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**NATIONAL SECURITY AGENCY/CENTRAL SECURITY
SERVICE**



INSPECTOR GENERAL

REPORT OF INVESTIGATION

22 April 2014

IV-14-0030

Conflict of Interest

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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

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

(U//~~FOUO~~) On 27 November 2013, the NSA/CSS Office of Inspector General (OIG) received an allegation that [redacted] at the time a [redacted] with [redacted] had a conflict of interest between his NSA employment and his contractor position with his own company. Specifically, [redacted] self-reported that as the [redacted] for his corporation, he had interacted with the Defense Security Service (DSS), an entity of the Department of Defense (DoD).

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(U//~~FOUO~~) We obtained [redacted] Agency Employee Profile and all pertinent records from the NSA/CSS Office of General Counsel (OGC) Administrative Law and Ethics (Ethics), as well as incorporation documents for [redacted] the company [redacted] co-owns with two other individuals who are not NSA employees, and the DoD Security Agreement (DD Form 441) between [redacted] and DoD. [redacted] resigned from the Agency on [redacted] to work full-time for [redacted].

(U//~~FOUO~~) The investigation determined that while an NSA employee, [redacted] represented [redacted] in interactions with DSS to obtain a DoD Facility Security Clearance (FCL). [redacted] required an FCL to begin work as a subcontractor on a Defense Intelligence Agency (DIA) contract. [redacted] received no compensation for his representational activities on behalf of [redacted] which was granted an FCL [redacted].

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that, while an NSA employee, [redacted] represented his corporation, [redacted] to DSS in its quest to obtain a favorable FCL determination, in violation of 18 U.S.C. §205(a)(2); 5 C.F.R. §2635.101(b)(10) and (14), 5 C.F.R. §2635.801(c) and (d)(4), and 5 C.F.R. §2635.802(a). There was no evidence to suggest that [redacted] knowingly violated the applicable authorities.

(U//~~FOUO~~) A summary of the investigative findings will be provided to the Associate Directorate for Security and Counterintelligence (ADS&CI).

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

II. (U) BACKGROUND

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

(U) Introduction

(U//~~FOUO~~) On 27 November 2013, [redacted] emailed the NSA/CAA OIG Hotline that he planned to resign from the Agency to become a contractor under his own company. In preparation, he had sought advice from OGC Ethics, which recommended that he self report to the OIG his representational activities on behalf of his company. [redacted] self-reported that as the [redacted] for his corporation, he had interacted with DSS, an agency of the DoD.¹

(U//~~FOUO~~) [redacted] resigned from NSA on [redacted]. At the time, he was a [redacted] in [redacted]. [redacted] had been an Agency employee since [redacted].

(U) Applicable Authorities

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

(b) (6)

(U) 18 U.S.C. § 205, Activities of officers and employees in claims against or other matters affecting the Government:

(a) Whoever, being an officer or employee of the United States in the executive... branch of the Government or in any agency of the United States, other than in the proper discharge of their duties-

...(2) acts as an agent... for anyone before any department, agency... in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

¹ The DSS mission includes overseeing "the protection of U.S. and foreign classified information and technologies in the hands of industry under the National Industrial Security Program" (NISP). DSS administers the NISP on behalf of the DoD and 26 other Federal agencies and serves as the focal point of interaction for the Government and the companies in the NISP. DSS is responsible for issuing FCLs based on procurement need. There are approximately 13,500 contractor facilities that are cleared for access to classified information. DSS has oversight authority to evaluate the security operations of these organizations for continued eligibility in the NISP.

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IV-14-0030

...(h) For the purpose of this section, the term "covered matter" means any judicial or other proceeding, application, request for a ruling or other determination, contract,... or other particular matter.

**DoD 5500.07-R, the Joint Ethics Regulation, Chapter 5- Conflicts of Interest,
Section 4-Other Conflict of Interest Laws**

**Paragraph 5-403. Representation of Others. Prohibition Under 18 U.S.C. 205
(Reference C).**

18 U.S.C. 205 (Reference (C)) applies to all DoD employees, other than enlisted members.

5 C.F.R., Part 2635-Standards of Ethical Conduct for Employees of the Executive Branch

Subpart A-General Provisions

5 C.F.R. 2635.101(b)

...(10) Employees shall not engage in outside employment or activities,...that conflict with official Government duties and responsibilities.

...(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

5 C.F.R. 2635.801

...(c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part...

(d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law,... may include:

...(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, ...from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest.

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IV-14-0030

5 C.F.R. 2635.802

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

- (a) If it is prohibited by statute or by an agency supplemental regulation;

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III. (U) FINDINGS

(U//~~FOUO~~) While an NSA employee, did [redacted] represent his corporation, [redacted] to DSS?

