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**NATIONAL SECURITY AGENCY/CENTRAL SECURITY
SERVICE**



INSPECTOR GENERAL

REPORT OF INVESTIGATION

28 September 2015

IV-14-0077

Alleged Conflict of Interest

(U) This report might not be releasable under the Freedom of Information Act or other statutes and regulations. Consult the NSA/CSS Inspector General Chief of Staff before releasing or posting all or part of this report.

Approved for Release by NSA on 09-30-2019, FOIA Case # 85643 (litigation)

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(U) OFFICE OF THE INSPECTOR GENERAL

(U) Chartered by the NSA Director and by statute, the Office of the Inspector General conducts audits, investigations, inspections, and special studies. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA operations, provide intelligence oversight, protect against fraud, waste, and mismanagement of resources by the Agency and its affiliates, and ensure that NSA activities comply with the law. The OIG also serves as an ombudsman, assisting NSA/CSS employees, civilian and military.

(U) AUDITS

(U) The audit function provides independent assessments of programs and organizations. Performance audits evaluate the effectiveness and efficiency of entities and programs and their internal controls. Financial audits determine the accuracy of the Agency's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

(U) INVESTIGATIONS

(U) The OIG administers a system for receiving complaints (including anonymous tips) about fraud, waste, and mismanagement. Investigations may be undertaken in response to those complaints, at the request of management, as the result of irregularities that surface during inspections and audits, or at the initiative of the Inspector General.

(U) INTELLIGENCE OVERSIGHT

(U) Intelligence oversight is designed to insure that Agency intelligence functions comply with federal law, executive orders, and DoD and NSA policies. The IO mission is grounded in Executive Order 12333, which establishes broad principles under which IC components must accomplish their missions.

(U) FIELD INSPECTIONS

(U) Inspections are organizational reviews that assess the effectiveness and efficiency of Agency components. The Field Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

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I. (U) SUMMARY

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(U//~~FOUO~~) On 1 April 2014, the NSA/CSS Office of Inspector General (OIG) received an allegation regarding [redacted] GG-15, [redacted] Utah Regional Operations Center (UROC). The allegation stated that [redacted] was both personally and professionally (in his NSA capacity) involved in the Utah Data Center Consortium (UDCC)¹. The allegation also stated that the NSA seal was used without appropriate authorization in a manner that suggested NSA endorsement of the UDCC. Further, [redacted] and other employees were listed on a UDCC website as NSA employees; specifically, [redacted] was listed as [redacted] [redacted] a non-existent position.

(U//~~FOUO~~) In addition to obtaining sworn testimony from [redacted] the OIG conducted interviews with two of his subordinates, as well as a Senior Official from NSA W.

(U//~~FOUO~~) The preponderance of the evidence does not support the conclusion that [redacted] knowingly made unauthorized commitments or promises of any kind on the government's behalf, or misused his position for private gain, in violation of 5 CFR § 2635.101, 5 CFR § 2635.702, or NSA/CSS Personnel Management Manual (PMM) Chapter 366. Further, [redacted] did not purposely use the NSA seal on the UDCC website in a manner that would convey an endorsement by NSA, in violation of 50 U.S. Code § 3613.

(U//~~FOUO~~) However, [redacted] violated 5 CFR § 2635.101, 5 CFR § 2635.202 and PMM Chapter 366 when he accepted a gift from the University of Utah (UoU) with an estimated value of \$69.

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(U//~~FOUO~~) The OIG will forward a copy of this report to MR Employee Relations. The OIG will also send a summary of the findings to the Special Actions Branch within Associate Directorate for Security and Counterintelligence, as well as [redacted] supervisor. The OIG will also send a copy of this report to OGC (Admin Law & Ethics) so they may provide ethics guidance to [redacted] in regard to his participation on the UDCC going forward.

¹ (U//~~FOUO~~) The UDCC was founded in 2011 by representatives from the Utah Governor's Office of Economic Development, the University of Utah, and NSA. It was established to provide a forum for data center professionals in the region to network and share ideas, as well as develop a data center engineering program at the university. On 30 October 2013, [redacted] compiled a paper describing the UDCC (Appendix C).

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II. (U) BACKGROUND(b) (3) -P.L. 86-36
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(U) Introduction

(U//~~FOUO~~) [redacted] GS-15, entered on duty as an NSA employee in April, 1987. He has been assigned to Utah since 2007, and spearheaded the establishment of the UROC. He is currently the [redacted] UROC, [redacted]. His employee profile is attached as Appendix B.

(U) Applicable Authorities

(U//~~FOUO~~) The investigation looked at possible violations of the following authorities.

(U) 5 CFR § 2635.101 Basic Obligation of Public Service

(U) 5 CFR § 2635.202 Subpart B: Gifts from Outside Sources, General Standards

(U) 5 CFR § 2635.702 Use of Public Office for Private Gain

(U) 50 U.S. Code §3613 Misuse of Agency Name, Initials, or Seal

(U) NSA/CSS Personnel Management Manual (PMM), Chapter 366, Section 1-3, General Principles for On-the-Job Conduct

(U//~~FOUO~~) Full citations are contained in Appendix A.

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III. (U) FINDINGS

(U//~~FOUO~~) ALLEGATION: Did [redacted] knowingly make unauthorized commitments or promises of any kind on the government's behalf or misuse his position for private gain, in violation of 5 CFR § 2635.101, 5 CFR § 2635.702, and NSA/CSS Personnel Management Manual (PMM) Chapter 366?

(U//~~FOUO~~) CONCLUSION: Not substantiated.

(U//~~FOUO~~) ALLEGATION: Did [redacted] knowingly use the NSA seal in a manner that conveyed the impression that such use was approved or endorsed by the NSA, in violation of 50 U.S. Code §3613?

(U//~~FOUO~~) CONCLUSION: Not substantiated.

(U//~~FOUO~~) ALLEGATION: Did [redacted] receive a gift from persons who might benefit from his subsequent actions, in violation of 5 CFR § 2635.101, 5 CFR § 2635.202 and PMM Chapter 366?

(U//~~FOUO~~) CONCLUSION: Substantiated.

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(U) Documentary Evidence

(U//~~FOUO~~) Email from [redacted] to the OIG, dated 14 June 2015.

(U//~~FOUO~~) In the email, [redacted] expresses his intent to pay the UoU \$69, the price of the [redacted] the university gave him at an open house in 2013. (Appendix D)

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(U) Testimonial Evidence

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(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 10 June 2014, [redacted] UROC, Human Resources Manager, was interviewed and provided the following sworn testimony.

(U//~~FOUO~~) [redacted] works for [redacted] directly, handling all human resource matters for [redacted]. She attended two meetings regarding the UDGC. She was involved when Dr. Harvey Davis and [redacted] from Installation and Logistics (I&L) came to the UROC to discuss the initiation of a data center degree program at the UoU. She went with [redacted] to meet with the UoU regarding the establishment of a degree program for data collection centers. One of the meetings was with the engineering dean at the university. About a year or so later, she attended a meeting with the UDCC. UoU representatives also attended, consistent with their involvement with UDCC. [redacted] is the [redacted] for the UROC, and attended consistent with her outreach duties.

(U//~~FOUO~~) [redacted] had no concerns about the involvement with the UDCC since a Senior Executive tasked [redacted] and since she viewed it as more college outreach. Chris Inglis, former D/DIR, has performed TDY to the UROC, and was fully supportive of the partnership. [redacted] is hoping the UROC will have interns involved in the new degree program.

(U//~~FOUO~~) [redacted] told [redacted] a few months ago that everything he is doing in relation to the UDCC is "on his own time." [redacted] finds that appalling since the Agency is clearly benefitting from his efforts, and he has support from NSA.W. He has not benefitted personally in any way from his involvement with UDCC. He is an amazing leader who is well intentioned.

