

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

John Greenwald, Jr.
27305 W. Live Oak Rd.
Suite #1203
Castaic, CA 91384

March 10, 2021

Reference: ODNI Cases DF-2021-00066

Mr. Greenwald:

This letter responds to your Freedom of Information Act ("FOIA") letter dated 29 December 2020 and received by the Information Management Office on 30 December 2020 (Enclosure 1), in which you requested *"a copy of records (which includes videos/photos), electronic or otherwise, of the following: the final report for DNI / IG investigation 18-0010-IN, 'CONFLICT OF INTEREST' and also the final report for DNI / IG investigation 18-0011-IN, 'CONFLICT OF INTEREST.'"*

A search has been conducted and records responsive to your request were located. The records are being granted to you in part (Enclosure 2) with the following exemptions:

- (b)(3), which applies to information exempt from disclosure by statute. The relevant statutes are:
 - the National Security Act of 1947, as amended, Section 102A(i)(1), 50 U.S.C. § 3024(i)(1), which protects information pertaining to intelligence sources and methods;
 - Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3024(m), which protects, among other things, the names and identifying information of ODNI personnel;
 - 50 U.S.C. § 3033(g)(3)(A), which protects the identity of employees or contractors who come to the ICIG with complaints of violations of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.
- (b)(6), applies to information which, if released, would constitute a clearly unwarranted invasion of the personal privacy of individuals.
- (b)(7)(C), which provides protection for personal information in law enforcement records, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

You may contact me, the FOIA Public Liaison, at dni-foia-liaison@dni.gov or (703) 275-3500 for any further assistance or to discuss any aspect of your request. You may also contact the Office of Government Information Services ("OGIS") of the National Archives and Records Administration to inquire about the mediation services they provide. OGIS can be

UNCLASSIFIED

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

reached by mail at 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; telephone (202) 741-5770; facsimile (202) 741-5769; Toll-free (877) 684-6448; or email at ogis@nara.gov.

If you are not satisfied with my response to your request, you may administratively appeal by submitting a written request to the Chief FOIA Officer, c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511 or dni-foia@dni.gov. The request letter and envelope or subject line of the email should be marked "Freedom of Information Act Appeal." Your appeal must be postmarked or electronically transmitted within 90 days of the date of this letter.

If you have any questions, please feel free to contact our Requester Service Center at dni-foia@dni.gov or 703-275-1313.

Sincerely,



Sally A. Nicholson
Chief, Information Review &
Release Group
FOIA Public Liaison
Information Management Office

Enclosures

UNCLASSIFIED

This document is made available through the declassification efforts
and research of John Greenewald, Jr., creator of:

The Black Vault



The Black Vault is the largest online Freedom of Information Act (FOIA) document clearinghouse in the world. The research efforts here are responsible for the declassification of hundreds of thousands of pages released by the U.S. Government & Military.

Discover the Truth at: <http://www.theblackvault.com>

Enclosure 1

From: john@greenewald.com
Sent: Tuesday, December 29, 2020 1:12 PM
To: DNI-FOIA
Subject: FOIA REQUEST

To whom it may concern,

This is a non-commercial request made under the provisions of the Freedom of Information Act 5 U.S.C. S 552. My FOIA requester status as a "representative of the news media." I am a freelance television producer often working on documentaries related to my FOIA requests, my work is commonly featured throughout major news organizations, and I freelance writer for news sites as well. Examples can be given, if needed.

I prefer electronic delivery of the requested material either via email to john@greenewald.com, FAX 1-818-659-7688 or via CD-ROM or DVD via postal mail. Please contact me should this FOIA request should incur a charge.

I respectfully request a copy of records (which includes videos/photos), electronic or otherwise, of the following: the final report for DNI / IG investigation 18-0010-IN, "CONFLICT OF INTEREST" and also the final report for DNI / IG investigation 18-0011-IN, "CONFLICT OF INTEREST."

Thank you so much for your time, and I am very much looking forward to your response.

Sincerely,

John Greenewald, Jr.
27305 W. Live Oak Rd.
Suite #1203
Castaic, Ca. 91384
FAX 1-818-659-7688

Sincerely,

John Greenewald, Jr.
CEO - The Black Vault, Inc.
<http://www.theblackvault.com>

Toll Free: (800) 456-2228
International: 1 (818) 655-0474
Fax: (818) 659-7688

Mailing Address:
The Black Vault

Enclosure 2a



OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
INVESTIGATIONS DIVISION
WASHINGTON, DC 20511

REPORT OF INVESTIGATION

September 21, 2020

(U) Case Number: 18-0010-IN

(U//~~FOUO~~) Subject: (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C)

1. (U) Predication

(U//~~FOUO~~) On January 29, 2018, the Office of the Inspector General of the Intelligence Community (IC IG), Investigations Division (INV), received a referral from the Office of General Counsel (OGC), Office of the Director for National Intelligence (ODNI) regarding a possible violation of a criminal conflict of interest provision by (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) (b)(3), (b)(6), (b)(7)(C). Per the referral, (b)(3), (b)(6), (b)(7)(C) engaged in a criminal conflict of interest when he, as the program manager (PM), recommended that a performer be removed from his program via contract cancellation. The decision whether to cancel the contract with the performer and end any associated work included work undertaken by the company for which (b)(3), (b)(6), (b)(7)(C) serves as an employee.

