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Description of document:	Closing memo or final report for Consumer Product Safety Commission (CPSC) Office of Inspector General (OIG) Investigations closed 2011-2013
Requested date:	2013
Released date:	08-July-2013
Posted date:	21-October-2013
Source of document:	FOIA Requester Service Center US Consumer Product Safety Commission 4330 East West Highway, Room 502 Bethesda, MD 20814 Fax: 301-504-0127

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**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

July 08, 2013

CERTIFIED MAIL

RE: Freedom of Information Act (FOIA) Request #13-F-00562: Request a copy of either the closing memo or final report, whichever exists, for each CPSC Office of Inspector General Investigation closed in calendar years 2011, 2012, and 2013 to date.

Thank you for your Freedom of Information Act (FOIA) request to the U.S. Consumer Product Safety Commission ("Commission"). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

We are withholding portions of the reports from the Commission's Office of the Inspector General's law enforcement investigatory files pursuant to the Exemptions 5, 6, 7(D), and 7(E) of the FOIA, 5 U.S.C. §552(b)(5), (b)(6), (b)(7)(D), and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda that would not be available by law to a party in litigation with the agency. Exemption 6 provides for the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(D) provides for the withholding from disclosure of records or information compiled for law enforcement purposes to the extent that the production of such records could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis. Exemption 7(E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or

information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of internal staff memoranda and reports containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs and information about trade complaints. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

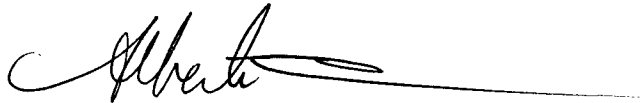
We believe that the Inspector General Investigative Files fall within the protection of FOIA Exemption 6. In this case the files contain personal and private information about employees and other individuals.

We have determined that the disclosure of the interview statements and identities of the confidential sources would be contrary to the public interest. It would not be in the public interest to disclose confidential statements or sources because disclosure would discourage other individuals from making such statements and deprive the Commission of those sources. Confidentiality of the sources and statements is a vital aspect to this means of information gathering.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: **FOIA APPEAL**, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408.

Processing this request, performing the file searches and preparing the information, cost the Commission **\$30.00**. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-7923 or e-mail addressed to cpsc-foia@cpsc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alberta", followed by a long horizontal line extending to the right.

Alberta E. Mills
Freedom of Information Officer
The Secretariat – Office of the Secretary
Office of the General Counsel


Enclosure

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: *Allegations* that CPSC had paid more than market rate for training services.

Investigation determined that although costs of training had been higher than anticipated, said payments had actually been made to another government agency under an Interagency Agreement and thus could not be fraud by definition. .


CHRISTOPHER W. DENTEL
Office of the Inspector General

11-002

Restricted

U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD. 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF ADMINISTRATIVE MISCONDUCT

November 28, 2011

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In Accordance With the Inspector Generals Act of 1974

Full or Partial Release of this document must be approved by the Office of the Inspector General and the Office of the General Counsel



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Memorandum

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Date: November 28, 2011

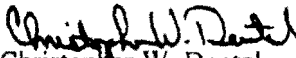
TO : Inez Tenenbaum
Chairman

FROM : Christopher W. Dentel
Inspector General

SUBJECT : Investigation of Alleged Administrative Misconduct

The Office of the Inspector General (OIG) has completed its investigation into the above allegation. [REDACTED]

A copy of the investigative report is attached.


Christopher W. Dentel
Inspector General

Attachment:
Report of Investigation

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Office of the Inspector General
Investigative Report
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U.S. CONSUMER PRODUCT SAFETY COMMISSION
Washington D.C. 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF ADMINISTRATIVE MISCONDUCT

SUMMARY: [REDACTED], the subject of this investigation, has engaged in a pattern of misconduct lasting over two years and involving thousands of dollars of the taxpayer's money. She has violated a number of administrative rules and regulations as well as a criminal statute (18 USC 208). She violated Government ethics regulations by accepting a gift from a subordinate in violation of 5 CFR 2635. She has misused her Government travel card by charging personal expenses on it. She has failed to comply with the provisions of the Government Travel Card program dealing with the timely payment of her Government travel card bill. She has violated the Basic Obligations of Public Service, set out at 5 CFR 2635.101, by failing to satisfy in good faith her obligations as a citizen by both writing insufficient fund checks to pay debts she incurred using her Government Travel Card, failing to pay personal debts, and failing to pay her Federal taxes due to the District of Columbia. The Department of Justice has been briefed about this case and declined to take criminal jurisdiction. They have, however, asked to be kept abreast of the administrative actions taken by the agency.

PURPOSE AND SCOPE: The purpose of this investigation was to determine the facts and circumstance surrounding the alleged violations of CPSC and Federal policies and regulations by Subject.

METHODOLOGY: The Office of the Inspector General conducted an administrative investigation into the individuals and circumstances surrounding the subject's alleged misconduct. Documents relevant to the alleged misconduct (financial records, travel vouchers, credit card statements, etc.) were reviewed. The subject of the investigation was informed of her rights and responsibilities regarding the investigation and was then interviewed. The subject was then given an opportunity to review and edit a summary of her interview. This summary was then sworn to and signed by the subject.