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(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 10 June 2014, [redacted] Office Manager, [redacted] UROC, was interviewed and provided the following sworn testimony.

(U//~~FOUO~~) [redacted] attended a meeting concerning the UDCC with [redacted]. She attended because [redacted] could not attend. She does not remember much about the meeting. She has not had any involvement with the UDCC since, and was not aware that she was listed as a General Member on the website. [redacted] has never asked her to complete any work in support of the UDCC.

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(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) On 10 June 2014, [redacted] UROC, was interviewed and provided the following sworn testimony.

(U//~~FOUO~~) [redacted] wrote the original proposal for the Utah Data Center (UDC), working with Dr. Harvey Davis, Associate Director for Installation and Logistics. Camp Williams was

the site for the UDC. In spring 2010, Dr. Davis asked [redacted] if he could approach the UoU about creating a Data Center Engineering degree program. Dr. Davis and others were concerned that without such a program, it would be difficult to hire the necessary skills to manage and operate what they knew was going to be a complex data-center. In June 2010, Dr. Davis traveled to the UROC and along with [redacted] codified an agreement with UoU. Lonny Anderson, Associate Director for Technology, was also involved in the discussions. The program would include electrical, computer and mechanical engineering programs. The students would fulfill one of the engineering degree programs and then take additional courses to achieve a data center certificate.

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(U//FOUO) For two years, [redacted] worked with the university on the degree requirements, and in fall 2013, an open house was held at the university regarding the new program. The UoU's Board of Regents approved the program then as well.

(U//FOUO) [redacted] worked with the Deputy CIO and Dean of Engineering at UoU, and met with the Governor's Economic Development Team, to support continued development and funding for the degree program. Along with the other data centers, they formed the UDCC. The UDCC now has about 30 to 40 members who meet quarterly. [redacted] has been representing NSA, and is a member of the UDCC Steering Committee, which consists of five individuals. Thus far, one student has formally signed up for the degree program.

(U//FOUO) In the early days, when [redacted] was working to get the degree initiated, consistent with Dr. Davis and Mr. Anderson's wishes, he claimed government time for the meetings and other time spent on the project. He worked a few hours a month on the project. He also used a government vehicle to drive to the meetings, and printed out materials for the meetings at work. But ever since the program was approved, he uses his annual leave for the meetings, and does not deploy government resources against the effort.

(U//FOUO) At the open house in 2013, UoU gave [redacted] a [redacted] which he estimates is probably worth \$100. [redacted] was not involved with the UDCC website. It was created by the university. [redacted]

[redacted] of the UROC. The UROC is not a term that is known outside of the building. [redacted] did not purposely claim or create the title of [redacted]. A lot of people referred to him as the [redacted] before the UDC was created. UoU also independently put the NSA logo on the website. [redacted] has no jurisdiction over the UDC, but if there are public things involving NSA in Utah, he is known as the lead.

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(U//FOUO) Once [redacted] learned that [redacted] and the NSA logo were used on the website, he made certain they were removed. He thinks NSA should be represented in the UDCC, however. Dr. Davis is responsible for drafting an SPF so that NSA involvement can be officially represented.

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(U//~~FOUO~~) [redacted] did not discuss the UoU effort with the NSA Outreach organization or the Agency Designated Ethics Office (DAEO). Several years ago, he consulted with General Counsel regarding acting as an advisory member on the UoU School of Computing. GC gave him guidance that if there was no monetary gain from his involvement, it was not a conflict of interest. He felt the involvement with UoU on the degree program was similar. His position with the UDCC is low key, and there has been no public inquiries or negative publicity associated with the effort.

(U//~~FOUO~~) [redacted] and [redacted] attended one meeting regarding the UDCC, at [redacted] request, but have had no other involvement. Their names were captured at the one meeting they attended, and they were listed as "General Members" on the website.

(U//~~FOUO~~) UoU personnel have been very happy with NSA's involvement with the UDCC. It has been a "PR boon" for NSA to be involved. [redacted] would like the benefit that the effort has brought to NSA and the university to be understood for what it is.

(U//~~FOUO~~) Dr. Harvey Davis

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(U//~~FOUO~~) On 20 August 2014, Dr. Harvey Davis, Associate Director for Installations and Logistics (I&L) was interviewed and provided the following sworn testimony.²

(U//~~FOUO~~) Dr. Davis helped lead an effort to connect with other data centers in Utah, once it was established that the UDC would be located at Camp Williams, Utah. For instance, Dr. Davis visited EBay, to see how the company handled its data center. Eventually, a decision was made to form a consortium with the other data centers there. Since [redacted] was already at the UROC, Dr. Davis asked him to initiate the effort. [redacted] worked with the Department of Economic Development of the Utah state government and helped establish the UDCC.

(U//~~FOUO~~) [redacted] was the "point man" because Dr. Davis had no I&L personnel there and there were no Technology Directorate (TD) people either. He is a [redacted] understands data centers, which made him a good choice.

(U//~~FOUO~~) At Dr. Davis' behest, [redacted] also helped initiate the Data Center Management curriculum at UoU. I&L is working to establish similar programs at the University of Texas San Antonio, Louisiana Tech, and Texas A&M, all schools in close proximity to NSA data centers. The curriculum is a combination of electrical and computer engineering as well as some data center specific courses. The hope is that the various data centers, to include NSA, will create internships for the students. NSA Recruitment, specifically Student Programs, is involved in the effort.

(U//~~FOUO~~) Now that the UDC has been established, and [redacted] is in place as Chief there, there is some tension regarding why [redacted] is still involved. [redacted]

² Dr. Davis retired from NSA in November 2014.

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[redacted]
[redacted] Instead, a triumvirate of leadership is there - [redacted] from Facilities, and [redacted]

(U//FOUO) [redacted] was on a board at the UoU in a personal capacity, but was also leading the NSA initiative. Dr. Davis gave [redacted] direction to separate his personal involvement from the NSA participation, and he has complied. Dr. Davis thinks the conflict resulted because it was a new effort, and the boundary between personal and government involvement was not as defined as it is now. At this point, Dr. Davis thinks [redacted] should be the UDC representative. [redacted] is enrolled in a degree program at UoU, so having [redacted] as the lead not only makes sense functionally, but makes things "cleaner." [redacted] participation now should be on his own time.

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(U//FOUO) TD personnel have expressed concerns to Dr. Davis about [redacted] role due to TD now owning the center - "an organizational encroachment issue." At this point, anything that [redacted] initiates with the UDC must be approved by Dr. Davis first. Other individuals have expressed concerns to Dr. Davis too about [redacted] involvement from a conflict of interest standpoint; Dr. Davis made [redacted] aware of the concerns.

(U//FOUO) [redacted] has performed well and is responsible for a lot of the success in Utah. But at times he overstates his role.

(U//FOUO) UoU owns the UDCC website there; Dr. Davis does not think [redacted] has been involved with that. He has not personally benefited from his involvement with the UDCC, and Dr. Davis does not have any conflict of interest concerns at this point concerning [redacted]. The problems that have surfaced were primarily due to the UDC being a new effort, with normal "growing pains."

(U) Analysis and Conclusions

(U//FOUO) 5 CFR § 2635.101, Basic Obligation of Public Service, states that "Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government." 5 CFR § 2635.702, Standards of Ethical Conduct for Employees of the Executive Branch, Use of Public Office for Private Gain, states that "An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives or persons with whom the employee is affiliated in a nongovernmental capacity." PMM Chapter 366 states that "employees shall not use public office for private gain." 5 CFR § 2635.101 and NSA PMM Chapter 366 state that employees should act impartially and not give preferential treatment to any private organization or individual. 50 U.S. Code §3613 states that "No person may, except with the written permission of the Director of the National Security Agency, knowingly use

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the...seal in connection with any...commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed or authorized by the National Security Agency.”