2. (U) Background

(b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C)

¹ (U) 5 C.F.R. Part 334, Temporary Assignments under the Intergovernmental Personnel Act (IPA) authorizes the use of 5 U.S.C. Codes Subchapter VI, Assignments to and from States, in which an IPA from a federally funded research and development center is deemed an employee of the agency.

² (U//~~FOUO~~) (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C)

INSPECTOR GENERAL SENSITIVE INFORMATION

This document is intended only for authorized recipients. Recipients may not further disseminate this information without the express permission of the signatory or other Office of Inspector General of the Intelligence Community personnel. This document may contain Inspector General sensitive information that is confidential, sensitive, work product or attorney-client privileged, or protected by Federal law, including protection from public disclosure under the Freedom of Information Act (FOIA), 5 USC § 552. Accordingly, the use, dissemination, distribution or reproduction of this information to or by unauthorized or unintended recipients may be unlawful.

(b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) Under the IPA agreement, (b)(3), (b)(6), (b)(7)(C) was treated as an ODNI employee, but received pay and benefits from his employer, (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) at IARPA, a position he began on August 10, 2015.

3. (U) Possible Violations

- a. (U) Title 18 U.S.C. §§ 208, 216(a), *Acts affecting a financial personal interest*
- b. (U) 5 C.F.R. § 2635.402, *Disqualifying financial interests*
- c. (U) 5 C.F.R. § 2635.502(e), *Disqualification*

4. (U) Conclusion

(U//~~FOUO~~) Our investigation developed sufficient information to suggest that (b)(3), (b)(6), (b)(7)(C) had a conflict of interest for purposes of 18 U.S.C. § 208 – Acts affecting a financial personal interest; 5 C.F.R. § 2635.402 – Disqualifying financial interests; and 5 C.F.R. § 2635.502(e) – Disqualification. However, our investigation also developed information indicating that the conflict of interest at issue is not actionable, because (b)(3), (b)(6), (b)(7)(C) informed management and counsel of the conflict and followed their guidance in response.

(U//~~FOUO~~) We determined that (b)(3), (b)(6), (b)(7)(C) participation in the decision of whether to cancel the contract had a predictable effect on the interests of (b)(3) and ultimately (b)(3). In an email, (b)(3), (b)(6), (b)(7)(C) indicated that cancelling of the Trex contract would involve shifting monetary resources being provided to (b)(3). However, (b)(3), (b)(6), (b)(7)(C) sought guidance, approval, and informed the responsible IARPA management and ethics officials about his potential conflict as soon as the conflict presented itself. Additionally, we note that although (b)(3), (b)(6), (b)(7)(C) recommended the performer be removed from the contract, the decision as to whether or not to cancel the contract was not (b)(3), (b)(6), (b)(7)(C) nor did he have that authority.

(U//~~FOUO~~) Our investigation further determined there was a considerable amount of confusion, miscommunication, and a lack of clear guidance that contributed to the circumstances surrounding (b)(3), (b)(6), (b)(7)(C) conflict. We revealed that IARPA officials, despite his known conflict, asked (b)(3), (b)(6), (b)(7)(C) to prepare a memorandum with his recommendation and reasons why to terminate the performer; ultimately presenting a potential conflict. Our investigative activity is detailed below.

5. (U) Internal Management Controls

(U//~~FOUO~~) ODNI Instruction 24.01, “ODNI Internal Control Program,” December 18, 2012, requires ODNI to implement and evaluate a comprehensive system of management controls that provide reasonable assurance programs are operating in accordance with pertinent laws and regulations. During the course of this investigation, we identified management deficiencies that

created confusing guidance regarding the activities that (b)(3), (b)(6), (b)(7)(C) could not participate. However, prior to the close of this investigation, IARPA OGC informed INV of its revised employment and placement processes that address in detail the hiring of IPA employees. IARPA OGC's new processes should preclude situations such as this from reoccurring.

6. (U) Investigative Activity

(U//~~FOUO~~) INV conducted an analysis of documents and audit data, and conducted interviews related to this matter. Prior to (b)(3), (b)(6), (b)(7)(C) entry on duty at IARPA he was provided a written pre-hire conflict of interest review. The review was conducted by the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

The review stated that under 5 C.F.R. § 2635.402 – Disqualifying financial interests³, (b)(3), (b)(6), (b)(7)(C) was disqualified from any involvement with (b)(3) 50 USC 3033(g)(3)(A) while at IARPA, and that (b)(3), (b)(6), (b)(7)(C) needed to be careful not to become personally and substantially involved in any matter in which (b)(3) 50 USC 3033(g)(3)(A) had an interest. (b)(3), (b)(6), (b)(7)(C) accurately disclosed his financial interests to IARPA leadership on January 23, 2015.

