requests for research. Based upon the information within the available emails, in some cases, Dr. [redacted] sent back information from his own dissertation, representing research completed years before

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

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his employment agreement with ZSS. Dr. [redacted] assertion within our interview with him that his work is mostly done in his head and his claims that much of scientist's work can be done just by thinking and while sleeping suggests a lack of research conducted by Dr. [redacted]

The termination letter also stated that Dr. [redacted] may have used ZSS resources, connections, and intellectual property to advance his own business interests, generate new business and connections, and engage in contract work with other clients, while an employee and or agent of the company. In our interview with [redacted] she expressed concern over her confidentiality agreement. The documentation we received supports her claims and stated that Dr. [redacted] sought to engage Ph.D. students in [redacted] work. Though she was initially on board, his suggestion that information should be freely shared suggested dismissal of her instructions. This action clearly presented a problem for [redacted] so much so that she stated that she felt the need to reach out directly to the university and sent an email for them to not release any information Dr. [redacted] may have revealed.

Based on our evaluation of the available information gathered during the investigation, we conclude that ZSS demonstrated, by clear and convincing evidence, that it would have terminated Dr. [redacted] employment absent his protected disclosure.

Conclusion

Based on the available information gathered during the investigation, we conclude that Dr. [redacted] did not meet the required burden of proof required under Section 4712. Although Dr. [redacted] met 2 of the 3 required criteria, he did not meet all 3 required elements. Dr. [redacted] established by a preponderance of the evidence that information he conveyed to the DOE constituted a protected disclosure within the definition of Section 4712. The temporal proximity between Dr. [redacted] protected disclosures and the termination of his employment on [redacted] 2017 is circumstantial evidence that the disclosure may have been a contributing factor in the decision by ZSS management. However, available information demonstrates that management was not aware of the disclosures, an element that must be met under Section 4712. Finally, available information demonstrates that ZSS management has proved by clear and convincing evidence that it would have taken the personnel action absent Dr. [redacted] disclosure.

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

V. RECOMMENDATIONS

Based on the findings in this report, the OIG provides no recommendations of relief to the Secretary for [redacted] [redacted] allegations.

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DOCUMENT 3

Department of Energy

Washington, DC 20585

January 12, 2018

VIA ELECTRONIC MAIL AND
U.S.MAIL

(b)(6); (b)(7)(C)
Elburn, IL 60119
(b)(6), (b)(7) @gmail.com

Re: Retaliation Complaint of (b)(6); (b)(7)(C) against Fermi National Accelerator Laboratory, OIG Case No. 18-0041-C/18-0001-W

Dear Ms. (b)(6); (b)(7)(C):

This letter is in reference to the whistleblower retaliation complaint you filed with the U.S. Department of Energy (DOE), Office of Inspector General (OIG), pursuant to Title 41, United States Code, Section 4712, "Enhancement of contractor protection from reprisal for disclosure of certain information" (Section 4712).

We carefully analyzed the materials you provided in your original complaint as well as the DOE Office of Science determination dated January 3, 2018, and the investigative report issued by the Fermi National Accelerator Laboratory Deputy General Counsel regarding the issues you raised in your employee concerns report. Based upon the available information, we have determined that the OIG will not open an inquiry into this matter as your complaint has previously been addressed through the DOE Office of Science Employee Concerns Program, which was initiated by you on September 25, 2017.

If you have additional information you would like us to consider, or if your circumstances change, please feel free to contact our Hotline at: IGHotline@hq.doe.gov, or 800-541-1625.

Sincerely,

Dustin Wright

Dustin R. Wright
Assistant Inspector General for Investigations

DOCUMENT 4

Department of Energy

Washington, DC 20585

February 6, 2018

VIA ELECTRONIC MAIL AND
U.S.MAIL

(b)(6); (b)(7)(C)
San Carlos, CA 94070
(b)(6), (b)(7)(C) @gmail.com

Re: Retaliation Complaint of (b)(6); (b)(7)(C) against Lawrence Livermore National Laboratory, OIG Case No. 18-0109-C/18-0002-W

Dear Mr. (b)(6); (b)(7)(C):

This letter is in reference to the whistleblower retaliation complaint you filed with the U.S. Department of Energy (DOE), Office of Inspector General (OIG), pursuant to Title 41, United States Code, Section 4712, "Enhancement of contractor protection from reprisal for disclosure of certain information" (Section 4712).

We carefully analyzed the materials you provided in your original complaint, as well as the additional information you provided to our office. Based upon the information available to us at this point, we have determined that the OIG will not open an inquiry into this matter as the available facts do not support a Section 4712 investigation and these matters are more appropriately addressed in another forum.

You may want to consider taking your allegations to agencies with a mandate to address the specific concerns you have raised. Those agencies include:

1) Department of Energy, Contractor Employee Protection Program (10 CFR Part 708),
2) Department of Energy, Alternative Dispute Resolution Office (ADR Act of 1996),
3) Department of Energy, Differing Professional Opinions Office (DOE O 442.2, Chg 1).

If you have additional information you would like us to consider, or if your circumstances change, please feel free to contact our Hotline at: IGHotline@hq.doe.gov, or 800-541-1625.

Sincerely,

Dustin R. Wright
Assistant Inspector General for
Investigations

DOCUMENT 5

Department of Energy

Washington, DC 20585

August 13, 2018

VIA ELECTRONIC MAIL AND
U.S.MAIL

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

Tracy, CA 95376
(b)(6), (b)(7)(C)@llnl.gov

Re: Retaliation Complaint of (b)(6), (b)(7)(C) against Lawrence Livermore National Laboratory, OIG Case No. 18-0405-C/18-0011-W

Dear (b)(6), (b)(7)(C):

This letter is in reference to the whistleblower retaliation complaint you filed with the U.S. Department of Energy (DOE), Office of Inspector General (OIG), pursuant to Title 41, United States Code, Section 4712, "Enhancement of contractor protection from reprisal for disclosure of certain information" (Section 4712).

We carefully analyzed the materials you provided in your original complaint as well as the supporting documentation you provided to our office. Based upon the available information, we have determined that the OIG will not open an inquiry into this matter as the available facts do not support a Section 4712 investigation and these matters are more appropriately addressed in another forum.

You may want to consider taking your allegations to another office within DOE with jurisdiction to address the specific concerns you have raised. Those agencies include the Department of Energy, Contractor Employee Protection Program (10 CFR Part 708).

If you have additional information you would like us to consider, or if your circumstances change, please feel free to contact our Hotline at: IGHotline@hq.doe.gov, or 800-541-1625.

Sincerely,

Dustin R. Wright
Assistant Inspector General for
Investigations

DOCUMENT 6

Department of Energy

Washington, DC 20585

August 13, 2018

VIA ELECTRONIC MAIL AND
U.S.MAIL

(b)(6); (b)(7)(C)

Washington, DC 20006
(b)(6), (b)(7)(C) .com

Re: Retaliation Complaint of (b)(6); (b)(7)(C)
against Carnegie Institute of Washington, OIG Case
No. 18-0289-C/18-0012-W

Dear (b)(6); (b)(7)(C):

This letter is in reference to the whistleblower retaliation complaint you filed on behalf of your client, (b)(6); (b)(7)(C) with the U.S. Department of Energy (DOE), Office of Inspector General (OIG), pursuant to Title 41, United States Code, Section 4712, "Enhancement of contractor protection from reprisal for disclosure of certain information" (Section 4712).

We carefully analyzed the materials you provided in your original complaint as well as the supporting documentation you provided to our office. Based upon the available information, we have determined that the OIG will not open an inquiry into this matter as the available facts do not support a Section 4712 investigation and these matters are more appropriately addressed in another forum.

If you have additional information you would like us to consider, or if your circumstances change, please feel free to contact our Hotline at: IGHotline@hq.doe.gov, or 800-541-1625.

Sincerely,

Dustin Wright

Dustin R. Wright
Assistant Inspector General for
Investigations

Predication No: 18-0489-C

DOCUMENT 7

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

COMPLAINT FORM

COMPLAINT FORM STATUS
PRE-DECISIONAL: ☐
FINAL: ☒

I. REFERENCE DATA

Complaint No:	18-0489-C	Complaint Taken By:	(b)(6); (b)(7)(C)
Date:	09SEP2018	Complaint Method:	E-Mail

II. COMPLAINANT INFORMATION

Name:	(b)(6); (b)(7)(C)
Use Name Outside OIG:	N/A
OIG Confidentiality Policy Explained:	Yes
Acknowledged Understanding of OIG Confidentiality Policy:	N/A
Advised of OIG Disposition Options:	Yes
Complainant Referred to OIG Web Site for Details on Allegation Processing:	Yes

Complainant Status:	Non-Employee	
Employer:	National Security Technologies, LLC (formerly)	
Position/Title:	(b)(6); (b)(7)(C) (former)	
Work Address: (Street)	Unknown	
(City, State & Zip):	Unknown	
Telephone & E-mail:	Unknown	Unknown
Home Address: (Street)	(b)(6); (b)(7)(C)	
(City, State & Zip):	(b)(6) (b)(7)(C)	
Telephone & E-mail:	(b)(6); (b)(7)(C)	Unknown

III. ALLEGATION(S) (Who, What, When, Where, Why and How. Identify Attachments, Documentation and Witnesses.)

OVERVIEW:

On 09 Sep 2018, the Hotline received a complaint from (b)(6); (b)(7)(C), a former contractor at the Nevada National Security Site, alleging in retaliation for reporting mismanagement, Occupational Safety and Health Administration (OSHA) violations, and discrimination her supervisor placed her on a Performance Improvement Plan (PIP) in 2017 and later had her terminated in (b)(6); (b)(7)(2017.

