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Description of document: Closing memoranda and investigative reports for 15 National Labor Relations Board (NLRB) Office of Inspector General (OIG) Investigations, 2011-2012

Requested date: 16-March-2013

Released date: 08-April-2013

Posted date: 21-October-2013

Source of document: NLRB FOIA Officer
National Labor Relations Board
1099 14th Street, N.W., Room 10600
Washington, D.C. 20570
Fax: (202) 273-FOIA (3642)

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United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF INSPECTOR GENERAL
Washington, DC 20570-0001

April 8, 2013

This letter is in response to your Freedom of Information Act (FOIA) request, dated March 16, 2013, seeking “The Final Report, Closing Memo, Referral Memo, and Referral Letter” for the following closed investigations: OIG-I-446, OIG-I-448, OIG-I-449, OIG-I-455, OIG-I-457, OIG-I-458, OIG-I-460, OIG-I-461, OIG-I-462, OIG-I-463, OIG-I-465, OIG-I-467, OIG-I-468, OIG-I-469, OIG-I-470, OIG-I-474. The request was made to the Jacqueline Young, Freedom of Information Officer, National Labor Relations Board. On March 27, 2013, the Freedom of Information Officer referred the request to the Office of Inspector General (OIG). This request was assigned a FOIA tracking number **OIG-2013-003**.

Our search revealed 23 responsive documents: 16 closing memoranda and 7 investigative reports. The closing memoranda are enclosed. Names and other identifying details have been deleted from these documents pursuant to the policies embodied in Exemptions 6 and 7(C) of the FOIA. Information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source has been deleted from these documents pursuant to the policies embodied in Exemption 7(D) of the FOIA. Finally, deletions of attorney work product and/or deliberative material have been made pursuant to the policies embodied in Exemption 5 of the FOIA.

Investigative reports involving completed/closed investigations by the OIG are exempt from disclosure pursuant to Exemptions 6, 7(C), and 7(D) of the FOIA. See 5 U.S.C. §§ 552 (b) (6), (7)(C), and 7(D). In the processing of investigations, the OIG obtains much information from individuals who would be reluctant or who would refuse to supply such information if it were routinely disclosed pursuant to a request under the FOIA. In carrying out his responsibilities, the Inspector General must be able to obtain all potentially relevant information. The protection of the identities of individuals and the substance of the information they provide is an important means of assuring the Inspector General’s continuing ability to obtain such relevant information. Compelled disclosure of the information would substantially deter voluntary cooperation, hinder obtaining information from all potential sources and,

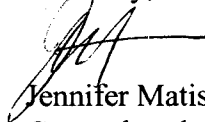
Page 2
April 8, 2013

consequently, substantially interfere with present and future enforcement proceedings. See, e.g., NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214 (1978); Wellman Industries, Inc., v. NLRB, 490 F. 2d 427 (4th Cir.), cert. denied 419 U.S. 834. Additionally, release of information about individuals referred to in such documents would constitute a clearly unwarranted invasion of their personal privacy, and you have made no showing of public interest in the disclosure of such information that would outweigh those privacy interests. See, e.g., Department of Justice v. Reporters Committee, 489 U.S. 749 (1989); Department of the Air Force v. Rose, 425 U.S. 352 (1976). I conclude that the deletion of names from the investigative reports would not preserve the interests recognized by these exemptions, since disclosure of the material contained therein would, itself, constitute invasions of personal privacy, reveal confidential sources and, therefore, interfere with enforcement proceedings.

I also conclude that investigative reports involving completed/closed investigations by the OIG are privileged from disclosure by Exemption 5 of the FOIA, 5 U.S.C. § 552 (b) (5), since they are intra-agency memoranda and attorney work-products which would not be available by law to a party other than an agency in litigation with this Agency. The legislative history of Exemption 5 makes it clear that this subsection of the FOIA was designed to protect and promote the objectives of fostering frank deliberation and consultation within the Agency and to prevent premature disclosure of recommendations which could disrupt the decision-making process. Investigative reports from the Inspector General to the Board and/or the General Counsel clearly reflect the deliberative and consultative process of the Agency which Exemption 5 protects from forced disclosure. Cf. NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975).

I am responsible for the above determination. You may obtain a review thereof under the provisions of Section 102.177(c)(2)(v) of the NLRB Rules and Regulations by filing an appeal with the Chairman, National Labor Relations Board, 1099 14th Street, NW, Washington, D.C. 20570, within 28 calendar days from the date of this letter, such period beginning to run on the calendar day after the date of this letter. Thus, the appeal must be received by the close of business (5:00 p.m.) on May 6, 2013. Any appeal should contain a complete statement of the reasons upon which it is based.