(U//FOUO) In March 2014 the UDCC website, Utahdata.org, listed [redacted] as [redacted] [redacted] Two other [redacted] employees were listed as “General Members” on the UDCC website, and the NSA logo was displayed on the site. [redacted] testified to the OIG that he had no involvement in the establishment of or the content of the UDCC website. The website was established and maintained by the UoU without any involvement from [redacted] personnel. [redacted] told the OIG he was not previously aware that he was listed as the [redacted] [redacted] that two of his subordinates were listed as General Members, or that the NSA logo was featured on the website. [redacted]

[redacted] UROC. He testified that he did not authorize the use of the NSA logo or seal on the website.

(U//FOUO) Dr. Davis confirmed to the OIG that he asked [redacted] to work with UoU and other area data centers to establish a data center engineering degree program at UoU. Dr. Davis also encouraged [redacted] to work with other data centers in Utah on common areas of interest. Since [redacted] was on some type of board at UoU, Dr. Davis emphasized the need to separate personal and professional involvement, and he expressed confidence to the OIG that [redacted] has done so. Dr. Davis said [redacted] performed well in leading the NSA initiatives but that now that other qualified personnel are in Utah, he should defer to them. Dr. Davis has asked [redacted] to seek approval before he performs any additional work in connection with the UDC.

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(U//FOUO) Other UROC employees interviewed by the OIG expressed confidence in [redacted] leadership and role in the UDC and UoU degree program, and did not raise any concerns about his actions or supervision. The involvement of the other employees with the UDCC and UoU has been minimal.

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(U//FOUO) Accordingly, [redacted] acted in accordance with direction he received from his leadership at NSA. The preponderance of the evidence does not support the conclusion that [redacted] knowingly made unauthorized commitments or promises of any kind on the government's behalf; or misused his position for private gain, in violation of 5 CFR § 2635.202, 5 CFR § 2635.702, or NSA/CSS Personnel Management Manual (PMM) Chapter 366. Further, [redacted] did not purposely use the NSA seal on the UDCC website in a manner that would convey an endorsement by NSA, in violation of 50 U.S. Code §3613.

(U//FOUO) However, in 2013, representatives from UoU presented [redacted] with a [redacted] [redacted] during an open house at the university. 5 CFR § 2635.101 states that “An employee shall not...solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's

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agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties." 5 CFR § 2635.202 states that "an employee shall not, directly or indirectly, solicit or accept a gift... given because of the employee's official position." PMM Chapter 366 also states employees are expected to abstain from receiving gifts from "persons who might benefit from your subsequent actions..." Although the OIG does not know the UoU's motivation behind giving [redacted] the [redacted] it is reasonable to consider the UoU a prohibited source for the gift, since UoU employees were actively conducting business with the Agency and had interests that could have been substantially affected by the performance or non-performance of [redacted] duties. [redacted] testified to the OIG that the [redacted] which he kept [redacted] was probably worth about \$100. Given his ongoing work with the UoU, [redacted] should have declined the gift, returned it, or paid the UoU the value of the [redacted]. In June 2015, after discussing the matter with the OIG and the Office of General Counsel (OGC), [redacted] contacted the university bookstore and was told the [redacted] cost \$69. Consistent with OGE guidance, [redacted] indicated that he would pay the university for the [redacted] (Appendix D).

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(U//~~FOUO~~) By a preponderance of the evidence, we conclude that [redacted] violated 5 CFR § 2635.101, 5 CFR § 2635.202 and PMM Chapter 366 when he accepted the [redacted] from UoU personnel.³

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³ (U//~~FOUO~~) The OIG also considered whether [redacted] service on the UDCC violated DoD 5500.7-R, Joint Ethics Regulations, section 3-202 which prohibits DoD employees from participating in their official DoD capacities in the management of non-Federal entities without authorization from the DoD General Counsel, or section 3-301 which allows participating in a management role in a personal capacity, but only if they act exclusively outside the scope of their official position and provided the management role was not offered because of their DoD assignment or position. However, because [redacted] service on the UDCC was directed by his supervisor (now retired), and supported by his supervisors once he transitioned from participating in an official capacity to a personal capacity, the OIG did not fully analyze any potential violations. We are forwarding a copy of this report to OGC (Admin Law & Ethics) so they may they may provide ethics guidance to [redacted] in regard to his participation on the UDCC going forward.

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IV. (U) RESPONSE TO TENTATIVE CONCLUSIONS

(U//FOUO) On 1 September 2015, the OIG emailed tentative conclusions of the investigation to [REDACTED] responded on 15 September 2015 (Appendix E). In his response, [REDACTED] indicated he sent a personal check to the University of Utah for the retail price of the [REDACTED] he received. He also wrote that during the seven years he was in Utah prior to the Utah Data Center being established, he had a business card which listed [REDACTED]. He wrote the business card was approved by "ADIL" and that [REDACTED] was used as a [REDACTED]; to maximize the OPSEC profile regarding the UROC, the organization for which he is the director. [REDACTED] opined that the "University likely pulled [REDACTED] from the business card."

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(U//FOUO) When he was interviewed by the OIG on 10 June 2014, [REDACTED] was asked about the [REDACTED] title that appeared on the UDCC website. He testified that the university "cobbled together a bunch of information and built this piece of the website. I don't know where they got that information." [REDACTED] did not tell the OIG that he had a business card with [REDACTED] nor did he mention the likely source of the University's information (his business card.) Although [REDACTED] provided previously undisclosed information in his response, it did not change the OIG's conclusions: that [REDACTED] did not knowingly make unauthorized commitments on behalf of the Agency, did not misuse his position for private gain, and did not misuse the NSA seal, but he did violate 5 CFR § 2635.101, 5 CFR § 2635.202 and PMM Chapter 366 when he accepted a gift from the University of Utah (UoU) with an estimated value of \$69.

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V. (U) CONCLUSIONS

(U//~~FOUO~~) The preponderance of the evidence does not support the conclusion that [redacted] knowingly made unauthorized commitments or promises of any kind on the government's behalf; or misused his position for private gain, in violation of 5 CFR § 2635.202, 5 CFR § 2635.702, or NSA/CSS Personnel Management Manual (PMM) Chapter 366. Further, [redacted] did not purposely use the NSA seal on the UDCC website in a manner that would convey an endorsement by NSA, in violation of 50 U.S. Code §3613.

(U//~~FOUO~~) However, [redacted] violated 5 CFR § 2635.101, 5 CFR § 2635.202 and PMM Chapter 366 when he accepted the [redacted] from UoU personnel.

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VI. DISTRIBUTION OF RESULTS

(U//~~FOUO~~) The OIG will forward this report to Employee Relations, as well as a summary to ADS&CI Special Actions. The OIG will also send a copy of the report to OGC (Administrative Law and Ethics) so that they can provide ethics guidance to [redacted] regarding future involvement with the UDCC. Additionally, the OIG will notify [redacted] and his immediate supervisor of the results of the investigation.

[redacted]

Senior Investigator

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Concurred by:

[redacted]

Assistant Inspector General
for
Investigations

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APPENDIX A

(U) Applicable Authorities

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(U) 5 C.F. R. §.2635.101 — *Basic Obligation of Public Service*

- (4) An employee shall not...solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties...
- (6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- (7) Employees shall not use public office for private gain.
- (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(U) 5 C.F. R. § 2635.202 _ Subpart B: — *Gifts from Outside Sources, General Standards*

- (a) General prohibitions...an employee shall not, directly or indirectly, solicit or accept a gift:
 - (1) From a prohibited source; or
 - (2) Given because of the employee's official position.