(b)(6), (b)(7)(C) (b)(6); (b)(7)(C) previously addressed this matter in a 708 claim, which was dismissed due to concurrent filing in Nevada State court. The matter is currently being addressed in Federal court.

Analyst's note: (b)(6); (b)(7)(C) requested all communications be directed to her attorney, (b)(6);

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ALLEGATION DETAILS:

On 09 Sep 2018, the Hotline received a complaint from (b)(6); (b)(7)(C), a former contractor at the Nevada National Security Site, alleging in retaliation for reporting mismanagement, Occupational Safety and Health Administration (OSHA) violations, and discrimination she was placed on a Performance Improvement Plan (PIP) in (b)(6); (b)(7)(C) 2017 and later terminated in (b)(6); (b)(7)(C) 2017.

Acts of Retaliation

(b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) 2017, (b)(6); (b)(7)(C) was placed on a 90-day PIP by her supervisor, (b)(6); (b)(7)(C). The PIP noted:

- (b)(6); (b)(7)(C) did not properly scan documents,
- Work orders completed by (b)(6); (b)(7)(C) contained errors, and
- (b)(6); (b)(7)(C) did not complete orders correctly.

Additionally, (b)(6); (b)(7)(C) wrote (b)(6); (b)(7)(C) up, citing (b)(6); (b)(7)(C) participated in three less-than-professional conversations. Subsequently, (b)(6); (b)(7)(C) sought legal advice and filed a dispute.

(b)(6); (b)(7)(C) On (b)(6); (b)(7)(C) 2017, (b)(6); (b)(7)(C) was terminated for failing her PIP; she failed her PIP because there were still errors in her work. The incoming contractor, Mission Support and Test Services, LLC, rescinded its offer of employment as she was no longer an NSTec employee.

Disclosures

On 21 Jul 2017, (b)(6); (b)(7)(C) reported the following violations to OSHA: (1) electrical issues in Building 23117 Room 205 that caused the electrical breaker to trip if more than two items were plugged into an outlet; (2) a sprinkler was located directly above a shelf, which would not be useful in a fire; (3) at one point bags of documents lay across electrical wiring for weeks to months at a time; (4) NSTec did not follow its ergonomic policy; and (5) visible rodent droppings in Building 23750's warehouse section indicated hantavirus. (b)(6); (b)(7)(C) complaint was not anonymous. She also reported concern (4) to (b)(6); (b)(7)(C). NSTec's investigation did not substantiate the concerns.

On 18 Aug 2017, (b)(6); (b)(7)(C) reported to the NSTec Ethics Office (via its online reporting system JUSTASK) misuse of government vehicles to travel between the site and "town", against NSTec policy. It was explained to (b)(6); (b)(7)(C) that the policy allows travel off-site for meetings and when managers arrive to/leave the site before/after the commuter buses between the site and town are operating. Employees were reminded of these restrictions.

(**Note: According to documents provided by the complainant the alleged disclosures were made after the act of retaliation**)

(b)(6); (b)(7)(C) previously addressed this matter (violations of the ADA, discrimination and retaliation, intentional interference with prospective economic advantage, retaliatory discharge in violation of public policy (workers' compensation retaliation), and retaliatory discharge in violation of public policy (whistle-blowing)) in a 708 claim, which was dismissed due to concurrent filing in Nevada State court. The matter is currently being addressed in Federal court.

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OIG's GC and/or the Hotline will contact the complainant's attorney to make them aware of the elements of retaliation.

(Attachments?) No

IV. OTHER NOTES

1. A review of investigative files revealed negative results for [redacted], [redacted] and [redacted] and positive but unrelated results for NSTec and RETALIATION.

2. The Hotline could not determine which Federal district the complaint is currently being addressed in.

(Attachments?) No

V. COMPLAINT DISPOSITION

Recommended Action: ZZ – Matter currently being addressed by alternate venue

Pre-CCC Disposition: ZZ – Matter currently being addressed by alternate venue

CCC Disposition: N/A

Initial CCC Review Date: N/A **Final CCC Review Date: N/A**

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DOCUMENT 8

U.S. Department of Energy
Office of Inspector General

September 27, 2018

MEMORANDUM

FROM: (b)(6); (b)(7)(C)

TO: (b)(6); (b)(7)(C)
Region 3 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 17-0091-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (DOE), Office of Inspector General (OIG), Office of Investigations, Region 3 Investigations.

As a matter of background, the investigation was predicated upon a July 18, 2017 telephonic complaint from an anonymous URS-CH2M Hill Oak Ridge, LLC (UCOR) employee who alleged thefts of government property at the Department's East Tennessee Technology Park (ETTP) located in Oak Ridge, TN. UCOR is the Department's prime contractor at ETTP. Allegations were made that Messrs. (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), and (b)(6); (b)(7)(C) were stealing plywood, copper, and various types of equipment, such as generators. The complainant also alleged that the above name individuals were also committing time card fraud.

GPS tracking devices were installed on the three individuals' government vehicles. However, due to the age of the GPS trackers and the software used to operate the devices, the OIG was unable to credibly evaluate the limited information obtained from the devices.

The OIG coordinated this matter with UCOR's Business Assurance and Compliance Manager who conducted an investigation. UCOR was unable to substantiate the allegations of theft or time card fraud. However, during the course of its review, UCOR discovered various internal control weaknesses in its time keeping system and made six corrective actions, which were reported to the OIG by memorandum dated September 17, 2018.

The DOE OIG case is requested to be closed, as there are no further investigative or administrative steps needed to be taken.

(b)(6); (b)(7)(C)
Special Agent

Concur: (b)(6); (b)(7)(C)
Digitally signed by (b)(6); (b)(6); (b)
Date: 2018.09.27 14:05:51 -04'00'

(b)(6); (b)(7)(C)

~~OFFICIAL USE ONLY~~

DOCUMENT 9

U.S. Department of Energy
Office of Inspector General

December 19, 2017

MEMORANDUM FOR THE CASE FILE

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

TO: (b)(6), (b)(7)(C)
Region 1 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 16-0065-I

The purpose of this memorandum is to document closure of (OIG Case No. 16-0065-I).

ALLEGATION

On March 30, 2016, (b)(6), (b)(7)(C) Federal Bureau of Investigation (FBI), Joint Terrorism Task Force (JTTF) Beaumont, TX, contacted this office and requested assistance in obtaining information and electronic communication from a Federal Energy Regulatory Commission (FERC) employee (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) who had been communicating with and forwarding emails from her nephew, (b)(6), (b)(7)(C) a Federal Bureau of Prisons (BOP) inmate, to other inmates, including an inmate incarcerated for terrorism related offenses. Information provided to this office revealed the communications from (b)(6), (b)(7)(C) were made through the use of her U.S. Government email account ending in "ferc.gov." This was discovered during the course of the JTTF investigation related to the inmate incarcerated for terrorism related offenses.

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on alleged violations of 18 U.S. Code § 1791 - Providing or possessing contraband; 18 U.S. Code § 4 – Misprison of a Felony; 18 USC 2339 - Material Support to Terrorist Organization; 21 U.S. Code § 841 - Possession with intent to distribute; 21 U.S. Code § 841 - Possession with intent to distribute; and 18 U.S. Code § 1349 – Attempts and Conspiracy.

INVESTIGATIVE FINDINGS

A review of (b)(6), (b)(7)(C) message traffic on her ferc.gov email address revealed a high volume of message notifications from a third-party electronic mail service provider for Federal Bureau of Prisons (BOP) facilities, called CorrLinks. These notifications were sent to (b)(6), (b)(7)(C) Department account to notify her that an inmate had sent her a message that she could retrieve from the CorrLinks site. Additionally, her FERC electronic mail account revealed contact requests from inmates who wanted to communicate with her.

This office also obtained [redacted] office desk telephone activity log, which indicated she called numerous outside lines throughout the course of her business day. Law enforcement database searches revealed several telephone numbers were listed under her name, registered to her, or associated with her in one form or another. A comparison of those phone numbers associated with her revealed she called them often based on phone log activity from her desk phone. The telephone log activity was forwarded to BOP Intelligence, who queried their systems using the numbers found on [redacted] phone activity log, and discovered many were associated with numerous additional inmates not previously identified, in various other facilities.

Though these reviews showed that [redacted] was communicating frequently with various inmates during her duty hours and with Department resources, they did not disclose evidence of [redacted] engaging in criminal activity.