Sincerely,



Jennifer Matis
Counsel to the Inspector General

Enclosures

cc: NLRB FOIA Officer (w/o enclosures)


UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

September 28, 2012

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-446

This investigation was initiated on April 19, 2010. The case involved an allegation that that a **6, 7(C)** a Charging Party, stole an affidavit from Region **6** and **6**, it on the **6**. Our investigative efforts failed to substantiate the allegation in part because the Field Attorney involved in the underlying unfair labor practice case stated that he did not believe that the subject could have taken the affidavit from the Region's case file. On May 19, 2010, we reported our investigative findings to the U.S. Attorney's Office **6, 7(C)**. That office declined to initiate prosecution. Thereafter, we were contacted by a **6, 7(C)** prosecutor from the U.S. Attorney's Office. We provided information to that prosecutor. On **6, 7(C)** **6** were indicted charges related to **6**. In light of that indictment, this matter is now closed.

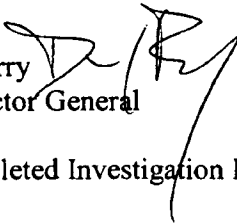
UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 4, 2012

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-448

This investigation was initiated on September 23, 2010. The case involved an allegation that [REDACTED] 6, 7(C) [REDACTED] Region [REDACTED] was using the Agency internet access for an inappropriate purpose and and excessive amounts of time. Our review of the internet files from the subject's Government computer did not provide evidence that substantiated the investigation. By this memorandum, our investigation is closed.


UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



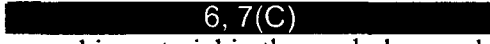

Memorandum

October 10, 2012

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-449

This investigation was initiated on September 23, 2010. The case involved an allegation that  6, 7(C) Resident Office  6, 7(C) was looking at pornographic material in the workplace and engaged in other forms of mismanagement. We determined that the best course of action was to monitor the subject's use of the Internet to determine if he was using it to view pornographic material. Our review of the internet files from the subject's Government computer did not provide evidence that substantiated the investigation. We also determined that the remaining allegations were more properly addressed by the Division of Operations-Mangement. By this memorandum, our investigation is closed.

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

September 28, 2012

To: File

From: David Berry
Inspector General

A handwritten signature in black ink, appearing to be "David Berry", written over the printed name.

Subject: Closed Case OIG-I-455

During the course of conducting an investigation involving Region [REDACTED] 6, 7(C) [REDACTED], [REDACTED] 6, 7(C) [REDACTED] requested that the Office of Inspector General (OIG) investigate an allegation that certain employees in Region [REDACTED] created a hostile work environment for him by spreading false and malicious rumors of a lascivious nature. [REDACTED] 6, 7(C) [REDACTED] also requested that the OIG investigate whether certain named employees had spread rumors with knowledge of falsity or reckless disregard for the truth. [REDACTED] 6, 7(C) [REDACTED] stated that it was his belief that [REDACTED] 6, 7(C), 7(D) [REDACTED]

[REDACTED] To address this allegation, we conducted interviews with support and professional staff in Region [REDACTED] and considered the information that was collected during the investigation involving the management officials in the Region.

When interviewed, the support staff personnel described a situation in the Regional Office that [REDACTED] 6, 7(C), 7(D) [REDACTED]

[REDACTED]

[REDACTED] 6,7(C),7(D) [REDACTED]

Apart from our investigative interviews with Region [REDACTED] personnel, we are also aware that

[REDACTED] 6,7(C),7(D)

Our investigation did not disclose evidence that the Region [REDACTED] 6, 7(C) employees engaged in misconduct by spreading rumors or otherwise discussing what they believed to be an inappropriate relationship between [REDACTED] 6, 7(C) and [REDACTED] 6, 7(C). As described in our earlier reports, the working environment in Region [REDACTED] was dysfunctional. The [REDACTED] 6, 7(C) had developed a personal relationship with a [REDACTED] 6, 7(C) that could reasonably be viewed as inappropriate. [REDACTED] 6, 7(C) acknowledged that she [REDACTED] 6,

[REDACTED] 7(C),

[REDACTED] 7(D).

Based on our review of the Region's awards to employees, [REDACTED] Ex. 5

The case is closed. This information was provided to the Division of Operations-Management in a separate memorandum as part of OIG-I-452.

**UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General**



Memorandum

April 12, 2012

To: David Berry
Inspector General

From: Jennifer Matis *JM*
Counsel

Subject: Completed Investigation OIG-I-457

This investigation was initiated on August 23, 2011. The case involves allegations that **6, 7(C)** improperly used his travel card while not on travel status, failed to pay his bill in a timely manner, and converted government funds to his own use when he received reimbursement for travel-related expenses but waited several months to make a payment for the associated charges.

Our investigative efforts consisted of reviewing the records of travel card transactions and interviewing the subject. We issued an investigative report substantiating the allegations on November 11, 2011. On **6, 7(C)** the subject and the Agency entered into an Alternative Discipline Resolution agreement in which the employee agreed to undergo financial counseling and 2 days of leave without pay in lieu of a 2-day suspension.