BACKGROUND: This investigation was initially launched to inquire into the validity of allegations that the subject had played an inappropriate role in her husband's application to work at the CPSC. These allegations were made by a complainant who wished to remain anonymous. A preliminary review of the allegations determined that subject was in a position to influence hiring decisions and did in fact have a husband who had applied for a position at the CPSC.

During all times relevant to this investigation, subject has, [REDACTED]

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[REDACTED]

[REDACTED]

As both a supervisor and a member of the [REDACTED], subject served in a position of trust and was expected to both know and follow the rules regarding her conduct as both a CPSC employee and a supervisor.

During the course of the investigation into subject's role in her husband's application for a position at the Consumer Product Safety Commission several other potential violations of statute or regulation came to light. This investigation was expanded to include the additional alleged misconduct.

The basic obligation of public service, as set out at 5 CFR 2635.101, is as follows, "Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct . . ." As detailed below, Subject has admitted to breaking this trust, while at the same attempting to minimize the impact of her misconduct.

At some period in time at or before 2009, subject began having financial difficulties. One of the ways in which she dealt with these difficulties was by inappropriately taking advantage of her position as a supervisor and Federal employee. (Attachments 1-2, 4-5)

At some point in 2009, subject was approached by one of her subordinates, [REDACTED], who had become aware of subject's financial difficulties. [REDACTED] knew that Subject did not have an automobile with which to commute to work. [REDACTED] offered to allow subject to use her second car, a 1998 Mercedes Benz C230, for "a few months." For a period of 12 to 14 months in 2009 and 2010 subject drove the automobile belonging to her subordinate. Subject neither offered to nor made any payment for the use of this vehicle. The only reason that subject stopped using this vehicle was that it stopped running. There is some dispute regarding whether or not subject paid to have the vehicle towed at the time it broke down or if the subordinate from whom she borrowed it had to do so. (Attachments 1-2)

Apparently, a number of [REDACTED] co-workers were aware that [REDACTED] supervisor, Subject, was borrowing the car in question and at least some of them believed that subject's treatment of [REDACTED] changed after subject was no longer able to borrow [REDACTED] automobile. [REDACTED] believed that subject stopped speaking to her socially, was sharp to her for no reason, and that it was not a comfortable place to work after she stopped letting subject use her automobile. (Attachment 2)

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On a number of occasions, subject's husband applied for positions at the CPSC. Despite [REDACTED]

(Attachments 1,

6)

[REDACTED]

Government employees are required to use the Government contractor-issued travel charge card (travel card) for their official travel expenses. Congress mandated the use of the travel card in the Travel and Transportation Reform Act of 1998. The travel card was made mandatory in an effort to both reduce travel expenses (eliminating the need to process travel advances, etc.) and generate revenue for the Government (through refunds which are paid to the Government by the contractors who issue the travel cards).

The travel card is issued by a government contractor and resembles the credit cards used in private commerce (it bears the name of the employee to whom it is issued). However, it is government property (a fact which is annotated on the face of the card) and may only be used for official travel related expenses.

CPSC employees must comply with both the Government wide regulations applicable to all Federal employees and with CPSC specific regulatory guidance. The Federal Travel Regulation (FTR), 41 CFR 300-304, implements the statutory requirements and Executive branch policies governing the use of the travel card which apply to all Federal civilian employees. The FTR contains policies and procedures that regulate both the issuance and use of the travel card.

US Bank issues the travel card used by CPSC employees. The CPSC reimburses employees for authorized travel expenses. The employee, in turn, is responsible for making payment directly to US Bank. The Government employee's obligations to US Bank must be discharged in accordance with the Cardholder Agreement that the employee signed when they applied for the travel card.

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Under the agreement applicable to the CPSC, employees must pay all undisputed charges directly to US Bank in full by the billing due date printed on the billing statement. This date will typically be 25 to 30 days after the closing date on the statement. A "delinquency" occurs when an employee fails to pay a financial obligation incurred on a travel card in accordance with the terms of the Cardholder Agreement. Delinquencies may result in administrative action being taken against an employee or in certain instances in the suspension or revocation of the employee's travel card.

There are four primary reasons for the CPSC to take an active roll in managing employees' use of the travel card:

First, agencies are responsible for ensuring that employees observe the Standards of Ethical Conduct for Employees of the Executive Branch. This in relevant part reads:

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes--that are imposed by law.
5 CFR 2635.902(b)(12)

Second, agencies are responsible for ensuring that employees follow the Federal Travel Regulation, 41 CFR 300, which applies to all Government employees, including those at the CPSC. (CPSC Directive 1300.1 implements the Federal Travel Regulation.)

Third, agencies are responsible for following the terms of the Master Contract with the contractor who issues the Government Travel Card, negotiated on the CPSC's behalf by GSA, including CPSC's requirements to ensure cardholders use the travel card correctly, monitor account activity, and manage employee delinquencies.