The OIG interviewed [redacted] who admitted she made calls and sent or received emails from approximately 40 inmates, but denied any nefarious intentions in doing so. She stated she had approximately five to six family members incarcerated in various federal facilities and admitted she communicated with other inmates who were not relatives, but were friends or acquaintances of her nephew. [redacted] stated she was unaware that facilitating communication between inmates was unauthorized. [redacted] also stated she was unaware she could not use her official U.S. Government "ferc.gov" email address to facilitate communications between inmates. She stated she had not seen a stipulation or advisory in the CorrLinks-operated system, the system through which inmates email to and from people with whom they are connected, which precluded that practice. However, during the course of the interview, [redacted] stated she realized the negative implications associated with using an official U.S. Government email address to communicate through the CorrLinks system. [redacted] admitted to using her U.S. Government issued computer during duty hours to communicate with these inmates, but stated she would cease the practice immediately. [redacted] also stated she would remove her official email address from the CorrLinks registration, and use her personal "gmail" email address instead. [redacted] stated she would also limit her communications to those who were family members, and cease communications with others.

[redacted] apologized repeatedly, insisting she had no nefarious intent whatsoever, and that she would immediately cease communicating with inmates other than her nephews and family members, and that she would cease doing so during duty hours with Department resources.

INVESTIGATIVE OUTCOMES

This matter was coordinated with the District of Washington, DC's Criminal Division Fraud and Public Corruption section, and the Narcotics and Violent Crime section. Both declined for lack of criminal violation.

RECOMMENDATION

This case is being recommended for closure as all prudent investigative steps have been taken, all investigative activities are complete, and further expenditures of resources are not warranted.

Should you have any questions, please do not hesitate to call me on 202-586-(b)(6), (b)(7)(C)

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

Region 1 Investigations
National Capital Field Office
Office of Inspector General

(b)(6), (b)(7)(C)
Digitally signed by (b)(6), (b
Date: 2017.12.19 12:58:46 -05'00'

Concur:
(b)(6), (b)(7)(C)

National Capital Field Office
Office of Inspector General

DOCUMENT 10

U.S. Department of Energy
Office of Inspector General

January 22, 2018

MEMORANDUM FOR THE CASE FILE

FROM: (b)(6) (b)(7)(C)
Region 1 Investigations

TO: (b)(6) (b)(7)(C)
National Capital Field Office Investigations

SUBJECT: Closing Memorandum for OIG Investigation 16-0119-I

The purpose of this memorandum is to document closure of (OIG Case No. 16-0119-I).

ALLEGATION

During the investigations associated with 16-0050-I and 16-0085-I, this office obtained information revealing that US Department of Energy (Department) program offices could, through their accountable property representative (APR), submit a retirement work order (RWO) in the event an electronic device was lost or stolen. RWO's were then used as supporting documentation to "write off" the device and eliminate it as accountable property. On July 15, 2016, this office obtained eight retirement work orders (RWO) from (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Office of Project Integration and Logistics Operations, Office of Management and Administration (MA), US Department of Energy (Department) identifying Apple iPads that were previously reported as lost or stolen. This effort was an attempt to recover Department property.

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on alleged violations of 18 U.S. Code § 641 – Theft of Government Property.

INVESTIGATIVE FINDINGS

Subpoenas Issued
Three IG subpoenas were issued during the course of this investigation. The first was to Apple, Inc. requesting subscriber information for the following devices:

1) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
2) Apple iPad, Serial Number:
3) Apple iPad, Serial Number:
4) Apple iPad, Serial Number:
5) Apple iPad, Serial Number:

~~OFFICIAL USE ONLY~~

6) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
7) Apple iPad, Serial Number:
8) Apple iPad, Serial Number:

Apple Inc. Subpoena Response Results

1) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
   - Apple provided subscriber information for this device which indicated (b)(6); (b)(7)(C) (b)(6); (b)(7)(C), unknown individual, was linked to the device. Additional records checks based on the information provided by Apple found (b)(6); (b)(7)(C) lived in Washington, DC, and had a history of criminal activity. Attempts were made to contact (b)(6); (b)(7)(C) but were unsuccessful.
2) Apple iPad, Serial Number: (b)(6), (b)(7)(C)
   - No subscriber information found
3) Apple iPad, Serial Number: (b)(6), (b)(7)(C)
   - No subscriber information found
4) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
   - Apple noted the iTunes subscriber information for the device indicated (b)(6); (b)((b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Office of the Chief Inforamtion Officer, had the iTunes account in his name. Notes from the RWO indicated that the device may have been relocated from a different individual to whom it was previously assigned, so the possibility existed it was reassigned to (b)(6); (b)
5) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
   - Apple could only provide the subscriber information for this device which indicated (b)(6); (b)(7)(C), unknown individual, was listed as a contact connected to the device and linked to email (b)(6); (b)(7)(C) @hq.doe.gov, 202-586 (b)(6); (b)(7)(C) 1000 Independence Ave., SW, Washington, DC. Records reviewed found no (b)(6); (b)(7)(C) in the Department directory.
6) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
   - Apple could only provide the subscriber information for this device which indicated that (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Chief Human Capital Office, registered the device on November 3, 2011. (b)(6); (b)(7)(C) reported the device lost on September 23, 2015, when he left it in a seat pouch on an airplane.
7) Apple iPad, Serial Number: (b)(6), (b)(7)(C)
   - No subscriber information found
8) Apple iPad, Serial Number: (b)(6) (b)(7)(C)
   - Apple noted the iTunes subscriber information for the device indicated (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) former contractor employee with Eagle Research, Office of the Resource Management and Logistics, had the iTunes account in his name. (b)(6); (b)(registered the device in his name on April 15, 2015, and the device was reported lost due to unknown circumstances in May 2015.

The second subpoena was to Verizon for records related to (b)(6); (b)(7)(C) and the third subpoena was to AT&T, also for records related to (b)(6); (b)(7)(C)

INVESTIGATIVE OUTCOMES

This investigation identified one individual with a strong potential for having obtained one of the Department devices illegally and that was (b)(6); (b)(7)(C). Investigative efforts identified (b)(6); (b)(7)(C) likely location and that with additional evidence found was provided to the US Attorney's Office, District of Columbia (USADC). The USADC declined to authorize a warrant to go into (b)(6); (b)(7)(C) home due to lack of evidence supporting probable cause, and consequently declined to move forward with a prosecution unless additional evidence was obtained.

Due to investigative priorities and a lack of resources within the Region 1 field office, additional analyses were not conducted and logical follow-up leads were not completed.

RECOMMENDATION

This case is being recommended for closure as many prudent investigative steps have been taken in this proactive effort and investigative priorities and office resources preclude this office from pursuing this matter further.

Should you have any questions, please do not hesitate to call me on 202-586-(b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

Region 1 Investigations
National Capital Field Office
Office of Inspector General

Concur: (b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C) Date: 2018.01.22 11:06:22 -05'00'

(b)(6); (b)(7)(C)

National Capital Field Office
Office of Inspector General

DOCUMENT 11

U.S. Department of Energy
Office of Inspector General

September 17, 2019

MEMORANDUM

FROM: SA (b)(6; (b)(7)(C)

TO: (b)(6; (b)(7)(C)
(b)(6; (b)(7)(C)
Region 3 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 04-0063-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations, Region 3 Investigations.

(b)(3);31 U.S.C. § 3730

This matter is being recommended for closure as all prudent investigative activities are complete and further expenditure of investigative resources is not warranted.

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Please do not hesitate to contact me at (412) 386-(b)(6); (b)(7)(C) if you have any questions or if I may be of further assistance to you.

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2019.09.17 08:46:24 -04'00'

(b)(6); (b)(7)(C)
Special Agent

Concur: _____ (b)(6); (b)(7)(C)

DOCUMENT 12

U.S. Department of Energy
Office of Inspector General

March 11, 2019

MEMORANDUM FOR THE CASE FILE

FROM: (b)(6), (b)(7)(C)
Special Agent
Region I Investigations

TO: (b)(6), (b)(7)(C)
Region 1 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 17-0076-I

The purpose of this memorandum is to document closure of OIG Case No. 17-0076-I.

ALLEGATION

On July 5, 2017, the U.S. Department of Energy (Department), Office of Inspector General, received an allegation regarding potential illegal lobbying activities on the part of (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) of the Federal Energy Regulatory Commission (FERC). The allegation, which was anonymous, was forwarded by the Office of Government Ethics (OGE).

Specifically, the complainant alleged that (b)(6), (b)(7)(C) subsequent to his departure from FERC in (b)(6), (b)(7)(C) lobbied FERC on behalf of a nonprofit organization, the (b)(6), (b)(7)(C). The complaint referenced an open source press article published on (b)(6), (b)(7)(C) which allegedly included admissions by (b)(6), (b)(7)(C) that he had been working on behalf of (b)(6), (b)(7)(C)

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on alleged potential violations of 18 USC § 207, Restrictions on Former Officers, Employees and Elected Officials of the Executive and Legislative Branches.