(U) 5 C.F. R. § 2635.702 --- *Use of Public Office for Private Gain*

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations...

- (a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

(U) 50 U.S.C. § 3613 – *Misuse of Agency Name, Initials or Seals*

- (a) No person may, except with the written permission of the Director of the National Security Agency, knowingly use the words "National Security Agency", the initials "NSA", the seal of the National Security Agency, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the National Security Agency."

(U) NSA Personnel Management Manual Chapter 366 – *Personal Conduct*

- (U) Section 1-3, General Principles for On-the-Job Conduct

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Generally, every employee is expected to:

D. Abstain from asking for or receiving gifts from persons who might benefit from your subsequent actions unless a regulatory exception applies...

F. Avoid knowingly making any unauthorized commitments or promises that bind the Government.

G. Act impartially and not give preferential treatment to any private organization or individual....

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APPENDIX B

(U) Employee Profile —



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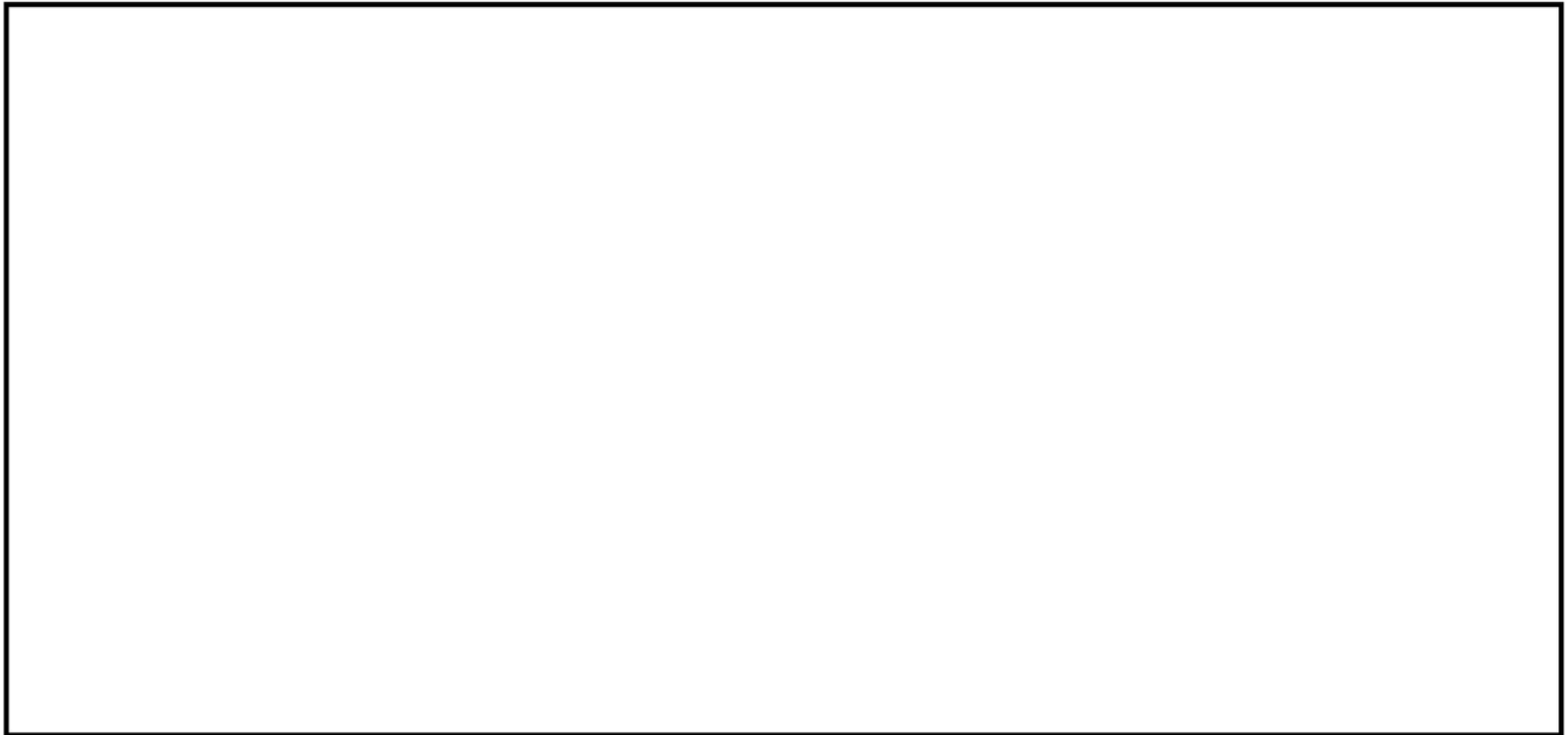
PERSONNEL PRIVILEGED

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*** removed from NSA facilities without specific approval of the Freedom of Information & Privacy Office. ***
*** Request for approval should be emailed to DJ4_privacy with a copy of your profile attached. ***

EMPLOYEE PRIVACY ACT

PERSONAL DATA: Dissemination or reproduction is limited to that authorized by the privacy act. Users may be subject to civil or criminal penalties and disciplinary action for failure to comply with privacy act provisions. Furthermore, document may not be removed from NSA facilities without specific approval of the Freedom of Information & Privacy Office.