(U//~~FOUO~~) **CONCLUSION: Substantiated.** The preponderance of the evidence supports the conclusion that, while an NSA employee, [redacted] represented his corporation, [redacted] to DSS in its quest to obtain a favorable FCL determination, in violation of 18 U.S.C. §205(a)(2), 5 C.F.R. §2635.101(b)(10) and (14), 5 C.F.R. §2635.801(e) and (d)(4), and 5 C.F.R. §2635.802(a). There was no evidence to suggest that [redacted] knowingly violated the applicable authorities.

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

(U) Documentary Evidence

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

(U//~~FOUO~~) On 27 November 2013, [redacted] self-reported a possible conflict of interest by forwarding to the OIG his email interactions with OGC Ethics from 26 and 27 November 2013. They disclosed that on 26 November 2013, [redacted] contacted OGC Ethics to disclose that he intended to resign from NSA to work for a company he had formed with two former NSA civilians. [redacted] had no involvement in [redacted] business development. However, he was the [redacted] for the company and requested OGC Ethics' advice regarding what he could and could not do: "I just want to be sure that I am not doing anything wrong presenting myself as a contractor [redacted] while still possessing a blue badge." He attached his completed Post Government Employment Questionnaire (PGEQ).

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(U//~~FOUO~~) In subsequent emails to OGC Ethics, [redacted] disclosed that as the [redacted] for his corporation, [redacted] he was responsible for [redacted] matters. According to [redacted] was incorporated on [redacted] and at that time began the process of obtaining a FCL from DSS. [redacted] was the [redacted] representative to DSS ("DSS requires that one of us [business owners] be designated the [redacted] and that was me") in regard to the FCL, which was granted in [redacted]. He had had no other interactions with the Government on behalf of [redacted].

(U//~~FOUO~~) According to [redacted] in January 2013 [redacted] established a subcontractor relationship with [redacted] the prime contractor on a DIA contract. However, [redacted] was not

² Among other things, in order to obtain an FCL a contractor must execute a DD Form 441, DoD Security Agreement, which is a legally binding document that sets forth the responsibilities of both parties (DoD and the contractor) and obligates the contractor to abide by the security requirements of the NISP. The DD Form 441 must be signed by a corporate officer and the certification portion of the form must be signed by a second corporate officer. A DSS Industrial Security Representative signs the form on behalf of DoD.

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

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

IV-14-0030

allowed to perform work on the contract until it obtained its FCL. One [redacted] employee, not [redacted] began work on the contract in November 2013. The DIA contract's period of performance was to end in April 2014, when [redacted] would shift contractor personnel to an NSA contract called [redacted]. According to [redacted] [redacted] supported the organization, [redacted] in which he worked as an NSA civilian, "but not at my level and I have had no insight or influence into that side."

(U//FOUO) [redacted] told OGC Ethics that he intended to resign from NSA effective [redacted] and become a full-time employee of [redacted]. He had not received compensation from [redacted] and did not expect to receive any income until approximately [redacted] when [redacted] billing income was expected to exceed the company's startup costs.

(U//FOUO) In his correspondence, [redacted] specifically requested an opinion as to whether, while he remained an NSA employee, he could begin to interact as the [redacted] with the Government in regard to passing [redacted] personnel security clearances and obtaining and retaining access badges in support of the company's role as a subcontractor on the DIA contract.

[redacted] told OGC Ethics that he would not reach out to any Federal official until he officially separated from the Government.

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(U//FOUO) In an email to the OIG dated 11 December 2013, [redacted] informed the OIG that he had submitted his resignation from NSA, effective [redacted].

(U//FOUO) The OIG obtained and reviewed OGC Ethics records related to [redacted]. According to the information on [redacted] PGEQ, he was not required by his NSA position to file an Office of Government Ethics Form 450 (OGE450) and did not have a "disqualification" on file. On the form, [redacted] also certified that he had not had [redacted] as an NSA employee. In regard to [redacted] partners did all the business development for the company.

(U//FOUO) OGC Ethics records disclosed that [redacted] was an OGE450 filer from [redacted] through [redacted]. On [redacted] through [redacted] OGE450s, his supervisor certified that [redacted] reported financial interests were unrelated to his official duties and no conflicts appeared to exist. [redacted] had no reportable financial interests or affiliations on his OGE450 covering [redacted] was not listed on any of the forms.

(U//FOUO) Records of the State of Maryland Division of Corporations On-Line Services disclosed that [redacted] was incorporated in [redacted] with a mailing address of [redacted] resident agent was listed as [redacted] and [redacted] were listed as the three directors of the corporation.