INVESTIGATIVE FINDINGS

OIG coordinated this matter with FERC's General Counsel (GC) and the Department of Justice (DOJ), Public Integrity Section (PIN), which did not accept this matter for prosecution. OIG reviewed FERC access logs to determine the extent of (b)(6), (b)(7)(C)'s visits to FERC since his departure. OIG then conducted interviews of FERC personnel, current and prior, who sponsored (b)(6), (b)(7)(C)'s access into FERC, including one of FERC's (b)(6), (b)(7)(C)

OIG also reviewed (b)(6), (b)(7)(C)'s post-employment restrictions and ethics files maintained by FERC GC, as well as FERC e-mails for (b)(6), (b)(7)(C) and one of the aforementioned former

employees who sponsored [redacted] access into FERC after his departure. OIG also reviewed all pertinent FERC e-mails that communicated with five (5) personal e-mail accounts OIG determined [redacted] to have used in the period following his departure from FERC. The analysis determined that though [redacted] may have visited FERC several times, most of those visits occurred after [redacted] one-year "cooling off" period, or his two-year ban on matters under his official responsibility. In addition, none of the matters appear to fall under the purview of [redacted] general lifetime ban, which covers matters involving specific parties in which he participated personally and substantially while at FERC.

INVESTIGATIVE OUTCOMES

The investigation did not substantiate the allegations made in the complaint made to OGE. [redacted] correspondence with FERC ethics officials indicate that he made an effort to coordinate and deconflict matters of pertinence, and did not indicate that any matters [redacted] discussed with FERC officials violated any of his post-employment restrictions.

RECOMMENDATION

This case is being recommended for closure as all prudent investigative steps have been taken and no further expenditure of resources is warranted.

Should you have any questions, please do not hesitate to call me at 202-586[redacted].

[redacted]
Special Agent
Region 1 Investigations

Concur: [redacted]
[redacted]
Region I Investigations

DOCUMENT 13

Department of Energy
Washington, DC 20585

September 27, 2018

MEMORANDUM FOR THE CASE FILE

FROM: (b)(6); (b)(7)(C)
Special Agent
Region 1 Investigations

TO: (b)(6); (b)(7)(C)
Region 1 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 18-0027-I

The purpose of this memorandum is to document closure of OIG Case No. 18-0027-I.

ALLEGATION

On January 18, 2018, the Federal Bureau of Investigation (FBI) contacted this office concerning (b)(6); (b)(7)(C), incoming (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) reportedly made approximately $2 million in wire payments to a Kazakhstan citizen, (b)(6); (b)(7)(C), in France in 2013. It is believed these payments were used to pay for (b)(6); (b)(7)(C) living quarters at a villa in France. (b)(6); (b)(7)(C) is the brother of (b)(6); (b)(7)(C), who is (b)(6); (b)(7)(C) long term girlfriend and cohabitant. (b)(6); (b)(7)(C) has reportedly been a fugitive from the Kazakhstan government since (b)(6); (b)(7)(C) The FBI requested potential assistance on the case.

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on alleged violations of 18 U.S. Code § 1956 - Laundering of monetary instruments.

INVESTIGATIVE FINDINGS

Obtained and reviewed the (b)(6); (b)(7)(C) personnel information via DOEinfo. The review revealed that (b)(6); (b)(7)(C) began working as the (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C) 2018. A review on DOEinfo on June 26, 2018, revealed that (b)(6); (b)(7)(C) separated from the Department on (b)(6); (b)(7)(C), 2018.

INVESTIGATIVE OUTCOMES

(b)(6); (b)(7)(C) separated from the Department and from Federal service on (b)(6); (b)(7)(C), 2018. As a result, the FBI advised that Department assistance in this case was no longer needed.

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RECOMMENDATION

This case is recommended for closure as there is no longer any Department nexus to the FBI investigation. Should you have any questions, please do not hesitate to call me at 202-586-(b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)
Date: 2018.09.27 17:35:02 -04'00'

(b)(6); (b)(7)(C)

Special Agent
Region 1 Investigations
Eastern Field Office
Office of Inspector General

Concur: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Region 1 Investigations
Eastern Field Office
Office of Inspector General

DOCUMENT 14

U.S. Department of Energy
Office of Inspector General

November 26, 2018

MEMORANDUM

FROM: Special Agent (b)(6); (b)(7)(C)

TO: (b)(6); (b)(7)(C)
Region 3 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 19-0013-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (DOE), Office of Inspector General (OIG), Office of Investigations, Region 3 Investigations.

As background, the investigation was predicated upon a complaint made to the OIG by (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), Portsmouth / Paducah Project Office. On September 11, 2018, (b)(6); (b)(7)(C) informed the Lexington Investigations office of possible false statements made by several employees of Four Rivers Nuclear Partnership, LLC (FRNP) during the site's inquiry into a picture of a classified object that was sent improperly through DOE's email system.

Specifically, in August of 2018, a classified component of the gaseous diffusion process was taken outside of a building at the Paducah Gaseous Diffusion Plant and left in plain view. The picture was taken of the component in question and a Derivative Classifier (DC), (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C), FRNP, deemed the object to be unclassified. After a weekend of being outside, a DC with more experience-notified FRNP authorities that a classified object was in plain view. FRNP immediately took steps to secure the object and began an inquiry.

As part of the initial inquiry, Swift & Staley Inc. (S&S), the site's Deactivation and Remediation contractor, did an information technology search for the picture that was taken and began the process to clean up any classified spillage. S&S identified, during their inquiry, a previous incident where a picture of the same object was passed over unclassified email in May of 2018. That email string included FRNP employees and subcontractors (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7) and (b)(6); (b)(7)(C) (b)(6); (b)(7)(C). After S&S found the previous incident, S&S employees interviewed (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7) (b)(6); (b)(7)(C) and (b)(6); (b)(7) who all denied knowledge of the May 2018 incident.

On September 26, 2018, (b)(6); (b)(7)(C) told the OIG he believed the employees in question, especially (b)(6); (b)(7)(C) and (b)(6); (b)(7) should have known the object in question was classified because of their previous work experience. (b)(6); (b)(7)(C) expressed concern to the OIG that the individuals had not self-reported the May 2018 incident, which dealt with the same classified object, after the notification of the August 2018 incident.

On September 26, 2018, Special Agent (SA)s [redacted] and [redacted] interviewed [redacted] and [redacted] The employees were all provided Garrity warnings. During the interviews, it was clarified the email in question did not reference the image as classified but rather, a classified area of science known as consumption. Based on information gathered during interviews the OIG concluded inexperience and lack of training of DC [redacted] led to the misclassification of the pictured object.

On August 16, 2018, as a result of this incident, FRNP implemented a policy requiring all photos taken at the site to be reviewed by a DC prior to upload in any system. [redacted] DC privileges were also revoked.

During a second interview on September 27, 2018, [redacted] an expert in the field of gaseous diffusion, told the OIG that he measured the classified object in question for a calculation he was performing as part of his contract to act as [redacted]. [redacted] said when he researched the object, he was told by a classification librarian the object was out of specs for classification and did not exist in the classified files.

The information provided to the OIG by these individuals reflected no nefarious intent. [redacted] was briefed on the results of the interviews and agreed that lack of training and experience by the DC resulted in the misclassification.

Given the new policy related to pictures taken at the Paducah site and the lack of intent of a violation, the case is requested to be closed, as there are no further investigative or administrative steps needed to be taken.

[redacted]

Special Agent

Concur: [redacted]

[redacted]

DOCUMENT 15

U.S. Department of Energy
Office of Inspector General

November 20, 2017

MEMORANDUM FOR THE DEPUTY ASSISTANT SECRETARY FOR RENEWABLE POWER

FROM: (b)(6); (b)(7)(C)
National Capital Field Office

SUBJECT: Investigative Closure Memorandum (OIG Case Number 17-0072-I)

The purpose of this memorandum is to report the results of an OIG investigation into the conduct of one of your employees based on alleged criminal or administrative wrongdoing. This memorandum is being provided for your visibility and may not be shared without the written approval of the Office of Inspector General as indicated below.

ALLEGATION

On June 21, 2017, the Office of Management and Budget General Counsel reported to the OIG through the DOE Office of General Counsel alleging DOE employee (b)(6); (b)(7)(C), Office of Energy Efficiency and Renewable Energy (EERE), accessed Federal Budget data for the entire federal government for FY18 and released that budget data to the media. This leak was reported by the media several weeks prior to the President's submission of the FY 2018 budget to Congress on May 23, 2017.

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on potential violations of Title 18, United States Code (U.S.C.), Section 641 (Theft of Government Property).

INVESTIGATIVE FINDINGS

The OIG conducted digital forensic analysis of the subject's government assigned computer, as well as the subject's government email files. The OIG also received documents from the Office of Management and Budget (OMB) indicating access to the government owned computer systems that contained federal government budgetary information to which the subject in this investigation had authorized access. Mr. (b)(6); (b)(7)(C) also consented to a voluntary interview with OIG special agents. Based on a review of all available information in this case as well as the findings of the digital forensic analysis and document review, the OIG was unable to substantiate the allegation that the subject leaked any government data, budget or otherwise, to the media.

INVESTIGATIVE OUTCOMES

This matter was coordinated with the United States Department of Justice (DOJ), Public Integrity Section, Washington, DC but was not accepted for criminal prosecution. AUSA (b)(6), (b)(7)(C)

Public Integrity Section, indicated that at this time there is insufficient evidence to bring criminal charges in the matter.

CONCLUSION

This investigation is closed, with the DOE employee listed above having been cleared of any wrongdoing related to the above-listed allegation(s) based on currently available information. Should new allegations emerge related to this case or this employee, the OIG may reopen this case or initiate a new investigation. All prudent investigative steps have been taken, all investigative activities are complete, and further expenditures of resources are not warranted.