Finally, as fiscal officers, agencies have an obligation to maximize the refunds paid to them by the contractors who issue the travel cards. Refunds are negatively impacted by slow payments and/or credit losses.

As set out in greater detail at Attachment 4 subject failed on numerous (14) occasions in 2009 and 2010 to pay her travel card bill in a timely manner. Because the card in question was a Government Travel Card, US Bank was unable to charge fees or interest as they would have done in a normal commercial setting. (Attachment 4)

Subject also charged nearly \$1,500 in unauthorized (not related to official business/travel) expense on her travel card.¹ (Attachment 4)

¹ Subject's supervisor took Subject's travel card away from her and only gave Subject access to it when she was actually traveling, thus limiting Subject's ability to continue to misuse it after 2010.

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On June 14 of 2009, subject charged \$268.99 at a TJ Maxx store located in Washington, DC to her Government Travel Card. Subject was not in travel status at this time and had no lawful authority to use her Government Travel Card for this purpose. When initially questioned about this transaction, subject accepted responsibility for the misuse in question stating that it was, "a bad decision" on her part. Later, subject balked at putting this statement in writing, instead changing it to, "It was a mistake on my part." Attachments 1, 3-4)

On April 5, 2010, subject charged \$1,214.85 in payments to PEPCO² on her Government Travel Card. Subject was not in travel status at the time that she charged her utility bill to the Government Travel Card and even if she had been, there is no provision authorizing the payment of one's utility bills on the Government Travel Card. Subject has accepted responsibility for this misuse of her card stating that, "It was a bad decision on my part that was made during a difficult period for me personally." (Attachments 1, 4)

In addition to the above, subject has also made online payments through her checking account to the contractor who issued her Government Travel Card that were rejected by her bank for insufficient funds. She bounced two payments (1,084.62 and \$1,889.22) totaling \$2,973.84 on 26 May and 19 October 2009. (Attachment 4)

According to the CPSC's Office of Financial Management (FMFS), at some point in time prior to April 28, 2009, subject incurred a debt to the United States Treasury (which resulted in her travel reimbursements being offset rather than paid to her. Other than indicating that this was the result of Subject having "outstanding debts with the Government," FMFS was unable to provide details about this debt. Further details are being sought at this time and if relevant will be provided to the agency.

On December 23, 2009, a request for garnishment on wages in the amount of \$10,190.88 was issued by [REDACTED] against Subject. This garnishment was the result of a failure by the Subject to pay a judgment entered against the Subject on June 12, 2009. The judgment was in favor of [REDACTED].

On August 14, 2009, a judgement of \$1,174.00 was entered against the subject and in favor of [REDACTED]. This resulted in a garnishment being placed against the Subject's wages with the CPSC.

On or about October 5, 2011, a garnishment of 32,809.02, the result of a tax lien, was ordered against Subject's Federal Pay, due to her failure to fully pay the taxes she owed to the [REDACTED]. This resulted in a garnishment being ordered against the Subject's pay on November 11, 2011.

² A utility that provides electrical service to residential and commercial customers.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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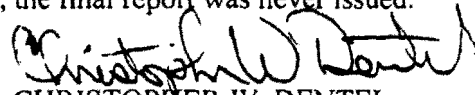
[REDACTED]

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations of Misuse of Government Purchase Card and T&A Rules.

Investigation of allegations that a CPSC employee had misused her government purchase card, engaged in various time and attendance type violations, and made a false statement to her supervisor. Investigation determined that the alleged violations had occurred. However, supervisor took disciplinary action (based on preliminary results of investigation) prior to final report being issued. As appropriate disciplinary action was taken by the agency prior to the report being issued, the final report was never issued.


CHRISTOPHER W. DENTEL
Office of the Inspector General


11-204

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations that CPSC Hiring Practices Constituted a Violation of MSPB Principles

Investigation of allegations that the CPSC was engaging in improper hiring processes. Investigation determined that the specified actions did not, prima facie, constitute a violation of Merit System principles.


CHRISTOPHER W. DENTEL
Office of the Inspector General

11-003

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U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD. 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF MAKING A FALSE OFFICIAL STATEMENT

May 31, 2011

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Office of the Inspector General
Investigative Report
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U.S. CONSUMER PRODUCT SAFETY COMMISSION
Washington D.C. 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS THAT SUBJECT MADE A FALSE OFFICIAL
STATEMENT BY SUBMITTING AN ALTERED COPY OF HER PERFORMANCE
APPRIASAL IN A JOB APPLICATION

SUMMARY: [REDACTED] the allegation that subject, [REDACTED] knowingly altered the performance appraisal that she submitted with her application for a position at the Consumer Product Safety Commission (CPSC).

PURPOSE AND SCOPE: The purpose of this investigation was to determine if subject had intentionally modified the copy of her performance appraisal that was submitted with her application for a position at the CPSC.

METHODOLOGY: The Office of the Inspector General conducted an administrative investigation of the circumstances surrounding the allegations. Relevant documents were reviewed. The subject and various other witnesses were interviewed and made sworn written statements. The subject's union representative provided a memorandum for record.