Employee Profile - Generated 18-MAR-2014

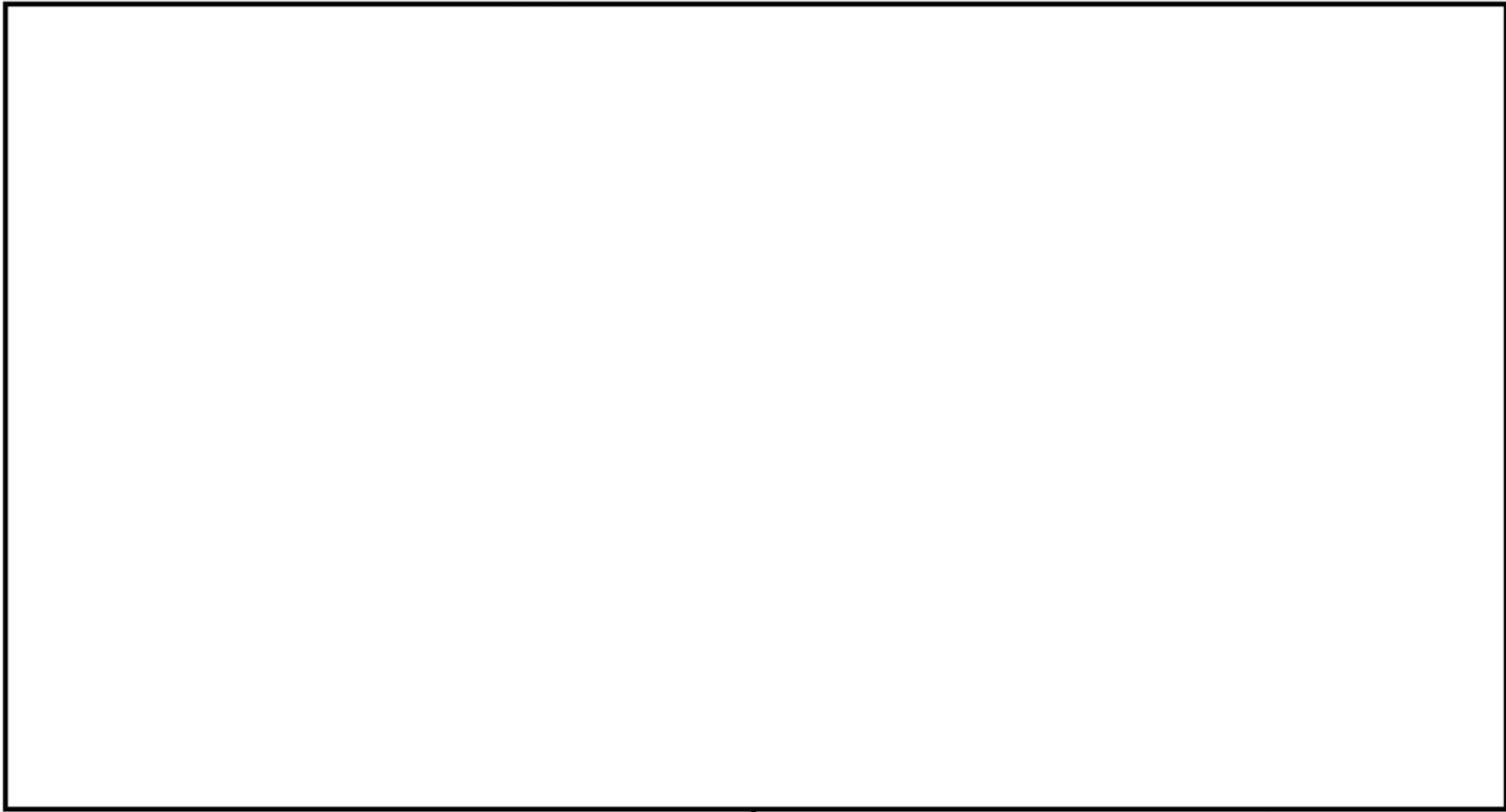


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PERSONNEL PRIVILEGED

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Employee Profile - Generated 18-MAR-2014



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Employee Profile - Generated 18-MAR-2014

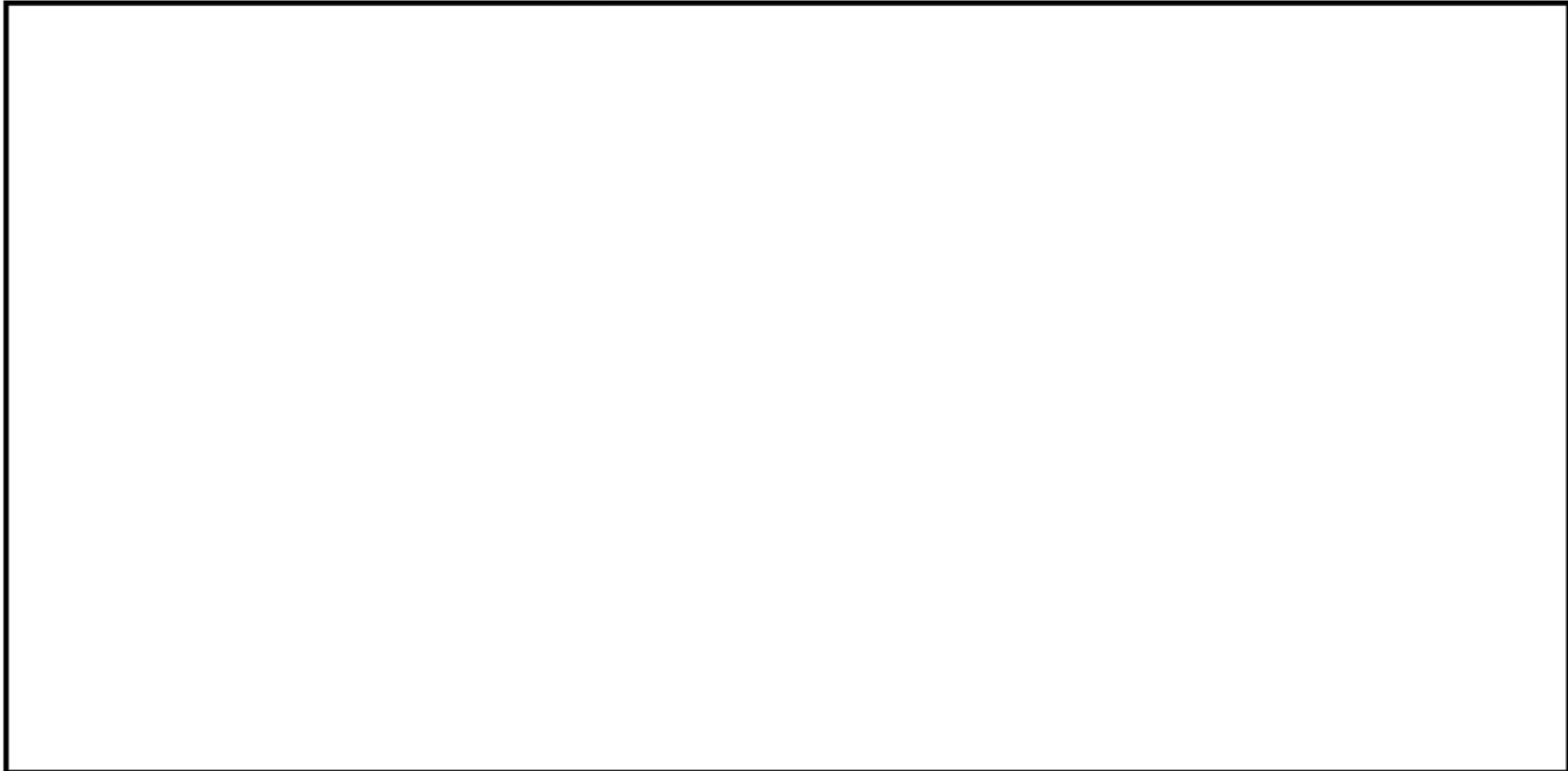


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PERSONNEL PRIVILEGED

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Employee Profile - Generated 18-MAR-2014