Should you have any questions, please do not hesitate to call me on 202-586-(b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

National Capital Field Office
Office of Inspector General

Privacy Act and Freedom of Information Act Notice

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DOCUMENT 16

DOE F 1325.8
08-89
EFG (07-90)

United States Government **Department of Energy**

Memorandum

DATE: November 9, 2017

REPLY TO: (b)(6); (b)(7)(C), Special Agent

SUBJECT: Case Closing Memorandum (OIG Case Number 17-0072-I)

TO: (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), National Capitol Field Office, Office of Investigations

The purpose of this memorandum is to recommend closing (OIG Case Number 17-0072-I).

ALLEGATION

On June 23, 2017, (b)(6), (b)(7)(C) Department of Energy (DOE), Office of Inspector General, submitted a complaint to the DOE hotline. The complaint alleged DOE employee (b)(6); (b)(7)(C), Office of Energy Efficiency and Renewable Energy (EERE), accessed Federal Budget data for the entire federal government for FY18, and released that budget data to the media. This leak was reported by the media several weeks prior to the President's submission of the FY 2018 budget to Congress on May 23, 2017.

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on potential violations of Title 18, United States Code (U.S.C.), Section 641 (Theft of Government Property).

INVESTIGATIVE FINDINGS

The OIG conducted digital forensic analysis of the subjects government assigned computer, as well as the subject's government email files. The OIG also received documents from the Office of Management of Budget (OMB), indicating access to the government owned computer systems that contained federal government budgetary information to which the subject in this investigation had authorized access. We also conducted a subject interview and coordinated the case with the Public Integrity Section of the U.S. Department of Justice. Based on a review of all available information in this case as well as the findings of the digital data analysis and document reviews, the OIG was unable to identify anything to substantiate the allegation that the subject leaked any government data, budget or otherwise, to the media.

INVESTIGATIVE OUTCOMES

This matter was coordinated with the United States Department of Justice (DOJ), Public Integrity Section, Washington, DC but was not accepted for criminal prosecution. AUSA (b)(6), (b)(7)(C) Public Integrity Section, indicated that at this time there is not sufficient evidence against the subject to open an investigation, but that the case has not been declined. Mr. (b)(6), (b advised that if more information was to become available to advise his office.

RECOMMENDATION

This case is being recommended for closure as all prudent investigative steps have been taken, all investigative activities are complete, and further expenditures of resources are not warranted.

Should you have any questions, please do not hesitate to call me on 202-586-(b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)
Special Agent
Technology Crimes Section
Office of Inspector General

Concur: (b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C) Date: 2017.11.09 15:11:18 -05'00'

(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Technology Crimes Section
National Capital Field Office
Office of Inspector General

Date

DOCUMENT 17

U.S. Department of Energy
Office of Inspector General

Jul 24, 2018

MEMORANDUM

FROM: Special Agent (b)(6); (b)(7)(C)

TO: (b)(6); (b)(7)(C)
Region 7 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 14-0103-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations (OI), Region 7 Investigations.

As background, this investigation was predicated upon a complaint provided to the OIG from management at the Department's Western Area Power Administration (Western) on August 14, 2014. Western management alleged Mr. Jason Hardy, a Federal employee working in Montrose, CO, made unauthorized purchases with his Government Purchase Card (GPC) for personal gain. Western management estimated Mr. Hardy improperly spent more than $10,000 of Western funds on personal items.

The OIG investigation, which was worked jointly with General Services Administration OIG substantiated the allegation. Mr. Hardy was removed from his position and from Federal service on September 20, 2014. On March 28, 2016, Mr. Hardy entered into a plea agreement with the U.S. District Court of Colorado whereby he agreed to plead guilty to one count of *Theft of Government Property* in violation of 18 U.S.C.§ 641. On June 28, 2016, Mr. Hardy was sentenced in U.S. District Court to 36 months' probation and ordered to repay the Department $27,237.61 in criminal restitution.

On March 12, 2018, Mr. Hardy was suspended and subsequently debarred from performing work on any federal contracts until March 11, 2021.

This investigation is requested to be closed, as there are no further investigative or administrative steps needed to be taken by the OI.

(b)(6); (b)(7)(C)
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(b)(6); (b)(7)(C)
Special Agent

Concur (b)(6); (b)(7)(C)
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(b)(6); (b)(7)(C)

~~OFFICIAL USE ONLY~~

DOCUMENT 18

U.S. Department of Energy
Office of Inspector General

September 9, 2019

MEMORANDUM FOR THE CASE FILE

FROM: (b)(6); (b)(7)(C)
Special Agent
Region 1 Investigations

TO: (b)(6); (b)(7)(C)
Region 1 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 16-0115-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations, Region 1 Investigations.

ALLEGATION

This investigation was initiated on February 29, 2016, after receipt of an allegation that Actoprobe, Inc. (Actoprobe) had received duplicative funding for similar work related to Small Business Innovative Research (SBIR) grants from the Army, National Science Foundation (NSF) and the Department. Specifically, Actoprobe applied for a Phase I SBIR grant from the Army on January 16, 2013, and was awarded a grant for a project from August 9, 2013 to February 24, 2014. It then applied for a Phase I award from the NSF on December 2, 2013 and was awarded a grant for a project from July 1, 2014 to June 30, 2015. Meanwhile, Actoprobe applied for a Phase II Army award on April 2, 2014, and was awarded the Phase II grant for work from September 28, 2014 to January 15, 2017. On July 31, 2015, Actoprobe applied for a Phase II NSF award, which was declined on November 21, 2015. Actoprobe applied for a Department Phase I award on October 19, 2015, and was awarded a grant for a project from February 22, 2016 to August 21, 2016. Actoprobe was subsequently awarded Phase II and Phase IIA awards from the Department. On multiple occasions throughout the award proposal processes, Actoprobe certified that no similar work had been proposed or funded by other Federal agencies. This was a joint investigation with the NSF OIG and Army Criminal Investigations Division (CID).

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

The investigation focused on potential violations of Title 18, United States Code, Sections 287 (False Claims) and 1001 (False Statements).

INVESTIGATIVE FINDINGS

In interviews with agency program officials, the Army (b)(6); (b)(7)(C) could not definitively say whether he thought the awards were duplicative or not, the NSF (b)(6); (b)(7)(C) stated that

he thought there was significant overlap in the awards, and the Department (b)(6) (b)(7)(C) had differing opinions. Specifically, the Department (b)(6); (b)(7)(C) who made the initial award, and who since retired from the Department, stated he thought there was significant overlap and had he known about the previous Army and NSF awards, he would not have made the initial award. The Department (b)(6); (b)(7)(C) who took over the award, and who made the subsequent Phase II and IIA awards, did not believe the overlap was significant enough to warrant not funding the awards, and stated that Actoprobe had merely "leveraged existing capabilities."

OIG investigators also obtained company and bank records through IG subpoenas, which were then analyzed by Defense Contract Audit Agency (DCAA) auditors. The DCAA analysis of the Actoprobe documents identified labor and materials charges that were inconsistent with the Department Phase I award approved budget. Those aggregate charges amounted to $17,258 overage in labor charges and $9,272 in material costs not used as budgeted. It was a total of $23,530 in re-budgeted funds, or approximately 15 percent of the total budget. The General Terms and Conditions for Department SBIR awards allow for the movement of funding between direct costs categories without Grants Officer's approval, as long as the total amount does not exceed 10 percent of the total budget. However, this requirement does not apply to Phase I awards made on a fixed obligation basis, which includes all Phase I awards below $250,000. The DCAA analysis did not identify any other anomalies in the Actoprobe records with regard to the Department Phase I award. As the records obtained in response to the IG subpoena covered a time period through August 2017, and the Department Phase II award began in April 2017, for work through April 2019, no meaningful analysis of Phase II award costs could be conducted without obtaining additional records.

This case was not coordinated with the U.S. Department of Justice, because no evidence of criminal or civil violations relating to Department interests was discovered.

RECOMMENDATION

This case is being recommended for closure as many prudent investigative steps have been taken and were unable to substantiate the allegations based on conflicting expert opinions.

Should you have any questions, please do not hesitate to call me on 202-586 (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)
Special Agent
Region 1 Investigations
Eastern Field Operations
Office of Inspector General

Concur: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)
Region 1 Investigations
Eastern Field Operations
Office of Inspector Genera

DOCUMENT 19

U.S. Department of Energy
Office of Inspector General

March 26, 2018

MEMORANDUM

FROM: Special Agent (b)(6); (b)(7)(C)

TO: (b)(6); (b)(7)(C)
Region 3 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 17-0043-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations, Region 3 Investigations.

As a matter of background, on February 6, 2017, Investigator (b)(6); (b)(7)(C), Special Investigations Unit, Ohio Auditor of State, emailed the OIG a report asking for assistance with a possible criminal investigation of a Department contractor/grantee. Investigator (b)(6); (b)(7)(C) report stated that a complainant interview was conducted on January 27, 2017 at the Ohio Attorney General's Office, of three individuals who alleged theft, fraud, bid rigging and violations of Ohio anti-trust regulations by Southern Ohio Asset Recovery, LLC (SOAR), Wastren Advantage, Inc. (WAI), and Southern Ohio Diversification Initiative (SODI) at the Department's Portsmouth Gaseous Diffusion Plant, Piketon, OH. Investigator (b)(6); (b)(7) advised the OIG the matter was a joint investigation involving the Ohio Attorney General's Office, the Ohio Bureau of Criminal Investigation, and the Ohio Auditor of State.