BACKGROUND: Agency management contacted the Office of Inspector General regarding an allegation that the subject had applied for a position at the CPSC using an altered copy of her performance appraisal. Preliminary investigation determined that the performance appraisal submitted with the subject's application had been altered. These alterations included the removal of the comments made by the subject's supervisor and the digital signatures of both the subject and the subject's first and second level supervisors. The appraisal submitted with the application also appeared to have had several sections of text (or tables) at the end of the appraisal overlap in a manner that rendered large portion of them illegible. (Attachment 1)

On the original performance appraisal in question, subject received a rating of fully successful (3 on a scale of 1 to 5) both for her overall summary rating and for each of the 4 critical elements upon which her summary rating was based: Program Support, Budget Formulations, Customer Service, and Special Assignments. The comments made by the rating official, subject's first level supervisor, were generally objective and neutral rather than subjective or negative. They consisted primarily of a recitation of the subject's duties and responsibilities rather than a qualitative assessment of how she had performed her duties. The appraisal also contained the graphic representations of the digital signatures of the subject's first and second level supervisors. (Subject had refused to sign the appraisal when it was issued, but did sign acknowledgments involving the establishment of her performance plan and progress reviews – these signatures were also missing.) (Attachment 2)

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Subject is a [REDACTED] On or before [REDACTED] she applied for a [REDACTED]. Her current supervisor, [REDACTED], was the selecting official for the position for which subject applied. [REDACTED] was also the individual who wrote subject's most recent performance appraisal. (Attachment 3)

As with any other applicant, in order to apply for the position subject had to use the USAJobs website. As part of that process subject was required to submit a copy of her most recent performance appraisal. All attachments to the application had to be scanned and turned into PDF files and then uploaded to the USAJobs website. (Attachment 3)

On or about February 4, 2011, subject telephoned fellow CPSC employee [REDACTED] and asked [REDACTED] to send subject a copy of subject's performance appraisal.¹ Subject knew that [REDACTED] had a copy of subject's performance appraisal because [REDACTED] was helping subject with her grievance (subject is grieving her most recent performance appraisal). (Attachments 3, 4)

Subject was at her home when she worked on her application. Therefore, she used Web Outlook (a program accessible from home through the CPSC's website) rather than Outlook (a program available on her Government issued computer) to open and forward all of the e-mail relevant to this investigation. (Attachments 3-5)

[REDACTED] e-mailed subject a copy of subject's performance appraisal. This e-mail contained two copies of subject's performance appraisal. An attachment to the e-mail contained the performance appraisal in a format only accessible through the proprietary software which the agency had licensed for the production and retention of its performance appraisals. A second copy of the performance appraisal was reproduced as text in the body of the e-mail. (Attachments 1, 3-5)

Subject forwarded the e-mail from [REDACTED] to subject's daughter at [REDACTED]. Subject had previously made arrangements with her daughter to have her print out the performance appraisal and then scan it to create a PDF file. (Attachments 1, 3, 5)

Subject's daughter dutifully printed out and scanned the e-mail in question.² She then e-mailed subject the resulting PDF files (subject's daughter made two copies of the appraisal and attached both to the e-mail). Subject reports that she just uploaded one of the PDF files to USAJobs without looking at it.³ (Attachments 1, 3)

As part of this interview – subject was shown a copy of the appraisal that was submitted with her application. Subject acknowledged that it was missing all digital signatures and the comments that her supervisor had made. (Attachments 1, 3)

¹ No good explanation has ever been offered for why subject needed someone to send her a copy of her own performance appraisal.

² Based on the appearance of the document in question, see Attachment 1, it was the text of the e-mail itself that was printed out and scanned, not the contents of the file attached to the e-mail.

³ Both files contained the same irregularities.

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Subject reports that she does not understand why anyone would think that she would deliberately take the comments in question out – as in her opinion they weren't negative, "I don't think that they or my ratings gave me full credit for the work I did – which is why I am grieving the appraisal – but the comments were not negative." (Attachment 3)

Subject has acknowledged not proofing her application before she submitted it. She claims that she was not aware that the copy of the appraisal that she submitted failed to include the digital signatures of her first or second level supervisors or the comments made by her first level supervisor. She has provided a copy of the e-mail from her daughter with the scanned PDF files as attachments. These files lack the digital signatures and comments from her supervisor that appear on the original performance appraisal. (Attachments 1, 3, 6)

No completely satisfactory explanation has been offered as to how deleting the supervisor's comments from the application would benefit the subject. Presumably, the supervisor in question, who was also the selecting official for the vacancy in question, would have been aware of the changes and uninfluenced by them. One possible motive offered by management for the subject to have altered her appraisal is the possibility that the subject may have believed that the altered appraisal would receive a more favorable rating from any officials in EXRM who reviewed the application than would have the unaltered appraisal. (Attachment 7)

Subject and her union representative both claimed that subject had not intentionally modified subject's performance appraisal. The theory offered by the union representative was that the performance appraisal had been altered unintentionally when it was transmitted via e-mail. At the time it was first offered, this theory was undercut by the fact that despite repeated efforts involving multiple commercial e-mail providers, neither this office nor the union representative were able to replicate the key alteration (the deletion of the comments).⁴ (Attachments 3, 5)

FINDINGS:

[REDACTED]

[REDACTED]

⁴ The transmission of the performance appraisal as text in the body of an e-mail through certain commercial providers did result in the deletion of the digital signatures and the "running together" of some of the text at the end of the appraisal, but not the deletion of the comments in question.