I recommend that the case be closed.

Approved

JM
Apr 12 2012

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

April 11, 2012

To: David Berry
Inspector General

From: Jennifer Matis
Counsel *Jm*

Subject: Completed Investigation OIG-I-458

This investigation was initiated on August 23, 2011. The case involves allegations that **6, 7(C)** improperly used her travel card while not on travel status and for improper transactions and failed to pay the balance, despite being reimbursed for official expenses.

Our investigative efforts consisted of reviewing the records of travel card transactions and interviewing the subject. We issued an investigative report substantiating the allegations on February 16, 2012. On **6, 7(C)** the subject and the Agency entered into an Alternative Discipline Resolution agreement providing for a two-day suspension to be converted to a warning and EAP counseling

I recommend that the case be closed.

D. Berry
Approved

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

August 16, 2012

To: David Berry
Inspector General

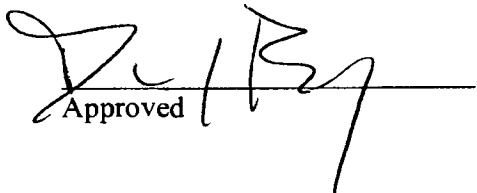
From: Jennifer Matis
Counsel 

Subject: Completed Investigation OIG-I-460

This investigation was initiated on August 23, 2011. The case involves an allegation that the subject, a **6, 7(C)** in Region **■**, improperly used his Government contractor-issued travel card while not on travel status and for improper transactions and failed to pay the balance, despite being reimbursed for official expenses.

Our investigative efforts consisted of reviewing the subject's travel records, reimbursements, and card statements, and conducting an interview of the subject on September 20, 2011. We issued an investigative report substantiating the allegations on February 6, 2012. On **6, 7(C)** **■** the Agency issued a 5-day suspension to the subject.

I recommend that the case be closed.


Approved

8/17/2012
Date

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

January 12, 2012

To: David Berry
Inspector General

From: Jennifer Matis
Counsel *JM*

Subject: Completed Investigation OIG-I-461

This investigation was initiated on August 23, 2011. The case involves an allegation that [REDACTED] 6, 7(C) [REDACTED] improperly used his travel card while not on travel status. I interviewed [REDACTED] 6, 7(C) [REDACTED] on October 28, 2011. Subsequently, [REDACTED] 6, 7(C) [REDACTED] retired from the NLRB as of [REDACTED] 6, 7(C) [REDACTED]. Because [REDACTED] 6, 7(C) [REDACTED] is no longer an employee of the NLRB, further investigative action is not warranted, and the case is closed.

DB 1/13/12
Approved

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

April 30, 2012

To: David Berry
Inspector General

From: Jennifer Matis
Counsel *JM*

Subject: Completed Investigation OIG-I-462

This investigation was initiated on August 24, 2011. The case involves [REDACTED] 6, 7(C) [REDACTED] and [REDACTED] 6, 7(C) [REDACTED] (subject), both from the [REDACTED] 6, 7(C) [REDACTED] Resident Office of Region [REDACTED]. The case was initiated after the OIG received information that [REDACTED] had allegedly misappropriated, from the subject's desk, notes indicating that the subject eavesdropped on, and took notes of, [REDACTED] telephone conversations. [REDACTED] 6, 7(C) [REDACTED] resigned from the Agency on [REDACTED] 6, 7(C) [REDACTED], after which the investigation proceeded only with regard to [REDACTED] 6, 7(C) [REDACTED] conduct.

Our investigative efforts consisted of interviewing witnesses and the subject and reviewing the subject's notes. We issued an investigative report substantiating the allegations on November 15, 2011. In [REDACTED] 6, 7(C) [REDACTED], the subject received counseling from the Regional Director.

I recommend that the case be closed.

[Signature]
Approved

5/1/12
Date

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

August 15, 2012

To: David Berry
Inspector General

From: Jennifer Matis
Counsel

Handwritten signature of Jennifer Matis in black ink.

Subject: Completed Investigation OIG-I-463

This investigation was initiated on September 2, 2011. The case involves an allegation that the subject, [REDACTED] 6, 7(C) in Region [REDACTED] misused his Agency e-mail account in support of political activities and other causes. We reviewed the subject's Agency e-mail account and obtained a forensic copy of the hard drive from his Government computer on April 5, 2012. [REDACTED]

[REDACTED] 6, 7(C)
The subject retired on [REDACTED] 6, 7(C) Because the subject is no longer an employee of the NLRB, further investigative action is not warranted.

I recommend the case be closed.

Handwritten signature of David Berry in black ink, written over a horizontal line.
Approved

8/15/12
Date

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 8, 2011

To: David Berry
Inspector General

From: Jennifer Matis
Counsel

A handwritten signature in black ink, appearing to read "JMatis", written over the printed name "Jennifer Matis".