The case agent conducted interviews of the complainant and Department representatives. Additionally, the case agent participated in conference call discussions with the Ohio Attorney General's Office. Finally, the case agent collected, reviewed, discussed and provided documents to the Ohio Attorney's General to better assess the allegation.

Based on the investigation to date, no dollar loss to the Department of Energy was identified. The case agent requested the Ohio Attorney General re-contact the OIG should they discover new evidence to the contrary.

The DOE OIG case is requested to be closed, as no further investigative or administrative steps need to be taken.

(b)(6); (b)(7)(C)
Special Agent

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2018.03.26 13:39:47 -04'00'

Concur: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

~~OFFICIAL USE ONLY~~

DOCUMENT 20

Department of Energy
Washington, DC 20585

March 29, 2019

MEMORANDUM

FROM: Special Agent [redacted]

TO: [redacted]
Region 2 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 18-0073-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations, Region 2 Investigations.

As background, the investigation was predicated upon information provided by the U.S. Army, Criminal Investigation Division that Edgar J Hosey, Materials Management Coordinator, MOX Services, LLC, Savannah River Site, Aiken, SC, was involved in a scheme with [redacted], an inmate at Perry Correction Institute in South Carolina, where [redacted] directed Hosey to receive extorted funds, sent in Hosey's name, on [redacted] behalf. As part of the scheme, an Army Soldier was contacted by a female named "Katie" on the social network Plenty of Fish stating she was 20 years old. "Katie" encouraged the exchange of nude photos of themselves and then informed the Soldier that she was 16 years old. Following the exchange, the Soldier was contacted by a person claiming to be Katie's father. The father reported to the Soldier that Katie cut herself when she broke her computer and demanded $1,100 to fix the computer or he would contact the police and report the nude photograph exchange. The Soldier subsequently submitted $1,100, in two payments, to Hosey at [redacted] request. Hosey further participated in additional instances of receipt of extorted funds on behalf of [redacted].

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

This case is originated as a joint investigation with Army CID, NCIS, AFSOI, IRS-CID as part of a Joint Counter-Extortion Task Force.

In summary, the OIG investigation identified that Hosey participated in the scheme to extort soldiers for money and served as a "mule" byway of receiving and transferring funds as part of a larger criminal enterprise. On November 14, 2018, Hosey was indicted with one count of Conspiracy to Commit Wire Fraud in violation of 18 USC 1343 and 1349, and one count of Money Laundering in violation of 18 USC 1956(h). On December 13, 2018, Hosey pled not-guilty plea in Federal District Court and was released on $25,000 bond.

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In light of these investigative findings, this matter is being recommended for closure as all prudent investigative activities are complete and further expenditure of investigative resources by the OIG is not warranted.

X (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Special Agent

X (b)(6); (b)(7)(C)
Concurrence
(b)(6); (b)(7)(C)

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DOCUMENT 21

U.S. Department of Energy
Office of Inspector General

Sep 13, 2018

MEMORANDUM

FROM: Special Agent [redacted]

TO: [redacted]
Region 7 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 18-0038-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations, Region 7 Investigations.

On April 19, 2018, Mr. [redacted], Western Area Power Administration (WAPA) contacted the OIG to report an allegation his office received regarding an alleged rape that occurred during work hours on April 19, 2018 at the Western Area Power Administration's Desert Southwest Regional office in Phoenix, AZ. According to Mr. [redacted] the victim, Ms. [redacted] a WAPA (b)(6), employee reported to WAPA management that she was raped by Mr. [redacted] WAPA's [redacted], and a member of the Senior Executive Service (SES).

Mr. [redacted] also notified the OIG that the incident was also reported to the Department's Office of Corporate Executive Management, the Federal Protective Service (Incident: 18016192) and the Phoenix Police Department (PD), which opened a criminal investigation (IR-201800000686394) into the matter jointly with the Federal Bureau of Investigation (FBI).

The OIG conducted a forensic examination of Mr. [redacted] and Ms. [redacted] government emails. The OIG determined that no emails were exchanged between the individuals between May 1, 2017 and May 1, 2018.

The OIG was notified by the Phoenix PD the criminal investigation was closed and the investigation was unable to substantiate the allegation.

On August 29, 2018, Mr. [redacted] informed the OIG that Mr. [redacted] had voluntarily resigned from federal service in (b) 2018.

This matter is being recommended for closure as all prudent investigative activities are complete

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~~OFFICIAL USE ONLY~~

DOCUMENT 22

Department of Energy
Washington, DC 20585

September 20, 2019

MEMORANDUM

FROM: Special Agent (b)(6); (b)(7)(C)

TO: (b)(6); (b)(7)(C)
Region 2 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 19-0089-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General (OIG), Office of Investigations, Region 2 Investigations.

As background, the investigation was predicated on information reported to the OIG involving potentially sensitive and/or classified photographs, relating to the Oak Ridge National Laboratory (ORNL), discovered on a personal cellular device belonging to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Chemical Engineer, ORNL.

In summary, the OIG investigation substantiated that Mr. (b)(6); (b)(7)(C) had photographs that could be related to activities and processes of ORNL on his personal cellular device; however, coordination of these photographs with ORNL officials revealed that the photographs were neither sensitive nor classified. Furthermore, the investigation collected all government issued devices belonging to Mr. (b)(6); (b)(7)(C) and confirmed that no further images, similar in nature to the ones contained on the personal cellular device, were present.

As a result, this matter is being recommended for closure as all prudent investigative activities are complete and further expenditure of investigative resources is not warranted.

X (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Special Agent

X (b)(6); (b)(7)(C)

Concurrence:

(b)(6); (b)(7)(C)

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DOCUMENT 23

U.S. Department of Energy
Office of Inspector General

November 9, 2018

MEMORANDUM

FROM: Special Agen (b;(6; (b;(7;(C;

TO: (b;(6; (b;(7;(C;
Region 4 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 18-0061-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department) Office of Inspector General (OIG), Office on Investigations (OI), Region 4 Investigations.

As background, the investigation was predicated on information provided by the OIG's Office of Audits (OA) that through their inspection related to a State of NM Audit Report (Report), allegations of DOE grant funds received by the Regional Coalition of LANL Communities (RCLC) may have been used to pay for prohibited lobbying activities between July 1, 2014 and June 30, 2018. OI opened and assigned this investigation in conjunction with OIG OA as a result of potential criminal statutory violations.

This Report, among other items, alleged that the RCLC received a $300,000 DOE grant, and some of those funds were used to pay for lobbying activities for (b;(6; (b;(7;(C; (b;(6; (b;(7;(C; RCLC. The Report was unable to indicate any specific expenditures related to prohibited activities or other significant fraudulent activity.

OA advised OI that they were pursuing all unallowable costs under grant DE-EM0003780. OA explained that any costs that the RCLC could not provide expenses for, or that were unallowable under the terms of the grant, to include alleged costs claimed for prohibited lobbying activities, would be questioned and included in their recommended recovery amount.

After review of the information provided, it is not recommended that OI pursue this matter for the following reasons:

- Not sufficient evidence of chargeable criminal statute. Ms. (b;(6; (b; did not submit the original proposal to DOE for grant DE-EM0003780.
- OA could not provide specific detail as to how much Ms. (b;(6; (b; claimed for alleged prohibited lobbying activities, only the total amount claimed by Ms. (b;(6; (b; for all services provided.
- OA is pursuing administrative action for all unallowable costs, to include alleged prohibited lobbying activities by the RCLC.

As a result, this matter is being recommended for closure as all prudent investigative activities are complete and further expenditure of investigative resources is not warranted.

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Special Agent

Concur

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DOCUMENT 24

U.S. Department of Energy
Office of Inspector General

November 28, 2018

MEMORANDUM

FROM: Special Agent (b)(6); (b)(7)(C)

TO: (b)(6); (b)(7)(C)
Region 4 Investigations

SUBJECT: Closing Memorandum for OIG Investigation 13-0013-I

This memorandum serves to recommend closure of an investigation conducted by the U.S. Department of Energy (Department) Office of Inspector General (OIG), Office on Investigations, Region 4 Investigations.

(b)(3):31 U.S.C. § 3730

As a result, this matter is being recommended for closure as all prudent investigative activities are complete and further expenditure of investigative resources is not warranted.

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)
Special Agent

Concur: (b)(6); (b)(7)(C)

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DOCUMENT 25

U.S. Department of Energy
Office of Inspector General
Region 2 Investigations

November 20, 2018

MEMORANDUM FOR CASE CLOSURE

FROM: SA (b)(6), (b)(7)(C)
Region 2 Investigations

TO: (b)(6), (b)(7)(C)
Region 2 Investigations

SUBJECT: Closing Memorandum for OIG Investigation No. 17-0079-I

This memorandum serves to document the closure of an investigation conducted by the U.S. Department of Energy (DOE), Office of Inspector General (OIG), Office of Investigations, Region 2 Investigations.