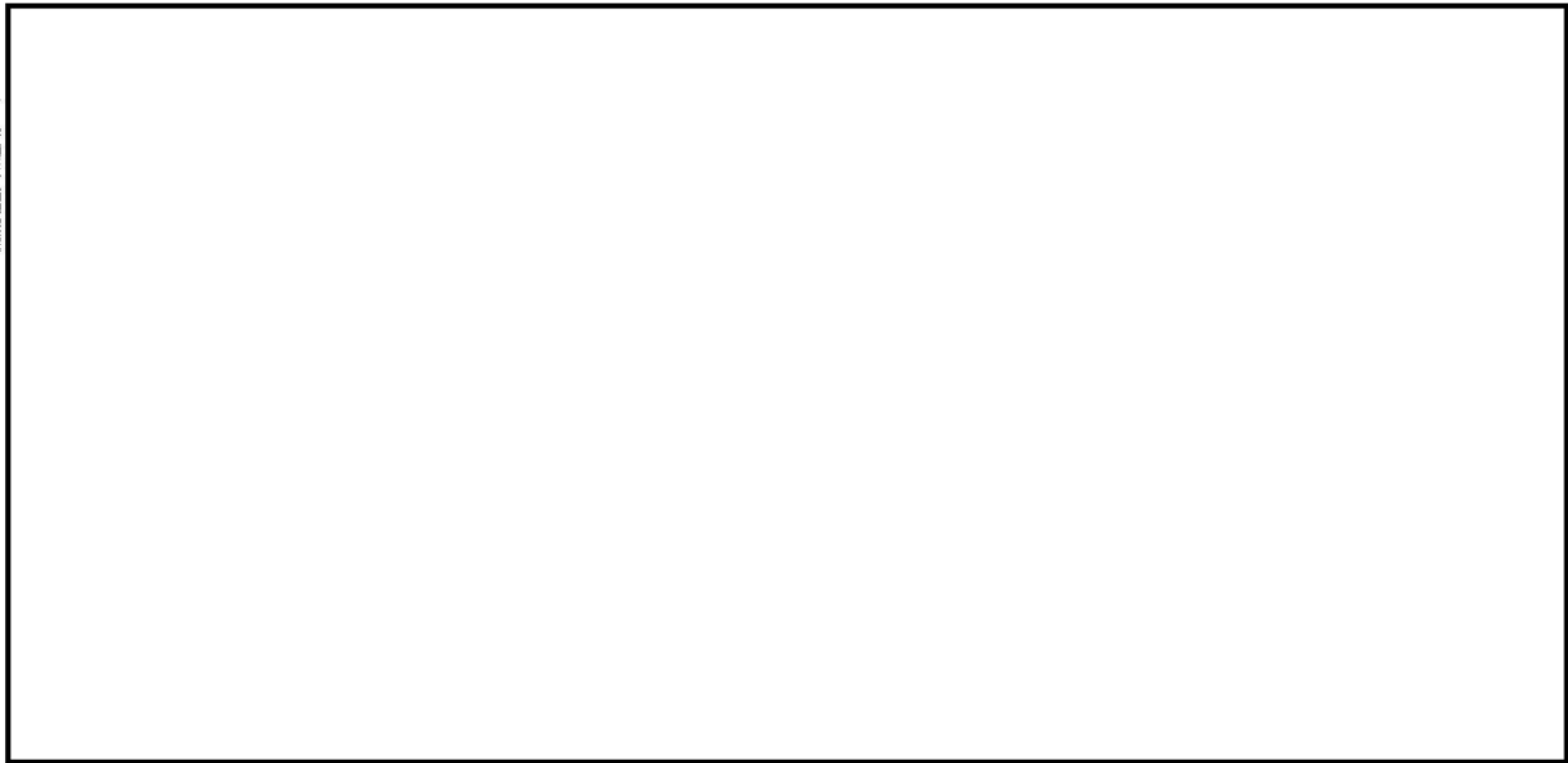


(b) (3) -P.L. 86-36
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PERSONNEL PRIVILEGED

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Employee Profile - Generated 18-MAR-2014



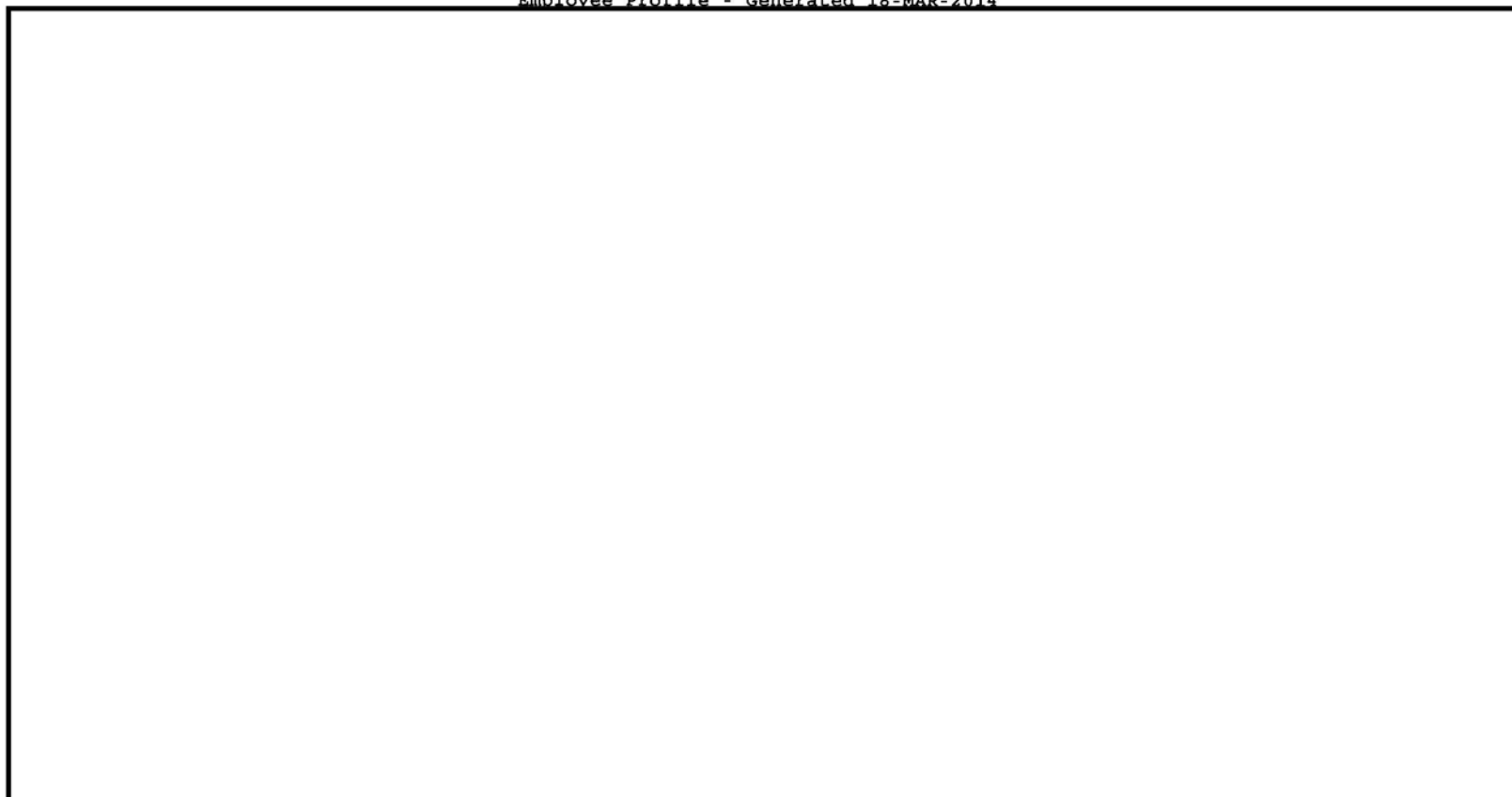
(b) (3) - P.L. 86-36
(b) (6)

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Employee Profile - Generated 18-MAR-2014