(U//~~FOUO~~) On January 17, 2017, (b)(3), (b)(6), (b)(7)(C) concluded that Trex Enterprise Corporation (Trex)⁴, a contracted company under (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) could not complete work required. Specifically, Trex lacked the testing and manufacturing skills necessary to conduct on-site testing. Trex asked (b)(3), (b)(6), (b)(7)(C) about using (b)(3), (b)(6), (b)(7)(C) as a subcontractor and asked (b)(3), (b)(6), (b)(7)(C) to assist with locating a contact. Due to his conflict, (b)(3), (b)(6), (b)(7)(C) informed (b)(3), (b)(6), (b)(7)(C) assigned to IARPA OGC at the time, about the request. (b)(3), (b)(6), (b)(7)(C) advised (b)(3), (b)(6), (b)(7)(C) to make the introduction between Trex and (b)(3), (b)(6), (b)(7)(C) but avoid conversations regarding collaboration. After (b)(3), (b)(6), (b)(7)(C) made the introduction, he solicited support from (b)(3), (b)(6), (b)(7)(C) (b)(3), (b)(6), (b)(7)(C) IARPA, to manage the testing of the (b)(3), (b)(6), (b)(7)(C) program that involved Trex.

(U//~~FOUO~~) On May 23, 2017, (b)(3), (b)(6), (b)(7)(C) executed a written recusal memorandum indicating his understanding that he was prohibited by statute and regulation from participating in matters involving (b)(3), (b)(6), (b)(7)(C) and on IPA to IARPA; pursuant to 18 U.S.C. § 208 – Acts affecting a financial personal interest⁵ and 5 C.F.R. § 2635.502(e) – Disqualification⁶. In the memorandum, (b)(3), (b)(6), (b)(7)(C) recused himself from participating officially in matters that could have a direct and predictable effect on (b)(3), (b)(6), (b)(7)(C) unless authorized by the agency designee. The recusal

³ (U) 5 C.F.R. § 2635.402, prohibits employee participation personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

⁴ (U) Trex Enterprise Corporation (Trex), a small public company, was one of three research and development performers for the (b)(3), (b)(6), (b)(7)(C). The existence of the Trex contract is not classified, the research directed and executed under it is classified.

⁵ (U) 18 U.S.C. § 208, prohibits government employee participation personally and substantially in any particular matter for which the organization he is employed by has a financial interest.

⁶ (U) 5 C.F.R. § 2635.402, unless authorized, employee shall disqualify himself from participation in a particular matter that would have a direct and predictable effect on the financial interest of a person whose interests, to his knowledge, are imputed to him.

memorandum also designated another IARPA PM to handle any particular matter that could come before (b)(3), (b)(6), (b)(7)(C) that would affect (b)(3) 50 USC 3033(g)(3)(A)

(U//~~FOUO~~) On October 23, 2017, five months after (b)(3), (b)(6), (b)(7)(C) executed his recusal memorandum, (b)(3), (b)(6), (b)(7)(C) assigned to IARPA, learned from (b)(3), (b)(6), (b)(7)(C) that he intended to recommend the cancellation of the (b)(3), (b)(6), (b)(7)(C) portion of the (b)(3), (b)(6), (b)(7)(C) held with Trex. (b)(3), (b)(6), (b)(7)(C) also sought guidance from (b)(3), (b)(6), (b)(7)(C) regarding potential follow-on program activities that could involve (b)(3) responding to a solicitation. In an email dated October 24, 2017, (b)(3), (b)(6), (b)(7)(C) told (b)(3), (b)(6), (b)(7)(C) that she had no concerns with him thinking through the issues, but to hold off on taking any action until a determination had been made regarding Trex. At this time, (b)(3), (b)(6), (b)(7)(C) did not mention, and (b)(3), (b)(6), (b)(7)(C) was not aware, that (b)(3) was already involved in the program. (b)(3), (b)(6), (b)(7)(C) further informed (b)(3), (b)(6), (b)(7)(C) that she and (b)(3) 50 USC 3033(g)(3)(A), (b)(7)(C)

(b)(3), (b)(6), (b)(7)(C) were working on drafting possible ways forward and the pros and cons of each for consideration by (b)(3), (b)(6), (b)(7)(C) and Jason Matheny (MATHENY), Director of IARPA. (b)(3), (b)(6), (b)(7)(C) stated that once a determination was made, they would discuss how to proceed with seeking new services to further (b)(3), (b)(6), (b)(7)(C) effort, and if and how he can be involved given a possible conflict.