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[REDACTED]

[REDACTED]

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Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations of Favoritism in Hiring and Disciplinary Process

Investigation of allegations that the CPSC was engaging in improper hiring decisions and showing "favoritism" in executing disciplinary actions involving an employee who allegedly was a personal friend of a senior management official at the CPSC.

Investigation determined that the hiring action in question had been conducted in accordance with agency and general Federal standards. Evidence substantiated that employee in question had misused government property, but also that appropriate disciplinary action had been taken for this offense. Other matters more closely related to EEO than OIG were found during the course of the investigation and referred to that office.


CHRISTOPHER W. DENTEL
Office of the Inspector General



U.S. CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Christopher W. Dentel
Inspector General

Tel: 301 504-7644
Fax: 301 504-7004
Email: cdentel@cpsc.gov

Date: October 18, 2011

TO : [REDACTED]
Hatch Act Unit
Office of Special Counsel

FROM : Christopher W. Dentel
Inspector General
Consumer Product Safety Commission

SUBJECT : Transfer of Investigation

The attached file was transmitted to your office electronically on 13 Oct 11.

Please contact me if you have any questions. I can be reached at [REDACTED] or via e-mail at [REDACTED]

A handwritten signature in black ink, appearing to read "Christopher W. Dentel".

Christopher W. Dentel
Inspector General


Attached:
OSC Form 13 w Attachments

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Selection Process

Initial investigation determined that specifically alleged misconduct had not occurred (complainant's file had been included in selection process). Disputes regarding selection process in general are subject to appeal to OPM which had not occurred to date, so complaint dismissed as not ripe.


CHRISTOPHER W. DENTEL
Office of the Inspector General

MEMORANDUM FOR RECORD

Allegation and Results of Preliminary Investigation: Complainant alleges that [REDACTED] actions regarding the recent [REDACTED] constituted an abuse of authority. The allegation as framed by the complainant (see attached) constitutes a prima facie case of abuse of authority by an official of the CPSC and therefore is within the jurisdiction of the OIG and requires that a preliminary investigation be conducted.

However, not all allegations lead to formal investigations and a preliminary investigation in this case has led to the case being closed without a formal investigation being conducted.

Analysis: Abuse of authority is not defined in the Inspector General Act. Traditionally, as noted by the complainant, "abuse of authority" has been defined as an *arbitrary or capricious* exercise of power by a federal official or employee that *adversely affects* the rights of any person or that *results in personal gain or advantage* to the abuser. Both factors must be present; an action which adversely affects the rights of a person but is not arbitrary or capricious is not, by definition, an abuse of authority.

Courts have interpreted the arbitrary and capricious standard in the context of government agency action under 5 U.S.C. § 706, the Administrative Procedure Act (APA). This standard is generally summarized into a two prong test. However, as both prongs must be met, if one part is not met there is no need to conduct an analysis of the other prong of the test. For our purposes, the relevant prong of the test is as follows, "Did the relevant official act within the authority granted under applicable regulations, law or policy?"

In answering this question, IGs have been enjoined that they should: examine the agency official's action very narrowly, giving the official's decision substantial deference; and not substituting the IG's judgment for that of the official.

In this case, the action by the agency official in question was the CPSC's reversal of its position regarding [REDACTED] through the issuance of an interpretive rule."

Complainant has offered a legal analysis indicating that the agency did not have the authority to do so (see Attachment 1). In brief, complainant alleges that the [REDACTED]

[REDACTED] As the CPSC, [REDACTED],

acted instead [REDACTED], complainant concludes that [REDACTED] actions were outside within the authority granted under applicable regulations, law or policy?"¹

[REDACTED]

[REDACTED]

Based on both the case law cited and the opinion issued by the OGC it appears that [REDACTED]

The issue of whether or not an agency or official has the authority to take an action should not be confused with the determination of whether or not the action in question is the most appropriate option available. [REDACTED]

Indeed, the option selected by [REDACTED] was the "least preferred" option offered by [REDACTED]

¹ Complainant has also raised an issue regarding the applicability of 16 CFR 1011.1(a) which states in relevant part that, "... the Commission has determined that it must involve the public in its activities to the fullest possible extent." How to balance the qualifier of this requirement (to the fullest extent possible) with the safety concerns raised by [REDACTED] public comment was not sought prior to the rule change, public input was sought regarding the effective date for the changed policy is ultimately more of a political question than one to be resolved by the Office of Inspector General. It should also be noted that this issue was decided by a majority vote of the commissioners [REDACTED]

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[REDACTED]

However, as noted above, the preference [REDACTED] is not the relevant test.² The test is, "Did the official act within the authority granted under applicable regulations, law or policy?" Although [REDACTED]

Conclusion: [REDACTED] actions were within the authority granted under applicable law. As such, there can be no finding that [REDACTED] actions constituted an abuse of authority. This investigation is being terminated at the preliminary investigation stage and no further action regarding this matter is contemplated at this time.