(U//FOUO) The OIG obtained a copy of [redacted] DD Form 441 from the DSS OIG. The undated form listed [redacted] and [redacted] as the partners who comprised [redacted] a Maryland corporation. [redacted] signed the form on behalf of [redacted] listing his title as [redacted]. On 06 May 2013, [redacted] President, [redacted] signed the

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

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DD Form 441, certifying that at the time that [redacted] signed the form, [redacted] was [redacted]. The DSS OIG advised that according to their FCL database, DSS conducted its most recent vulnerabilities assessment of [redacted] in [redacted]

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(U) Interviews

(U//~~FOUO~~) [redacted] was not interviewed. The investigation determined that he is not currently affiliated with NSA.

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

(U) Analysis and Conclusions

(U//~~FOUO~~) To substantiate that [redacted] violated 18 U.S.C. §205, the evidence must show that he was an NSA employee who represented [redacted] as its agent, before DSS in connection with a covered matter in which DSS was a party or had a direct and substantial interest. The evidence shows that all these elements existed with regard to [redacted] activities concerning the FCL determination involving [redacted] and DSS.

(U//~~FOUO~~) In the course of obtaining a favorable FCL determination, [redacted] represented [redacted] to DSS. [redacted] told OGC that as the [redacted] for his corporation, [redacted] it was he who interacted with DSS throughout the FCL determination process - from [redacted] incorporation in [redacted] to DSS' granting of the FCL in [redacted]. Further, the DoD Security Agreement itself, required to obtain the FCL, disclosed that while he was an NSA employee [redacted] represented [redacted] to DSS; he signed it as [redacted] of the corporation on or before 06 May 2013.

(U//~~FOUO~~) The remaining elements are met in view of the fact that DSS granted [redacted] FCL. A request for an FCL determination is a covered matter, and the [redacted] FCL was of direct and substantial interest to DSS, the DoD entity responsible for overseeing the protection of classified information by DoD contractors under the NISP.

(U//~~FOUO~~) 18 U.S.C. §205 allows an exemption for an employee to represent himself before a Government department or agency. However, this exception allowing self-representation does not extend to the representation of a distinct legal entity such as a corporation. Because [redacted] business, [redacted] is a corporation, he is not entitled to the self-representation exemption from the criminal statute for his representations on behalf of [redacted]

(U//~~FOUO~~) The evidence shows that [redacted] attempted to avoid any conflicts between his NSA employment and his position with [redacted]. He sought advice from OGC Ethics on how to avoid such conflicts, albeit too late. Further, when notified by OGC Ethics that a violation may have occurred, [redacted] self-reported it to the OIG that same day. In light of his actions, we found it reasonable that [redacted] lack of understanding regarding criminal conflict of interest statutes caused the violation.

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

(b) (6)

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IV-14-0030

(U//~~FOUO~~) Nonetheless, the onus was on [redacted] to ensure that he was in compliance with applicable criminal statutes and regulations. Despite the fact that [redacted] was incorporated in [redacted] to perform work as a Government subcontractor and that [redacted] as [redacted] [redacted] began interacting with DSS at that time in order to obtain an FCL, he did not seek conflict of interest advice until over a year later when preparing to leave the Government. Had he sought advice earlier, [redacted] would likely have received the information necessary to avoid violation of the criminal statute.

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

(U//~~FOUO~~) Accordingly, [redacted] actions in representing [redacted] to DSS in the corporation's quest to obtain a favorable FCL determination were in violation of the criminal statute. His actions also violated the 5 C.F.R. 2635 prohibitions against employees engaging, or appearing to engage, in outside employment activities that conflict with their official duties. 5 C.F.R. 2635.802 specifically states that an activity conflicts with an employee's official duties: "(a) if it is prohibited by statute or agency supplemental regulation...."

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that, while an NSA employee, [redacted] represented his corporation, [redacted] to DSS in its quest to obtain a favorable FCL determination, in violation of 18 U.S.C. §205(a)(2), 5 C.F.R. §2635.101(b)(10) and (14), 5 C.F.R. §2635.801(c) and (d)(4), and 5 C.F.R. §2635.802(a). There was no evidence to suggest that [redacted] knowingly violated the applicable authorities.

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

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IV. (U) CONCLUSION

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

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that, while an NSA employee, [redacted] represented his corporation, [redacted] to DSS in its quest to obtain a favorable FCL determination, in violation of 18 U.S.C. §205(a)(2), 5 C.F.R. §2635.101(b)(10) and (14), 5 C.F.R. §2635.801(c) and (d)(4), and 5 C.F.R. §2635.802(a). There was no evidence to suggest that [redacted] knowingly violated the applicable authorities.

(b) (3) - P.L. 86-36
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VI. (U) DISTRIBUTION OF RESULTS

(U//~~FOUO~~) A summary of the investigative findings will be provided to the ADS&CI.

[Redacted Signature]

Senior Investigator

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

Concurred by:

[Redacted Signature]

Assistant Inspector General
for
Investigations