Subject: Completed Investigation ICO OIG-I-465

This investigation was initiated on October 24, 2011. The case involves an allegation by [REDACTED] 6, 7(C) that the Chairman does not have authority to resolve administrative appeals from adverse FOIA decisions. I researched the legal issue and summarized my conclusions in a Summary of Investigation. After discussion, we determined that no misconduct has occurred. Subsequently, you and I spoke to [REDACTED] 6, 7(C) about his issues in detail on the phone on November 2, 2011. During that conversation, we informed [REDACTED] 6, 7(C) that we had determined that further investigation is not warranted, although we did plan to schedule an audit of the NLRB FOIA's program in the Fiscal Year 2012 Audit Program. He was also sent a letter to that effect on November 3, 2011. Because further investigative action is not warranted, the case is closed.

A handwritten signature in black ink, appearing to read "D. Berry", written over the printed name "David Berry".
Approved

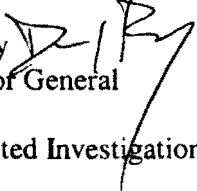
UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General






Memorandum

May 15, 2012

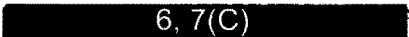

To: File

From: D. Berry 
Inspector General

Subject: Completed Investigation ICO OIG-I-467

This investigation was initiated on November 23, 2011. The case involved an allegation that  6, 7(C) and  6, 7(C) were being improperly influenced or having inappropriate communication with outside parties. The allegation was not substantiated. We did find, however, that  Ex. 5

. We also found that,  Ex. 5 


On January 23, 2012, we issued an investigative report.  6, 7(C)


 6, 7(C) the case is closed.

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

September 28, 2012

To: File

From: D. Berry *D-B*
Inspector General

Subject: Completed Investigation ICO OIG-I-~~467~~ 468 *8*

This investigation was initiated on November 28, 2011. The case involved an allegation that [REDACTED] 6, 7(C) improperly released confidential case processing information during the time that he was serving as a [REDACTED] 6, 7(C). Our investigative efforts substantiated the allegation and we issued two investigative reports. Each of the reports was provided to the

[REDACTED] 6, 7(C)
[REDACTED]
[REDACTED]

On May 26, 2012, the subject submitted his resignation, with an effective date of [REDACTED] 6, 7(C), to [REDACTED] 6, 7(C). [REDACTED] 6, 7(C)
[REDACTED] By this memorandum, our investigation is closed.

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

January 30, 2012

To: David Berry
Inspector General

From: Jennifer Matis
Counsel *JM*

Subject: Completed Investigation OIG-I-470

This investigation was initiated on December 30, 2011. The case involves allegations that Region [REDACTED] 6, 7(C) (1) improperly used his government travel card while not on travel status and for improper transactions; (2) failed to pay the balance on his government travel card, despite being reimbursed for official expenses; and (3) made false statements to Regional Management concerning his whereabouts and leave status.

[REDACTED] 6, 7(C)
[REDACTED] 6, 7(C) [REDACTED] S
[REDACTED] 6, 7(C). On January 20, 2012, I left a voicemail message for the subject notifying him I would take his statement in the Regional Office the next week. On Saturday, January 21, 2012, the subject called me and we briefly discussed the allegations. On [REDACTED] 6, 7(C), [REDACTED] 6, 7(C) resigned from the Agency, effective immediately. Because [REDACTED] 6, 7(C) is no longer an employee of the NLRB, further investigative action is not warranted, and the case is closed.

[Signature]
Approved

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

August 16, 2012

To: David Berry
Inspector General

From: Jennifer Matis
Counsel to the Inspector General

Handwritten signature of Jennifer Matis in black ink.

Subject: Completed Investigation OIG-I-474

This investigation was initiated on May 10, 2012. The case involves an allegation that [REDACTED] 6, 7(C) (subject), a [REDACTED] 6, 7(C) in Region [REDACTED] had misused Agency resources to make harassing telephone calls to [REDACTED] 6, 7(C) with whom the subject is having a relationship. Additionally, we received information that the subject may have misused sick leave in order to travel to meet [REDACTED] 6, 7(C).

Our investigative efforts consisted of reviewing reviewed Region [REDACTED]'s long distance telephone records and the subject's Government e-mail account. We also reviewed the subject's leave records for the relevant dates. Based on the record evidence, we concluded that the allegations are unsubstantiated.

In the course of the investigation, however, we discovered an e-mail message in the subject's Government e-mail account that raises an issue of whether [REDACTED] Ex. 5

[REDACTED] 6, 7(C)

I recommend that the case be closed.

Approved Handwritten signature of Jennifer Matis in black ink.

8/16/12
Date