(U//~~FOUO~~) On October 26, 2017, (b)(3), (b)(6), (b)(7)(C) met with MATHENY and informed him of his plans to recommend the Trex contract be cancelled. Despite knowing of (b)(3), (b)(6), (b)(7)(C) conflict and asking (b)(3), (b)(6), (b)(7)(C) not to take action, (b)(3), (b)(6), (b)(7)(C) in order to inform the decision of the contracting officer on this matter, asked (b)(3), (b)(6), (b)(7)(C) to submit a draft memorandum to document why cancellation of the contract was in the best interest of the government. The document was hand-delivered to (b)(3), (b)(6), (b)(7)(C). On the same day, (b)(3), (b)(6), (b)(7)(C) sent an email to a number of IARPA officers, including the designated program manager overseeing (b)(3) services and (b)(3), (b)(6), (b)(7)(C) indicating that (b)(3) was providing manufacturing and testing services to the (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) including services associated with the Trex contract. Upon reviewing the email, (b)(3), (b)(6), (b)(7)(C) raised concerns that this ORNL connection to the Trex contract, of which she was previously unaware, could raise conflict of interest issues. After conferring with the ethics officials in OGC, on November 6, 2017, (b)(3), (b)(6), (b)(7)(C) sent an email to (b)(3), (b)(6), (b)(7)(C) advising not to take any further action on the Trex contract matter until he and (b)(3), (b)(6), (b)(7)(C) were able to discuss further.

(U//~~FOUO~~) Interview of (b)(3), (b)(6), (b)(7)(C)

(U//~~FOUO~~) INV interviewed (b)(3), (b)(6), (b)(7)(C) on January 28, 2018 with his attorney present. (b)(3), (b)(6), (b)(7)(C) could not recall conversations he specifically had with OGC as to what a potential financial impact related to a conflict of interest could be, but believed the ethics training he received was woefully inadequate to deal with his duties and daily activities at IARPA.

(U//~~FOUO~~) (b)(3), (b)(6), (b)(7)(C) explained there are research performer teams, essentially people who are developing the next generation of technology. There is also test and evaluation teams that test those technologies. Trex stated in their proposal they could do what was required, which

was one of the factors that led to their selection for the project. However, on January 18, 2017, Trex informed (b)(3), (b)(6), (b)(7)(C) they lacked the testing and manufacturing skills needed. Trex offered to simulate the testing, but (b)(3), (b)(6), (b)(7)(C) declined as IARPA required actual testing. Trex asked (b)(3), (b)(6), (b)(7)(C) if he could help find a classified testing facility because Trex did not have classified contacts. (b)(3), (b)(6), (b)(7)(C) informed Trex that he would talk to an Ethics Attorney before providing advice to Trex as it could affect (b)(3), (b)(6), (b)(7)(C) sent an email to (b)(3), (b)(6), (b)(7)(C) requesting a conversation with her, the Contracting Officer, and Contracting Officer's Technical Representative. He also related there was an ethics issue for him; thus, their decision needed to satisfy that requirement and align with IARPA's policy allowing private companies to conduct testing, but not research. (b)(3), (b)(6), (b)(7)(C) concurred that (b)(3), (b)(6), (b)(7)(C) could provide the information requested to Trex, but agreed he may not be the best avenue to send it.

(U//~~FOUO~~) The decision was made that given (b)(3), (b)(6), (b)(7)(C) concern that (b)(3) may be a group who could get involved with the support, and the only lab that (b)(3), (b)(6), (b)(7)(C) knew could conduct the testing, he was not going to be involved with assisting Trex from that point forward. (b)(3), (b)(6), (b)(7)(C) was then asked by (b)(3), (b)(6), (b)(7)(C) to write up what he thought the program needed, and to hand it off to (b)(3), (b)(6), (b)(7)(C). (b)(3), (b)(6), (b)(7)(C) IARPA, to find out how they were going to accomplish the testing. MATHENY also advised (b)(3), (b)(6), (b)(7)(C) to tell (b)(3), (b)(6), (b)(7)(C) that (b)(3), (b)(6), (b)(7)(C) IARPA, could assist with determining the testing facility.

(U//~~FOUO~~) (b)(3), (b)(6), (b)(7)(C) sent an email to (b)(3), (b)(6), (b)(7)(C) the Contract Attorney, and members of (b)(3), (b)(6), (b)(7)(C) team. The email included (b)(3), (b)(6), (b)(7)(C) technical write-up and the requirements (a description of the generic testing support services he thought the program needed), but also asked (b)(3), (b)(6), (b)(7)(C) to speak up if it was in violation of ethics. (b)(3), (b)(6), (b)(7)(C) then recused himself from finding a lab and executing testing support for Trex. (b)(3), (b)(6), (b)(7)(C) continued to manage the (b)(3), (b)(6), (b)(7)(C) which included Trex, but did he have any further discussions regarding testing.

(U//~~FOUO~~) (b)(3), (b)(6), (b)(7)(C) said Trex was also struggling technically and had a turnover of staff that created problems. (b)(3), (b)(6), (b)(7)(C) was uncomfortable with where Trex was going technically, which is why he started discussing whether to terminate the contract. (b)(3), (b)(6), (b)(7)(C) was not the CO, nor the source selection authority, and therefore the decision to cancel the contract fell to MATHENY.