[REDACTED]
Christopher W. Dentel
Inspector General

Attachments:

1. Complaint
2. OGC Opinion w Attchs

² The issue of whether or not an agency officials action are "authorized by regulation, policy or statute" is different – and more narrow – than the issue of whether or not the actions are the best possible policy or indeed, are even "fair." Abuse of authority is not a "catch-all" standard for actions that don't seem "fair." While actions may not be fair, they don't always rise to the level of abuse of authority. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42-43 (1983)(quoting Burlington Truck Lines Inc. v. United States, 371 U.S. 156, 168 (1962)) See also Dep't of the Air Force v. FLRA, 352 U.S. App. D.C. 394 (D.C. Cir 2002) (discussing arbitrary and capricious standard)).

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Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding DoE Employee

Investigation determined that jurisdiction over the investigation rested with DoE OIG and not CPSC OIG. DoE OIG had already initiated investigation so this case was closed.

A solid black rectangular box used to redact the signature of Christopher W. Dentel.

CHRISTOPHER W. DENTEL
Office of the Inspector General


10 Feb 12

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Agency Handling of Complaint

Investigation determined that individual in question was filing the IG complaint before agency had taken final action on the matter in question. Complaint dismissed as not ripe.



CHRISTOPHER W. DENTEL
Office of the Inspector General


10 Feb 12

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Nepotism

Investigation determined that individual in question was not related to deciding official.
Complaint dismissed for failing to state a prima facie case.


CHRISTOPHER W. DENTEL
Office of the Inspector General


17 May 12

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Nepotism

Investigation determined that individual in question was not related to alleged perpetrator and normal hiring practices followed. Complaint dismissed for lack of factual basis.



CHRISTOPHER W. DENTEL
Office of the Inspector General


29 May 12

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Failures by CPSC Employees to Pay Federal Income Tax

Preliminary investigation determined that no specific individual was cited by complainant. However, as IRS had recently indicated that this was an increasing problem across the Federal Government as a whole, matter was raised with agency management for management action. Matter was also added to audit universe for future action.


CHRISTOPHER W. DENTEL
Office of the Inspector General

Memorandum for Record

08/14/12

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Threats Made by [REDACTED]

Preliminary investigation determined that threat in question was not credible. However, as threat made against President, threat was forwarded to Secret Service.

[REDACTED]
CHRISTOPHER W. DENTEL
Office of the Inspector General


18 Oct 12

Memorandum for Record

From: Christopher W. Dentel, Inspector General

Subject: Allegations Regarding Agency Travel Card Program

Investigation determined that problems in question were primarily process oriented rather than the result of misconduct by individuals. Investigation closed and issue incorporated into ongoing audit.



CHRISTOPHER W. DENTEL
Office of the Inspector General

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U.S. CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF IMPROPER AND ABUSIVE PURCHASES

April 19, 2013

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Memorandum

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Date: April 19, 2013


TO : Inez Tenenbaum
Chairman

FROM : Christopher W. Dentel
Inspector General

SUBJECT : Investigation of Alleged Improper and Abusive Purchases

The Office of the Inspector General (OIG) has completed its investigation of allegations that iPhones were purchased by the CPSC in an abusive and improper manner. This investigation was initiated as the result of an anonymous complaint. A copy of the investigative report is attached.

The evidence obtained during the investigation was sufficient to establish that the purchases in question were not abusive but were improper.


Christopher W. Dentel
Inspector General

Attachment:
Report of Investigation

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Office of the Inspector General
Investigative Report
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U.S. CONSUMER PRODUCT SAFETY COMMISSION
Bethesda MD 20814

Office of the Inspector General
Investigative Report

INVESTIGATION OF ALLEGATIONS OF ADMINISTRATIVE MISCONDUCT

SUMMARY: Between on or about February 27, 2009 and on or about July 7, 2010 the Office of Information and Technology Services (EXIT) purchased 19 iPhones for testing. The decision making processes regarding the selection of the iPhone for testing and the number to be acquired were both undocumented but appear on their face to be reasonable. However, the manner in which the iPhones were acquired was improper and the iPhones were not entered into the CPSC's property management system (PMS) as required by CPSC directives.

PURPOSE AND SCOPE: The purpose of this investigation was to determine the facts and circumstance surrounding the alleged violations of CPSC and Federal policies and regulations by the Office of Information and Technology Services.

METHODOLOGY: The Office of the Inspector General conducted an administrative investigation into the individuals and circumstances surrounding the alleged misconduct. Documents relevant to the alleged misconduct (financial records, credit card statements, e-mails, etc.) were reviewed. The subject of the investigation and various witnesses were informed of their rights and responsibilities regarding the investigation and then interviewed. The subject and the other witnesses were then given an opportunity to review and edit a summary of their interviews. This summary was then sworn to and signed.