On July 17, 2017, the OIG received allegations of conflict of interest and misuse of position between (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) DOE, and JDR Government Solutions (JDR). The investigation specifically investigated claims that Mr. (b)(6), (b)(7)(C) used his position and government resources to assist JDR in obtaining a meeting with representatives from three contractors at the Savannah River Site: Savannah River Nuclear Solutions, Savannah River Remediation, and Centerra SRS.

In summary, the OIG investigation identified that Mr. (b)(6), (b)(7)(C) sent an email from his DOE email address to the contractors to attempt to schedule a meeting with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) JDR. This meeting was later canceled by Mr. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) Through interviews of JDR employees, the OIG learned that Mr. (b)(6), (b)(7)(C) intended to work for JDR upon his retirement from DOE, and had brief salary discussions with Mr. (b)(6), (b)(7)(C) regarding salary requirements. By his own admission, Mr. (b)(6), (b)(7)(C) played a significant role in establishing JDR as a Small Business Administration, HubZone company as well as locating the business in Barnwell, SC. The investigation determined that Mr. (b)(6), (b)(7)(C) performed these above-described activities prior to submitting and receiving approval for outside work authorization from DOE.

On (b)(6), (b)(7)(C) 2018, Mr. (b)(6), (b)(7)(C) retired from DOE. In light of Mr. (b)(6), (b)(7)(C) retirement and the OIG's investigative findings, this matter is being recommended for closure as all prudent investigative activities are complete and further expenditure of investigative resources is not warranted.

DOCUMENT 26

U.S. Department of Energy
Office of Inspector General
Office of Investigations

Investigative Report to Management

18-0031-I **January 23, 2019**

This report, including any attachments and information contained therein, is the property of the Office of Inspector General (OIG) and is for ~~OFFICIAL USE ONLY~~. The original and any copies of the report must be appropriately controlled and maintained. Disclosure to unauthorized persons without prior OIG written approval is strictly prohibited and may subject the disclosing party to liability. Unauthorized persons may include, but are not limited to, individuals referenced in the report, contractors, and individuals outside the Department of Energy. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

U.S. Department of Energy
Office of Inspector General

May 13, 2019

MEMORANDUM FOR THE CASE FILE

FROM: (b)(6), (b)(7)(C) Special Agent
Eastern Field Office - Region 1 Investigations

TO: (b)(6), (b)(7)(C)
Region 1 Investigations, Eastern Field Office

SUBJECT: Closing Memorandum for OIG Investigation 18-0031-I

The purpose of this memorandum is to document closure of (OIG Case No. 18-0031-I).

ALLEGATION

On February 1, 2018, the U.S. Department of Energy (DOE), Office of Inspector General (OIG) received a referral from the U.S. Department of Defense, OIG involving an anonymous complainant who alleged a DOE employee, (b)(6), (b)(7)(C), employed her daughter, (b)(6), (b)(7)(C) ((b)(6), (b)(7)(C)), to assist her with classified and nuclear work-related matters. It was reported that on days (b)(6), (b)(7)(C) teleworked, (b)(6), (b)(7)(C) signed in and completed classified work for (b)(6), (b)(7)(C). It was also alleged that (b)(6), (b)(7)(C) bragged about access to nuclear documents. This case was referred to DOE Counterintelligence (IN-20) who determined that (b)(6), (b)(7)(C) did not have regular and ongoing access to classified or nuclear material in her capacity as a (b)(6), (b)(7)(C) was identified as a for the Defense Information Systems Agency (DISA).

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

POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on alleged violations of 18 U.S. Code § 1905 – Disclosure of Confidential Information, 18 USC § 2701 – Unlawful Access to Stored Communications, and 41 USC § 423 Procurement Integrity.

INVESTIGATIVE FINDINGS

The OIG did not substantiate the allegations purported in the original complaint. However, a review of (b)(6), (b)(7)(C) unclassified email account revealed that since October 2010, she shared a minimum of 20 Department procurement sensitive documents via email with (b)(6), (b)(7)(C) doing so as recently as 2017. These documents included draft

modifications of contracts, pre- negotiation plans, sole source justifications, requisition-type information, technical evaluations, documents containing "Unclassified//FOUO" markings, and competitive thresholds.

On certain occasions, (b)(6), (b)(7)(C) returned (b)(6), (b)(7)(C) attachments containing what appeared to be minor formatting and grammar edits on Department documents.

The OIG conducted interviews, which revealed (b) are expected to be well-versed in the Procurement Integrity Act (PIA); however, it was difficult to determine (b)(6), (b)(7)(C) level of PIA awareness because there did not appear to be a repository for this training.

The OIG interviewed (b)(6), (b)(7) who admitted to sending various procurement sensitive documents to (b)(6), (b)(7)(C) (b)(6), (b)(7) stated her intent was to obtain (b)(6), (b)(7)(C) guidance and input based upon (b)(6), (b)(7)(C) experience as a (b)(6), (b)(7)(C) explained that she and (b)(6), (b)(7)(C) never received any financial benefits for removing procurement sensitive documents from Department networks, nor did they release the information to any foreign governments, companies doing business with the federal government, or other unauthorized personnel.

(b)(6), (b)(7) was adamant that she never allowed (b)(6), (b)(7)(C) to sign into her computer in order to complete any Department work. Her classified account was deemed inactive; however, it was determined (b)(6), (b)(7) coordinated with individuals within the Office of Intelligence and Counterintelligence (IN) to send classified emails in a Sensitive Compartmented Information Facility (SCIF) on her behalf via the hardware abstraction layer (HAL) network. These emails were sent for procurement purposes.

(b)(6), (b)(7) stated she did not know exactly what types of documents could not be released outside of the Department despite being a with a Federal Acquisition Certification in Contracting (FAC-C) Level III designation and having received training on the PIA. During the interview, (b)(6), (b)(7) also expressed confusion with why certain draft counterintelligence and cybersecurity documents might be considered sensitive.

The OIG also interviewed (b)(6), (b)(7)(C) who provided no information contrary to (b)(6), (b)(7) (b)(6), statements.

INVESTIGATIVE OUTCOMES

On January 23, 2019, the OIG issued an Investigative Report to Management (IRM) as a result of this investigation. The IRM was directed to the Supervisory Contract Specialist, Office of Headquarters Procurement Services, Acquisition Management, Office of Management (MA-642), making the following five recommendations:

1. Determine if any administrative actions are warranted against (b)(6), (b)(7)(C)
2. Develop a mechanism to track the recurring training of the PIA, to include a process for obtaining signatures as acknowledgement of the material;
3. Ensure appropriate markings are used on all Official Use Only (OUO) emails and documents, in accordance with DOE

Order 471.3;

4. Develop a standardized method for [redacted] to be held accountable for preventing the release of procurement sensitive information as it pertains to each contract, potentially through the use of Non-Disclosure Agreements; and (b)(6), (b)(7)(C)
5. Ensure that [redacted] working on classified projects have access to their own classified accounts for accountability and oversight purposes. (b)(6), (b)(7)(C)

On February 22, 2019, the Supervisory Contract Specialist, Office of Headquarters Procurement Services, provided written response determining no administrative actions against [redacted] were warranted, and upholding the four remaining recommendations.

RECOMMENDATION

This case is being recommended for closure as the complainant's claims of unauthorized disclosure of confidential information, and unlawful access to stored communications were unsubstantiated. Investigative steps taken in this case determined an Investigative Report to Management recommending changes and improvements to training and internal controls was the most appropriate course of action.

Should you have any questions, please do not hesitate to call me at 202-586-[redacted]

[redacted]
Special Agent
Eastern Field Office
Office of Inspector General

Concur: [redacted]
[redacted]
Eastern Field Office
Office of Inspector General

Department of Energy
Washington, DC 20585

January 23, 2019

MEMORANDUM FOR THE SUPERVISORY CONTRACT SPECIALIST, OFFICE OF HEADQUARTERS PROCUREMENT SERVICES, ACQUISITION MANAGEMENT, OFFICE OF MANAGEMENT (MA-642)

FROM: [redacted]
REGION 1 INVESTIGATIONS

SUBJECT: Unauthorized Release of Procurement Sensitive Information (OIG Case No. 18-0031-I)

This report serves to advise you of the results of an investigation conducted by the U.S. Department of Energy (Department), Office of Inspector General.

The investigation was predicated upon an allegation from an anonymous complainant who purported that Department employee, [redacted] employed her daughter, [redacted] to assist her with classified and nuclear related matters. As a result of our investigation, we determined the allegation was unsubstantiated. However, we established that [redacted] released procurement sensitive information outside of the Department, although it appears this information was only shared with [redacted] Based upon the information obtained, it appears [redacted] was solely attempting to receive formatting, grammar and vocabulary recommendations from her daughter.

This report makes five recommendations for your consideration. Should you have any questions regarding this matter, please contact me at (202) 586[redacted] or Special Agent [redacted] at (202) 586[redacted].