(U//~~FOUO~~) Trex's contract was not terminated while (b)(3), (b)(6), (b)(7)(C) was involved. Because he had provided input to MATHENY about Trex's inability to meet technical requirements, (b)(3), (b)(6), (b)(7)(C) asked the Stacey Dixson, former IARPA Deputy Director, to assume source selection authority. It would have normally been MATHENY, but (b)(3), (b)(6), (b)(7)(C) wanted to proceed with the decision-making without any input (b)(3), (b)(6), (b)(7)(C) had given to MATHENY.

(U//~~FOUO~~) Interview of (b)(3), (b)(6), (b)(7)(C)

(U//~~FOUO~~) On August 23, 2018, INV interviewed (b)(3), (b)(6), (b)(7)(C) regarding the possible criminal conflict of interest. (b)(3), (b)(6), (b)(7)(C)

(b)(3), (b)(6), (b)(7)(C) She provides support to IARPA. (b)(3), (b)(6), (b)(7)(C) was generally aware that (b)(3), (b)(6), (b)(7)(C) received "marching orders," to be the PM for the contract, and someone else would manage the test and evaluation.

(U//~~FOUO~~) (b)(3), (b)(6), (b)(7)(C) said she became cognizant of (b)(3) involvement with Trex from an email she received from (b)(3), (b)(6), (b)(7)(C) on October 26, 2017. In that email, (b)(3), (b)(6), (b)(7)(C) expressed intent to recommend cancellation of a portion of the project performed by Trex. Because (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) the Trex project, (b)(3), (b)(6), (b)(7)(C) asked (b)(3), (b)(6), (b)(7)(C) to step back from taking action on Trex as cancelling the work would have a financial effect on (b)(3). She also asked (b)(3), (b)(6), (b)(7)(C) to provide a memorandum to help (b)(3), (b)(6), (b)(7)(C) and other contracting officials with their decision making. (b)(3), (b)(6), (b)(7)(C) worked to mitigate the matter and ensure a termination of contract for improper reasons did not occur. (b)(3), (b)(6), (b)(7)(C) related that she was not cognizant of previous practices by (b)(3), (b)(6), (b)(7)(C) but had instituted a more structured conflict of interest pre-hire process since her arrival.

(U//~~FOUO~~) *Investigative Note:* On November 28, 2017, (b)(3), (b)(6), (b)(7)(C) informed (b)(3), (b)(6), (b)(7)(C) that he had routinely made determinations and approved matters involving (b)(3) that her predecessor (b)(3), (b)(6), (b)(7)(C) approved. (b)(3), (b)(6), (b)(7)(C) also provided (b)(3), (b)(6), (b)(7)(C) with a list of activities for which he had routinely provided guidance on that involved (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) asked for a detailed written guidance from (b)(3), (b)(6), (b)(7)(C) on how he should interact with (b)(3) given his conflict of interest to "avoid any possibility of getting into trouble in the future."

(U//~~FOUO~~) *Interview of* (b)(3), (b)(6), (b)(7)(C)

(U//~~FOUO~~) On August 24, 2018, INV interviewed (b)(3), (b)(6), (b)(7)(C) who stated that (b)(3), (b)(6), (b)(7)(C) wanted to end contracted work performed by Trex due to security and technical concerns. (b)(3), (b)(6), (b)(7)(C) later learned from (b)(3), (b)(6), (b)(7)(C) that (b)(3), (b)(6), (b)(7)(C) could not be involved in actions on matters involving Trex due to "some sort of" conflict. (b)(3), (b)(6), (b)(7)(C) opined that if (b)(3), (b)(6), (b)(7)(C) acted in conflict, it was probably because he did not understand that if Trex was removed from the contract, (b)(3) would also lose work. According to (b)(3), (b)(6), (b)(7)(C) a "big part" of her job is dealing with contracts involving ethical matters, and she finds the topic "murky". (b)(3), (b)(6), (b)(7)(C) stated "if ethical matters are murky for her, then she imagines it is murky for IARPA PMs." PMs often need ethical guidance in the area of contracts, and routinely go to OGC, who does not always have an immediate answer and needs to do research.

(U//~~FOUO~~) Because of the potential conflict, (b)(3), (b)(6), (b)(7)(C) turned full control of the (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) over to (b)(3), (b)(6), (b)(7)(C) worked with (b)(3), (b)(6), (b)(7)(C) to discontinue the particular work under the project being accomplished by Trex because the effort missed key milestones and could not meet objectives. (b)(3), (b)(6), (b)(7)(C) sent a stop notice to Trex on 29 November 2017 and a notice of reimbursement for settlement costs on 1 December 2017. The Trex contract was

terminated and not replaced. The decision to down select Trex was not based on ^{(b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C)} recommendation.