BACKGROUND: This investigation was initiated to inquire into the validity of allegations that the subject inappropriately directed the purchase of iPhones, issued them to "selected IT staff" (NFI), and failed to have the iPhones entered into the property management system (PMS). These allegations were made by a complainant who wished to remain anonymous. The complainant indicated fear that he would lose his job if his identity became known to agency management. (See Atch 1)

During all times relevant to this investigation, subject served as the [REDACTED] of the CPSC and the [REDACTED] Office of Information and Technology Services.

The initial recommendation to purchase the iPhones was not made by subject, but by [REDACTED] at that time a senior official in EXIT, proposed that iPhones be tested because the iPhone was "wonderful technology" and users were generally much more positive about it than they were the Blackberries the agency was using. (Atch 2-3)

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On or about February 27, 2009, at the direction of [REDACTED] the CPSC purchased 7 iPhone 3s¹. According to all witnesses interviewed who were aware of the rationale for the purchase, this was done to test the possibility of using iPhones to replace the Blackberry telecommunication devices currently used by the agency. (Attchs 4-5)

In order to use/test the iPhones the agency had to have a data plan. Data plans for iPhones, at that time, were only being offered through ATT; so EXIT contracted with ATT to provide a data plan. (Attchs 5-6)

The iPhones were issued to IT managers (6) and to [REDACTED], who was not a manager but was the individual responsible for managing mobile devices (such as the iPhone). The decision to issue them to IT managers was reportedly based on the desire to have a variety of users all of whom had backgrounds in IT. (Attch 6)

[REDACTED] indicated that although [REDACTED] was clear that the reason for the purchase of the iPhones was to test them as a possible replacement to the Blackberry, there was never a formal project plan and they were never directed to develop a formal testing plan². (Attch 3)

On two occasions, [REDACTED] made the decision to replace the iPhones in the agency's possession with newer models. Thus the original iPhone 3s were replaced by iPhone 3GSs and they in turn with iPhone 4s. These upgrades did not feature any particular advantage in terms of security. However, in each case the model replaced was no longer going to be produced or maintained by Apple. [REDACTED] has indicated that he wanted to make sure that the test platform used by the CPSC was a version of the iPhone that would actually be in production at the time of the switch from Blackberry to iPhone³. (Attchs 3-6)

The lack of documented test results or a formal testing plan makes it impossible to say exactly what use was made of the iPhones. However, it appears that the testing consisted primarily of EXIT using the iPhones to see if they could receive and transmit e-mails on "Exchange," the CPSC's mail server at the time⁴. They also tested the security settings to try and see if they could be made compatible with agency requirements. Two distinct problems were found with the adoption of the iPhones. First, the iPhones could not be encrypted to the standards required by the Federal Government as established by the National Institute of Standards and Technology in their publication FIPS 140-2. Second, there were problems with device management. Device management is the ability to remotely control the devices to monitor, install software and if necessary (due to loss or theft) delete all information from them. In the words of one witness,

¹ Initially, four iPhone 3s were purchased. Shortly thereafter three more were purchased.

² This was cooperated by a number of other witnesses.

³ There were some additional costs to the agency generated by the upgrade to the iPhone 4. These were caused because at the time of the upgrade the iPhone 4 has not been placed on the GSA schedule and therefore by switching to the iPhone 4 the agency lost a discount that GSA had negotiated on iPhone 3 accounts. Given the number of iPhones involved and the limited nature of the pilot project, these amounts were de minimis.

⁴ Ultimately, after modifications were made to the agency's server, they were able to do so.

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RIM, the maker of Blackberry, has a number of issues with the functionality of their devices, but they could not be beat for device management. (Attchs 2-4, 6)

There was some disagreement amongst the witnesses as to the decision to not enter the iPhones into PMS. None of the managers interviewed remembered making an affirmative decision to not enter the iPhones into the PMS system. However, [REDACTED] recalled that he asked [REDACTED] and [REDACTED] about entering them into the PMS system and was told that they did not want to put them in PMS because they were only going to have them a few months⁵. Ordinarily, responsibility for entering new equipment into PMS would rest with the property custodians and not senior managers. (Attchs 2-4, 6)

EXIT still has the iPhones and used them relatively recently when they were working on issues related to the implementation of Wi-Fi access to the CPSC network within the CPSC Headquarters building. They could also be used as iPods (i.e. as storage devices) but management wanted to make sure that they were not misused, so once testing was stopped and the data plan cancelled they locked them up⁶. (Attch 6)

When using the purchase card, CPSC employees must comply with both the Government wide regulations applicable to all Federal employees and with CPSC specific regulatory guidance. Although the CPSC has recently revised its regulations regarding the purchase card program (CPSC Directive 1540.1, *Government-wide Purchase Card program*, and its Appendix 1540.1a, *Purchase Card Handbook*) the incidents which are the subject of this investigation occurred prior to these revisions and thus were subject to the regulations in place at the times in question.

FINDINGS: There is very little dispute over facts of the case.