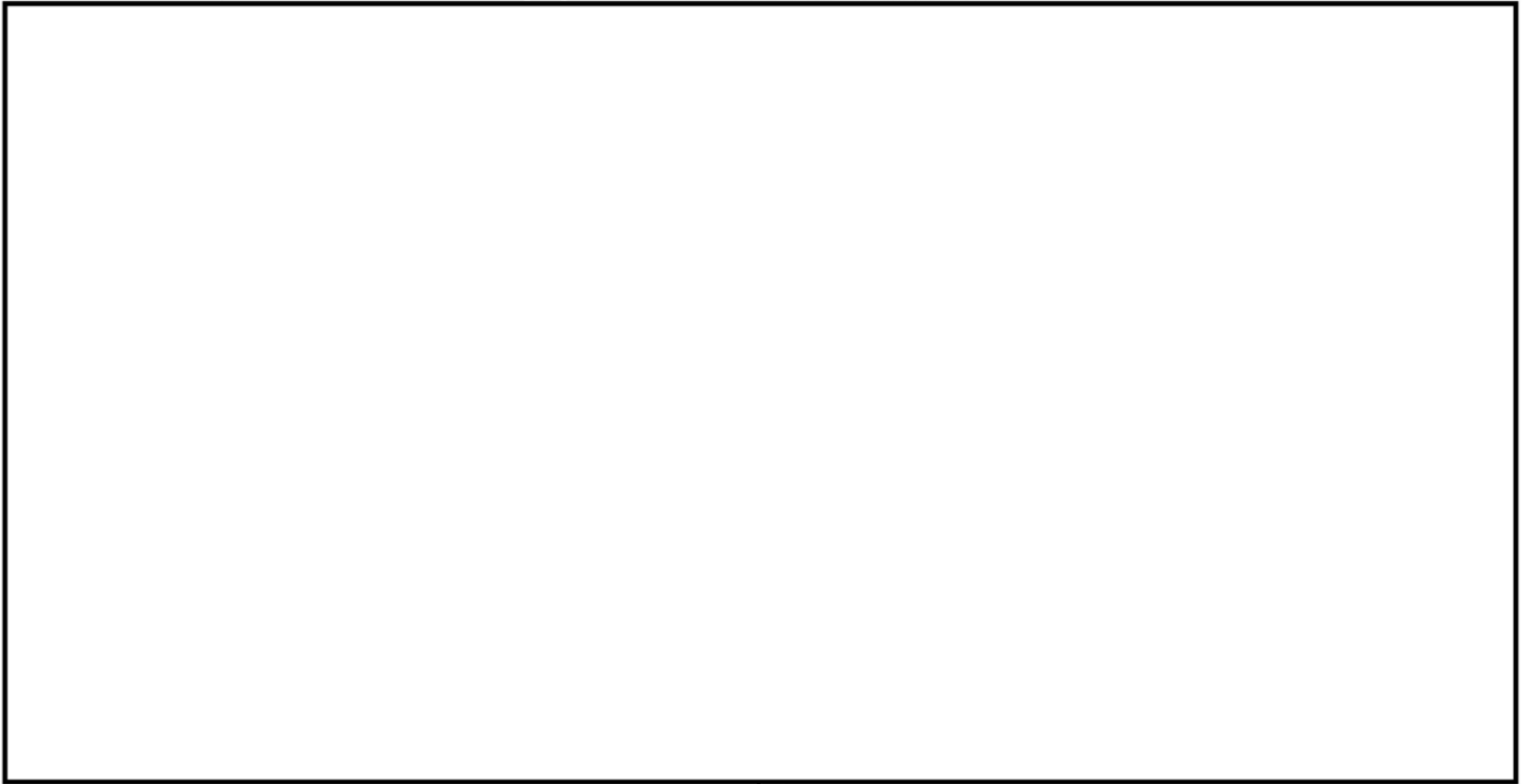


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PERSONNEL PRIVILEGED

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*** Request for approval should be emailed to DJ4_privacy with a copy of your profile attached. ***

Employee Profile - Generated 18-MAR-2014

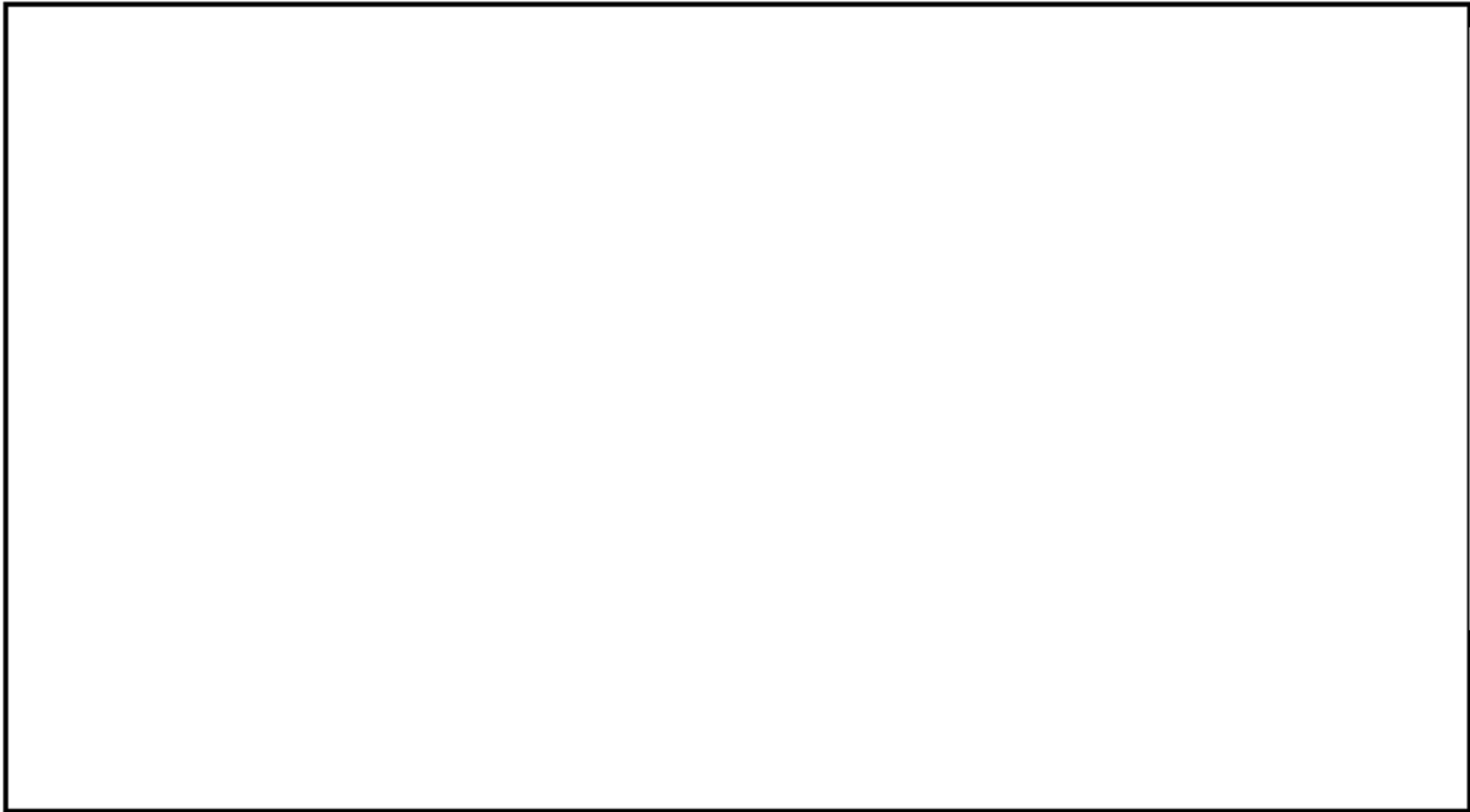


(b) (3) - P.L. 86-36
(b) (6)

PERSONNEL PRIVILEGED

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Employee Profile - Generated 18-MAR-2014



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(b) (6)

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*** removed from NSA facilities without specific approval of the Freedom of Information & Privacy Office. ***
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Employee Profile - Generated 18-MAR-2014



BENEFITS

Retirement:
Health Plan:
FEGLI Life Insurance
Thrift Savings Plan:



(b) (3) - P.L. 86-36
(b) (6)

TSP investment allocations are now maintained by the TSP Office.
Please refer to the Agency TSP Home Page for further information

LOCATOR INFORMATION

HOME INFORMATION:

Address:



Phones
Mobile:

(b) (6)

PERSONNEL PRIVILEGED

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*** removed from NSA facilities without specific approval of the Freedom of Information & Privacy Office. ***
*** Request for approval should be emailed to DJ4_privacy with a copy of your profile attached. ***

Employee Profile - Generated 18-MAR-2014

Employee ID:

[Redacted]

[Redacted]

(b) (3) - P.L. 86-36
(b) (6)

EMERGENCY INFORMATION:

Contact
Name:
Relationship:
Address:

[Redacted]

Phones
Home:
Mobile:

Contact
Name:
Relationship:
Address:

Phones
Home:

(b) (6)

APPENDIX C

(U) Paper on the UDCC
dated 30 October 2013

(b) (3) - P.L. 86-36
(b) (6)

(b) (3) - P.L. 86-36
(b) (6)

Appendix D

(U) Email from [redacted] to the OIG

Dated 14 June 2015

[redacted]
(b) (3) -P.L. 86-36
(b) (6)

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: RE: (U) [redacted]
Date: Monday, June 08, 2015 10:19:37 AM

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

All,

There is a retail sales tag on [redacted] for \$69. As such, I will write a check for \$69 and send it to the University.