(U//~~FOUO~~) Interview of ^{(b)(3), (b)(6), (b)(7)(C)}

(U//~~FOUO~~) On 4 September 2018, INV interviewed ^{(b)(3), (b)(6), (b)(7)(C)} assigned to IARPA OGC. ^{(b)(3), (b)(6), (b)(7)(C)} was familiar with ^{(b)(3), (b)(6), (b)(7)(C)} and identified him as a previous IARPA PM. ^{(b)(3), (b)(6), (b)(7)(C)} had an ongoing matter involving a “possible conflict of interest,” but she was unaware of the specifics. ^{(b)(3), (b)(6), (b)(7)(C)} received a pre-hire financial review for conflicts of interest prior to FISCHER’s arrival. ^{(b)(3), (b)(6), (b)(7)(C)} did not know if ^{(b)(3), (b)(6), (b)(7)(C)} received a sit-down review upon arrival.

(U//~~FOUO~~) ^{(b)(3), (b)(6), (b)(7)(C)} explained that IPAs now receive a pre-hire financial review coordinated under ^{(b)(3), (b)(6), (b)(7)(C)}. Once a conditional offer of employment is made to an IPA, the ADAEO sends a form to the IPA to obtain financial information for the pre-hire review; OGC IARPA participates in the pre-hire review. Results of the review identify possible conflicts for the IPA with the proposed job, and are shared with IARPA management for consideration of possible adjustments to the IPA agreement or whether the IPA employee can perform the duties without a potential conflict.

(U//~~FOUO~~) In addition to the pre-hire review, IPAs assigned to IARPA now receive a sit-down review internally conducted by OGC IARPA upon arrival. Under ^{(b)(3), (b)(6), (b)(7)(C)} the sit-down financial review process with IPAs was “cleaned up, improved.” ^{(b)(3), (b)(6), (b)(7)(C)} took over the review process due to PONDER’s upcoming departure. IPA employees, not OGC IARPA, share all executed recusals with their government supervisor and IARPA management.

(U//~~FOUO~~) Interview of ^{(b)(3), (b)(6), (b)(7)(C)}

(U//~~FOUO~~) On January 9, 2019, INV interviewed ^{(b)(3), (b)(6), (b)(7)(C)} departed IARPA in July 2017, prior to the cancellation of the contract with Trex. ^{(b)(3), (b)(6), (b)(7)(C)} could not recall specific details related to ^{(b)(3), (b)(6), (b)(7)(C)} situation with Trex, but believed ^{(b)(3), (b)(6), (b)(7)(C)} always attempted to do the right thing.” ^{(b)(3), (b)(6), (b)(7)(C)} was “seemingly conscientious” about conflicts, and routinely brought up possible conflicts through verbal inquiry. ^{(b)(3), (b)(6), (b)(7)(C)} believed ^{(b)(3), (b)(6), (b)(7)(C)} was aware that matters involving a negative or positive financial impact on ^{(b)(3)} would be elevated, but added that ^{(b)(3), (b)(6), (b)(7)(C)} was the subject matter expert. ^{(b)(3), (b)(6), (b)(7)(C)} said that conflict inquiries from personnel in positions such as ^{(b)(3), (b)(6), (b)(7)(C)} were a common theme at IARPA. She had no further information to provide.

(U//~~FOUO~~) Interview of ^{(b)(3), (b)(6), (b)(7)(C)}

(U//~~FOUO~~) On January 29, 2019, INV telephonically interviewed ^{(b)(3), (b)(6), (b)(7)(C)} regarding an alleged conflict of interest involving ^{(b)(3), (b)(6), (b)(7)(C)}. According to ^{(b)(3), (b)(6), (b)(7)(C)} shortly after Trex was selected as a development performer, Trex notified IARPA that California state law limited their ability to conduct proper testing of technological efforts. This was a concern because a performer

should have the capability to conduct testing on its products. Other performers on the [REDACTED] (b)(3) 50 USC 3033(g)(3)(A), (b)(6), (b)(7)(C) were also offered testing support by (b)(3) but declined the support because both were capable of conducting their own testing. Shortly after Trex notified IARPA of its restriction, (b)(3) was identified as a possible internal tester and supporter for Trex.

(U//~~FOUO~~) Once it became apparent that (b)(3) would likely be the internal tester for Trex, (b)(3), (b)(6), (b)(7)(C) recused himself. (b)(3), (b)(6), (b)(7)(C) raised concerns regarding his conflict with both IARPA leadership and (b)(3), (b)(6), (b)(7)(C). As a result, the testing and evaluation portion of the project was reassigned to (b)(3), (b)(6), (b)(7)(C) who volunteered to oversee the testing for (b)(3).

(U//~~FOUO~~) (b)(3) never conducted any testing for Trex, because IARPA pulled the acquisition due to other contractual issues. (b)(3), (b)(6), (b)(7)(C) believed (b)(3), (b)(6), (b)(7)(C) identified some technical requirements, and other issues not involving the testing and evaluation by (b)(3) as reasons to down select Trex as a performer. The decision to cancel the Trex contract was not (b)(3), (b)(6), (b)(7)(C) decision and happened long after (b)(3), (b)(6), (b)(7)(C) executed his recusal.