1. Subject directed the purchase of the iPhones and associated data plans. The purchase of the iPhones and associated data plans with a purchase card was an improper purchase, but not an abusive one.

The purchases of the iPhones (both the initial purchase and the later upgrades) and the associated data plans were improper in that they violated the version of CPSC Directive 1540.1 in effect at the time of the purchases.

OMB Circular A-123, Appendix B, Section 4.6, defines an "improper purchase" as, "... any purchase that should not have been made ... under statutory, contractual, administrative, or other legally applicable requirements. ..." GAO Report 08-333 offers a similar definition of improper purchases, "... those purchases that although intended for government use, are not permitted by law, regulation, or government/agency policy."

⁵ Although the iPhones were ultimately kept substantially longer than a "few months" due to the lack documentation it is impossible to determine how long the agency intended to keep them at the time they were purchases.

⁶ They were, as alleged, locked in the desk of [REDACTED]

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CPSC Directive 1540.1 governs the CPSC's purchase card program. The version of this directive in force at the time in question contained a prohibition against CPSC employees using the purchase card to acquire telecommunications services or supplies. Although, the directive contained no definition of the term "telecommunication," the most common definitions (Webster's Dictionary, Wikipedia, etc.) refer to "communication at a distance" and "technology that deals with telecommunication" which would appear to cover telephones and their associated data plans, including the iPhone. As such, their purchase violates the agency's regulation governing the use of the purchase card and is by definition, "improper."

GAO Report 08-333 defines "abusive purchases" as follows: "... where the conduct of a government organization, program, activity, or function fell short of societal expectations of prudent behavior ... examples of abusive purchases (included) where the cardholder (1) purchased goods or services at an excessive cost (e.g., gold plated), or (2) purchased an item for which government need was questionable."

Although, as noted above, the purchases of the iPhones were improper, there is no evidence to indicate that they were abusive. This determination was complicated by the agency's failure to document either the initial decision to purchase the iPhones or the testing plan/test results. However, all of the witnesses were consistent in their explanations of the rationale for the purchase of the iPhones (testing them as potential replacements for the Blackberry) and were able to explain the results of the testing and the rationale for the project being cancelled (the iPhones inability to meet agency security and device management requirements). Based on the evidence available, the purchase of the iPhones did not involve an excessive cost or a questionable need.⁷

2. The decision to issue the iPhones to the seven individuals in question was reasonable. This determination was complicated by the agency's lack of written documentation. However, all of the witnesses were consistent in their explanations of the rationale for the issuing of the iPhones and the explanation given was reasonable. These individuals all had IT backgrounds and as supervisors qualified to have Blackberry devices issued under existing agency policies.

3. The iPhones should have been entered into the property management system (PMS) but were not. Appendix A to CPSC Directive 820.1, states that:

ITEMS ACQUIRED BY GOVERNMENT CREDIT CARD. Accountable property (property with an acquisition cost of \$500 or more) and "sensitive property⁸," ... purchased with a Government credit card must be entered into the Personal Property Management System. Credit card holders are required to submit to their property custodians the description of the item, make, model serial number, manufacturer's date (when provided), date of receipt, and unit cost. In addition, credit card holders must provide the property custodian a copy of the credit card monthly statement,

⁷ The iPhones were purchases at market cost and in commonly used configurations.

⁸ Sensitive Property is defined as property costing between \$100 and \$499 that, because of its appeal, is subject to theft, loss, or conversion to personal use, is subject to the accountability and control procedures of accountable property. The iPhones unquestionably qualify.

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annotated with the description and unit cost of each item purchased (a separate sheet can be provided when multiple items are purchased). The property custodian must initiate actions to enter the new items in the property system within three (3) working days of receipt. This procedure will facilitate the identification/matching of accountable property purchased with credit cards.

As of the time of this investigation, the iPhones had not been entered into the PMS system. Thus, for more than four years, the iPhones remained unaccounted for by the agency. (Atch 7)

CONCLUSION: The standard of proof applicable in an administrative proceeding is "preponderance of the evidence" (5 U.S.C. 7543). That standard of proof has been met and, as detailed above, it has been established that:

1. Subject violated the version of CPSC Directive 1540.1 in effect at the time in question, by authorizing the purchase of iPhones via purchase card.
2. The process used to determine to whom the iPhones were issued was reasonable.
3. Agency rules were violated when the iPhones were not entered into the property management system.

RECOMMENDATIONS:

1. A copy of this report of investigation should be provided to the Executive Director so that he can determine what administrative action, if any, it is appropriate to take regarding subject's regulatory violations.
2. Appropriate administrative action should be taken to ensure that EXIT complies with CPSC Directive 820.1 and promptly enters both the previously purchased iPhones and any newly purchases equipment into PMS.

ADDENDUM: Corrective Action regarding a number of these recommendations may have already been taken as a result of the recent purchase card audit. It should also be noted that although this investigation took place after the issuance of the purchase card audit report, the actual violations of policy took place before that audit was issued to agency management. As a result of said audit, the agency has revised its regulations governing the purchase card program and these revisions should be taken into account while determining the appropriate administrative action to take.

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