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INVESTIGATIVE REPORT TO MANAGEMENT

I. ALLEGATION

On February 1, 2018, the U.S. Department of Energy (Department), Office of Inspector General (OIG) received a referral from the U.S. Department of Defense (DoD), OIG involving an anonymous complainant who alleged that [redacted] a DOE [redacted] in the Office of Management (MA), employed her daughter, [redacted] a DoD employee, to assist her with classified and nuclear work-related matters. It was reported that on days [redacted] teleworked, [redacted] signed into [redacted] computer and completed classified work for [redacted] It was also alleged that [redacted] bragged about her access to nuclear documents and traveled to Europe on a regular basis, which the complainant believed could lead to secrets being released outside of DOE.

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

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

II. POTENTIAL STATUTORY OR REGULATORY VIOLATIONS

This investigation focused on potential violations of Title 18, United States Code (U.S.C.), Section 1905 (Disclosure of Confidential Information Generally); 18 U.S.C. § 2071 (Concealment, Removal, or Mutilation Generally); and 41 U.S.C. § 423 (Procurement integrity).

III. BACKGROUND

[redacted] was born and raised in [redacted] where she attended college before moving to the [redacted] In [redacted] joined the U.S. Department of [redacted] as a [redacted] and subsequently joined the Department as a [redacted] in [redacted] is currently a [redacted] in the Office of Headquarters Procurement Services, where she holds a Federal Acquisition Certification-Contracting (FAC-C) Level III designation.

[redacted] maintains both a Top Secret/Sensitive Compartmented Information (TS/SCI) and "Q" clearance, in addition to "TK", "SI-G", and "HCS-P" access. A counterintelligence (CI) scope polygraph in 2016 and background investigation in 2014 both yielded [redacted] results. [redacted] was issued a classified (HAL) network account at one time, but it is currently inactive.

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

This case was coordinated with the Department's Office of Intelligence and Counterintelligence (IN) in addition to MA and the Office of Environment, Health, Safety and Security. During this process, it was determined that [redacted] had access to certain classified procurement documents as a result of her assignment supporting [redacted] Additionally, it was determined [redacted] teleworks every Tuesday but does not appear to be working on any nuclear-related projects at this time.

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

[redacted] was identified as a [redacted] for the Defense Information Systems Agency (DISA), a component of the DoD. Coordination was conducted with DoDIG, DISA OIG, and DISA CI, who confirmed [redacted] maintains a TS/SCI clearance. DISA OIG conducted an

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administrative investigation of (b)(6), (b)(7)(C) as a result of this referral.

IV. INVESTIGATIVE FINDINGS

The OIG did not substantiate the allegations purported in the original complaint. However, a review of (b)(6), (b)(7 unclassified email account revealed that since October 2010, (b)(6), (b)(shared a minimum of 20 Department procurement sensitive documents via email with (b)(6), (b) (7)(C) (b)(6), as recently as 2017. These documents included draft modifications of contracts, pre-negotiation plans, sole source justifications, requisition-type information, technical evaluations, documents containing "Unclassified//FOUO" markings, and competitive thresholds. Certain attachments sent by (b)(6), (b) to (b)(6), (b)(7)(C) pertained to the Department's CI and cybersecurity programs.

On certain occasions, (b)(6), (b)(7)(C) returned (b)(6), (b) (7)(C) attachments containing what appeared to be minor formatting and grammar edits on Department documents. Additionally, the majority of the emails and attachments from (b)(6), (b to (b)(6), (b)(7)(C) failed to contain any markings indicating they were Official Use Only (OUO) or Exemption 4 (Commercial/Proprietary), which includes bids, contracts, proposals, and various other procurement sensitive documents.

According to the Procurement Integrity Act (PIA), items considered to be procurement sensitive include proposal information, bid information, and source selection information, such as source selection plans, technical evaluations, and rankings of bids. The OIG conducted interviews, which revealed (b)(6 are expected to be well-versed in the PIA; however, it was difficult to determine (b)(6), (b)(7 level of PIA awareness because there did not appear to be a repository for this sort of training.

The OIG interviewed (b)(6), (b) (7)(C) who admitted to sending various procurement sensitive documents to (b)(6), (b)(7)(C) stated her intent was to obtain (b)(6), (b)(7)(C) guidance and input based upon her experience as a (b)(6), (b)(7)(C) explained that she and (b)(6), (b)(7)(C) never received any financial benefits for removing procurement sensitive documents from Department networks, nor did they release the information to any foreign governments, companies doing business with the federal government, or other unauthorized personnel. (b)(6), (b) (7)(C) could not explain why she did not seek the assistance of fellow Department (b) .

(b)(6), (b) was adamant that she never allowed (b)(6), (b)(7)(C) to sign into her computer in order to complete any Department work. (b)(6), (b)(also stated she never brought classified work products home; did not attempt to access documents outside of her scope; did not have any security violations; and reported all foreign travel and foreign contacts to her security officer. (b)(6), (b)(7) classified account was deemed inactive; however, it was determined (b)(6), (b)(coordinated with individuals within IN to send classified emails in a Sensitive Compartmented Information Facility (SCIF) on her behalf via the HAL network. These emails were sent for procurement purposes.

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[redacted] stated she did not know exactly what sorts of documents could not be released outside of the Department despite being a [redacted] with a FAC-C Level III designation and having received training on the PIA. During the interview, [redacted] also expressed confusion with why certain draft CI and cybersecurity documents might be considered sensitive. For example, when told by investigators that some of the cybersecurity and counterintelligence documents she sent to [redacted] were really concerning, [redacted] stated there was nothing of importance in them, at which point investigators explained the sensitivity of the information she had sent, to include technical evaluations. At the conclusion of the interview, [redacted] stated she is now aware that she should not have released any procurement sensitive documents to anyone outside of the Department unless authorized to do so in her official capacity.

The OIG also interviewed [redacted] who provided no information contrary to [redacted] testimony.

V. COORDINATION

This investigation was coordinated with the Department's Director of the Office of Corporate Business Operations, Office of Management and Administration.

VI. RECOMMENDATIONS

Based upon the findings of this investigation, and other information that may be available to you, the OIG recommends the Division Manager consider the following recommendations:

1. Determine if any administrative actions are warranted against [redacted]
2. Develop a mechanism to track the recurring training of the PIA, to include a process for obtaining [redacted] signatures as acknowledgement of the material;
3. Ensure appropriate markings are used on all Official Use Only (OUO) emails and documents, in accordance with DOE Order 471.3;
4. Develop a standardized method for [redacted] to be held accountable for preventing the release of procurement sensitive information as it pertains to each contract, potentially through the use of Non-Disclosure Agreements; and
5. Ensure that [redacted] working on classified projects have access to their own classified accounts for accountability and oversight purposes.

VII. FOLLOW-UP REQUIREMENTS

Please provide the OIG with a written response within 30 days concerning any action(s) taken or anticipated in response to this report.

VIII. PRIVACY ACT AND FREEDOM OF INFORMATION ACT NOTICE

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DOCUMENT 27

Number	Title	Current Status	Current Status Date	Current Status Notes
13-0048-I	LOS ALAMOS NATIONAL SECURITY; FALSE CLAIMS QUI TAM; LANL	Closed	08Jun2018	08JUN2018 - This case is being closed due to the United States declining intervention in the matter. The case was dismissed with prejudice as to the Relators and the dismissed without prejudice as to the United States. The Relators and their attorneys agreed to the declination of intervention and the dismissal. No further investigative actions are warranted at this time. This is a paper case file and the file is being maintained at Headquarters.

DOCUMENT 28

Number	Title	Current Status	Current Status Date	Current Status Notes
15-0016-I	Theft of Government Property Monitoring; Region 1; 2015	Closed	14Oct2015	14OCT2015 - FY15 monitoring file closed.

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Number	Title	Current Status	Current Status Date	Current Status Notes
15-0127-I	(b)(6) (b)(7)(C); Misuse of Position for Personal Gain; National Security Technologies (NSTec)	Closed	06Jun2018	No criminal, civil, or administrative violations were discovered during the course of the investigation. It was determined travel and program funds for Mrs. (b)(6) (b)(7)(C) and Mr. (b)(6) (b)(7) were appropriate and for Department business. The travel was for Department business and Mr. (b)(6) (b)(7) project was an NA-22 project. Additionally, it was determined Ms. (b)(6) was approved for overtime and worked the overtime and she was approved to work past the original contract date to complete the work on the contract. Finally, it was determined Ms. (b)(6) was entitled to non-local per diem based on her primary residences being in Colorado and California during the time she worked on the contract. All allegations were found to be unsubstantiated based on investigative work. No further investigative work is warranted at this time.

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DOCUMENT 30

Number	Title	Current Status	Current Status Date	Current Status Notes
17-0015-I	(b)(6) (b)(7)(C); Attempted TGP; NNSA Production Office, Pantex	Closed	24Jan2018	24JAN2018 - The United States Attorney's Office for the Northern District of Texas declined prosecution on the case. The FBI Headquarters entered derogatory information into the Joint Personnel Adjudication System (JPAS) for Mrs. (b)(6) (b)(7)(C), but did not share with the OIG the specifics of the derogatory information. According to the FBI, the derogatory information entered into JPAS will prevent Mrs. (b)(6) (b)(7)(C) from regaining a security clearance. Based on this, no further investigative activities are warranted at this time.