7. (U) United States Attorney's Office Coordination

(U) Coordination with the United States Attorney's Office was not required.

8. (U) IC IG Legal Opinion

(U) On September the 8, 2020, IC IG Counsel opined that based on the information developed during the investigation, as set forth above, Counsel believes the critical facts are as follows. First, the subject was a federal employee for purposes of the conflict-of-interest statute and regulations. Second, in his official capacity, he participated personally and substantially in a recommendation to cancel the Trex contract. Third, the subject was aware that he had a financial interest in the cancellation of the Trex contract because it would have an effect on (b)(3) 50 USC 3033(g)(3)(A) which paid the subject's salary. Finally, the evidence shows that the subject properly recorded his interests in advance, and consulted with management and counsel about the potential conflict. At each stage, he communicated with the appropriate officials, fully informed them of the possible conflict, and followed their directions when the conflict arose.

(U) In our judgment, these facts foreclose the possibility of a successful prosecution for conflict of interest in violation of 18 U.S.C. § 208. First, the subject's ongoing good-faith communications with management and counsel about the potential conflict, as well as his conduct in accordance with their advice, contradict the willfulness necessary to establish the felony offense. *See* 18 U.S.C. § 216(a)(2). Second, based on the subject's reliance on the guidance and directions he received from his management and counsel, we believe that the Department of Justice, in its exercise of prosecutorial discretion, would likely decline even a misdemeanor prosecution, even though willfulness is not an element of the misdemeanor offense, because "good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution." 5 C.F.R. § 2635.107(b). In addition, we note that the subject's conduct appears to

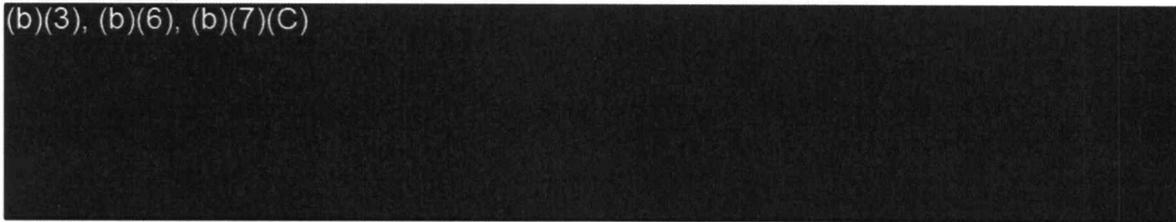
have satisfied his responsibility to consult with agency ethics officials before taking action in a matter which an employee knows would affect his financial interests. *See* 5 C.F.R. § 2640.205.

(U) Finally, we believe that even administrative or disciplinary action for violating 5 C.F.R. § 2635.402 and 502(e), is foreclosed in these circumstances, because “[d]isciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.” 5 C.F.R. § 2635.107(b). Based on the results of the investigation, we believe the subject’s conduct met that good-faith standard. For these reasons, we concur with the investigative findings and conclusion contained herein.

Submitted by:

Approved by:

(b)(3), (b)(6), (b)(7)(C)



Enclosure 2b



OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
INVESTIGATIONS DIVISION
WASHINGTON, DC 20511

(U) REPORT OF INVESTIGATION

(U) Case Number: 18-0011-IN

(U//~~FOUO~~) Subject: Possible Improprieties with the Hiring Process of an Employee

(U) I. Introduction and Summary

(U//~~FOUO~~) The Office of the Inspector General of the Intelligence Community (IC IG) Investigations Division (INV) completed an investigation into possible improprieties in the hiring of [REDACTED] as a Program Manager (PM) by the Office of the Director of National Intelligence (ODNI), Intelligence Advanced Research Project Activity (IARPA) Director, Jason MATHENY [REDACTED]

(U//~~FOUO~~) Based on our analysis of available information, IC IG did not find evidence of hiring Improprieties committed by MATHENY.

(U) II. Background

(U//~~FOUO~~) [REDACTED] entered on duty on 5 September 2017 with the ODNI/IARPA. Prior to that, he worked as an Independent Consultant (IC) for the industrial contractor, Booz Allen Hamilton (BAH). On 29 January 2018, the IC IG was notified by the ODNI Office of General Counsel (OGC) of possible improprieties in the hiring of [REDACTED] MATHENY allegedly suggested and/or arranged for the government's revocation of the Conditional Offer of Employment (COE) made to [REDACTED] and for the procurement by BAH for [REDACTED] consulting services while he went through the security clearance process.

(U//~~FOUO~~) On 30 November 2017, [REDACTED] sought guidance from an ODNI/OGC [REDACTED] by submitting a written recusal from representing the U.S Government on contract matters involving BAH. According to [REDACTED] while discussing the details of his recusal with the ethics official,

INSPECTOR GENERAL SENSITIVE INFORMATION

This document is intended only for authorized recipients. Recipients may not further disseminate this information without the express permission of the signatory or other Office of Inspector General of the Intelligence Community personnel. This document may contain Inspector General sensitive information that is confidential, sensitive, work product or attorney-client privileged, or protected by Federal law, including protection from public disclosure under the Freedom of Information Act (FOIA), 5 USC § 552. Accordingly, the use, dissemination, distribution or reproduction of this information to or by unauthorized or unintended recipients may be unlawful.