Cheers,

[redacted]

(b) (3) - P.L. 86-36
(b) (6)

(U//~~FOUO~~)

[Large redacted block]

(b) (6)

(b) (3) - P.L. 86-36

From: [redacted]
Sent: Friday, June 05, 2015 8:16 AM
To: [redacted]
Cc: [redacted]
Subject: RE: (U) [redacted]

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[redacted]

Thanks for calling to discuss your gift question. Just to follow up on our conversation, you advised that the approximate value of [redacted] given to you by the university is \$100. Because of the value, I advised you [redacted] exceeds the exception limits for accepting gifts from a prohibited source (which is \$20). I provided you with 2 options, one of which is to give [redacted] back to the donor and the other is to pay the full fair-market value of [redacted] to the donor. We discussed that the fair market value is the value one would have to pay on the market for the item, rather than the amount the donor paid. Also, if you cannot find the exact item for sale anywhere, you can estimate the fair market value based on a substantially similar item for sale.

This opinion is based on facts you provided. Different facts could result in different advice. Please contact this office if any alternate or additional facts come to light.

Thank you for your inquiry.

[Redacted]

(U//FOUO)

[Redacted]

Administrative Law & Ethics Attorney
Office of General Counsel
992-3936s [Redacted]
Unclassified fax [Redacted]

[Redacted]

Attorney Work Product --
Do not release outside of NSA without the express approval of OGC

(b) (3) - P.L. 86-36

From: [Redacted]
Sent: Thursday, June 04, 2015 1:22 PM
To: [Redacted]
Cc: [Redacted]
Subject: (U) [Redacted]

(b) (6)

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[Redacted]

I spoke to [Redacted] this morning. The course of action I'd like to take is that I will work to ascertain the fair market value of [Redacted] and then write a check for that amount to the University. Not sure how long it'll take me to get that done, but I'll try to get it done soonest.

Cheers,

[Redacted]

(b) (3) - P.L. 86-36
(b) (6)

(U//FOUO)

[Redacted]

Appendix E

(U) **Response to Tentative Conclusions**

Dated 15 September 2015

(b) (3) - P.L. 86-36
(b) (6)

(b) (3) - P.L. 86-36

[Redacted]

From: [Redacted]
Sent: Tuesday, September 15, 2015 11:53 AM
To: [Redacted]
Subject: RE: (U) Tentative Conclusions of OIG Investigation

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[Redacted]

(b) (6)

I have submitted a personal check in the amount of \$70 to the University of Utah to cover the retail price of [Redacted]

A note of clarification regarding [Redacted] - For the 7 years prior to the arrival of the Utah Data Center my business card listed me as the [Redacted]. This business card was approved by ADIL and was processed through the NSA Business Card Process. The title [Redacted] was used as [Redacted] so as to maximize the OPSEC profile regarding the Utah Regional Operations Center (UROC). On the UDCC website, the University likely pulled [Redacted] from the business card.

~~(U//FOUO)~~

[Large Redacted Block]

(b) (3) - P.L. 86-36
(b) (6)

From: [Redacted]
Sent: Tuesday, September 01, 2015 9:28 AM
To: [Redacted]
Subject: (U) Tentative Conclusions of OIG Investigation

(b) (3) - P.L. 86-36

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

INSPECTOR GENERAL SENSITIVE INFORMATION: This email, including any attachments, is intended only for authorized recipients. This email message may contain information that is confidential, sensitive, and/or protected by Federal law, including the Privacy Act of 1974, as amended.

[Redacted]

This email serves as notification of the tentative conclusions reached in the Office of Inspector General (OIG) investigation into the allegation that you were both personally and professionally (in your NSA capacity) involved in the Utah Data Center Consortium (UDCC). The allegation also stated that the NSA seal was used without appropriate authorization in a manner that suggested NSA endorsement of the UDCC. Further, you and other employees were listed on a UDCC website as NSA employees; specifically, you were listed as [Redacted] a non-existent position.

(b) (6)

In accordance with the investigative process, you have the opportunity to comment on the conclusions.

(b) (3) - P.L. 86-36

TENTATIVE CONCLUSIONS of OIG Investigation:

(U//FOUO) 5 CFR § 2635.101, Basic Obligation of Public Service, states that "Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government." 5 CFR § 2635.702, Standards of Ethical Conduct for Employees of the Executive Branch. Use of Public Office for Private Gain, states that "An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives or persons with whom the employee is affiliated in a nongovernmental capacity. PMM Chapter 366 states that "employees shall not use public office for private gain." 5 CFR § 2635.101 and NSA PMM Chapter 366 state that employees should act impartially and not give preferential treatment to any private organization or individual. 50 U.S. Code §3613 states that "No person may, except with the written permission of the Director of the National Security Agency, knowingly use the... seal in connection with any... commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed or authorized by the National Security Agency."

(U//FOUO) In March 2014 the UDCC website, Utahdata.org, listed you as [redacted] Two other [redacted] employees were listed as "General Members" on the UDCC website, and the NSA logo was displayed on the site. You testified to the OIG that you had no involvement in the establishment of or the content of the UDCC website. The website was established and maintained by the University of Utah (UoU) without any involvement from [redacted] personnel. You told the OIG you were not previously aware that you were listed as the [redacted] that two of your subordinates were listed as General Members, or that the NSA logo was featured on the website. [redacted]

(b) (6)

[redacted] UROC. You testified that you did not authorize the use of the NSA logo or seal on the website.

(U//FOUO) The OIG confirmed that you were asked by the Associate Director for Logistics (ADIL) to work with UoU and other area data centers to establish a data center engineering degree program at UoU.

(U//FOUO) Accordingly, the OIG found you acted in accordance with direction you received from your leadership at NSA. The preponderance of the evidence does not support the conclusion that you: knowingly made unauthorized commitments or promises of any kind on the government's behalf; misused your position for private gain; or misrepresented your official position, in violation of 5 CFR § 2635.202, 5 CFR § 2635.702, or NSA/CSS Personnel Management Manual (PMM) Chapter 366. Further, you did not purposely use the NSA seal on the UDCC website in a manner that would convey an endorsement by NSA, in violation of 50 U.S. Code §3613.

(U//FOUO) However, in 2013, representatives from UoU presented you with [redacted] during an open house at the university. 5 CFR § 2635.101 states that "An employee shall not...solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties." PMM Chapter 366 also states employees are expected to abstain from receiving gifts from "persons who might benefit from your subsequent actions..." Although the OIG does not know the UoU's motivation behind giving you [redacted] it is reasonable to consider the UoU a prohibited source for the gift, since UoU employees were actively conducting business with the Agency and had interests that could have been substantially affected by the performance or

non-performance of your duties. You testified to the OIG that [redacted] was probably worth about \$100. Given your ongoing work with the UoU, you should have declined the gift, returned it, or paid the UoU the value of [redacted]. In June 2015, after discussing the matter with the OIG and the Office of General Counsel (OGC), you contacted the university bookstore and were told [redacted] cost \$69. Consistent with OGE guidance, you indicated that you would pay the university for [redacted].

(U//~~FOUO~~) By a preponderance of the evidence, the OIG concludes that you violated 5 CFR § 2635.202 and PMM Chapter 366 when you accepted the [redacted] from UoU personnel.

As noted above, in accordance with the investigative process, we are giving you the opportunity to comment on the OIG conclusions. Please respond via email by close of business, **Tuesday, 8 September 2015.**

Please call me if you have any questions or wish to discuss.

(b) (6)

[redacted]
NSA/CSS Office of Inspector General
[redacted]
963-2817s
[redacted] (b) (3) - P.L. 86-36
Suite 6247

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