██████████ stated he pursued the consulting position with BAH at the suggestion of MATHENY. He added the MATHENY wanted to hire him before he started working for BAH and had received a COE from the ODNI/IARPA. But after ██████████ discussed with the MATHENY that he was living and working in Singapore at the time and was traveling to China periodically for business, MATHENY told ██████████ that his security clearance would take too long to process. MATHENY then asked ██████████ if it would be okay for IARPA to withdraw the COE and have ██████████ work with BAH. This would keep ██████████ engaged with IARPA while BAH would help with ██████████ security clearance process. MATHENY then allegedly arranged for BAH to procure ██████████ services as an IC on IARPA-related matters and support the continued processing of his security clearance.

(U) A. Authority

(U//~~FOUO~~) IC IG conducted this investigation pursuant to 50 U.S.C. § 3033, *Inspector General of the Intelligence Community*, 7 October 2010; ODNI Instruction 10.34, *Office of the Inspector General of the Intelligence Community*, dated 22 September 2013; and, *Quality Standards for Investigations*, dated 15 November 2011, set forth by the Council of the Inspectors General on Integrity and Efficiency.

(U) B. Applicable Law, Regulation, and Policy:

- 5 C.F.R. § 2635.101 Basic obligation of public service.

(U) III. Evidence and Findings

(U) 1. Review

(U//~~FOUO~~) IC IG reviewed 5 C.F.R. § 2635.101 Basic obligation of public service. The memorandum from the United States Office of Government Ethics Director, Robert CUSICK dated 1 August 2007 titled, "Misuse of Federal Position to Help Another Person Get a Job" which was sent by CUSICK to the Designated Agency Ethics Officials throughout the intelligence community. ██████████ and MATHENY's email and messaging communications from 1 October 2015 through 15 December 2015. Recusal memo submitted on 30 November 2017 to OGC by ██████████ and the pre-hire conflicts review questionnaire of ██████████

(U) 2. Interviews

(U//~~FOUO~~) IC IG interviewed ██████████ and MATHENY for this investigation.

(U//~~FOUO~~) A. ██████████ Interview

(U//~~FOUO~~) On 8 February 2018, IC IG met with ██████████ to discuss her concerns of possible hiring improprieties of ██████████ by MATHENY. According to ██████████ ██████████ sought guidance from her office on 30 November 2017 after submitting a

recusal memo from working on government matters involving BAH, the company he worked with as an IC prior to government employment. ██████ said ██████ told her that, he pursued and accepted the IC position with BAH at the suggestion of MATHENY. ██████ said it was this comment along with ██████ saying MATHENY told him BAH would assist with his clearance process prompted her to submit her concerns to the IC IG.

(U//~~FOUO~~) B. ALSTOTT Interview

(U//~~FOUO~~) On 26 February 2018, IC IG interviewed ██████ Prior to his current position ██████ relayed he was in academia and also worked part-time as an IC for BAH supporting IARPA related research starting in January 2015. Based on his prior position with BAH, ██████ said he requested to be recused from working on IARPA matters involving BAH.

(U//~~FOUO~~) ██████ said he first applied for the PM position with IARPA in 2015 and soon after, received a COE. ██████ said before receiving the COE from IARPA, he accepted a position with Singapore University of Technology and Design and moved abroad. He added that in this position, he frequently traveled to China. ██████ said that after receiving the COE, MATHENY got in contact with him via email and later telephonically and expressed his concern that ██████ security clearance process would most likely be very lengthy and would result in the PM billet at IARPA being vacant for too long. That is when MATHENY asked ██████ if it would be okay for IARPA to withdraw the COE, and MATHENY would pass ██████ contact information to BAH for the IC position. This way BAH would keep ██████ engaged with IARPA while supporting the continued processing of his security clearance process.

(U//~~FOUO~~) C. ██████ Interview

(U//~~FOUO~~) On 26 February 2018, IC IG interviewed ██████ said she is the contractor PM for BAH on the CASES¹ task order supporting IARPA and has been in her position since September 2012. She stated that she oversees the day-to-day operations of approximately 60 BAH employees supporting IARPA; responsible for ensuring all contractor positions are filled and the customer (Government) is satisfied with BAH's service. ██████ said she has known ██████ since early 2016 when he joined BAH as an IC on the same contract that she is the PM for at IARPA.

(U//~~FOUO~~) ██████ stated that MATHENY provided her with ██████ contact information, which she added was not unusual; "MATHENY does that from time to time as he identifies a requirement and has an identified Subject Matter Expert (SME) outside of the Government that can fulfill that requirement, using the contractor currently in place as a vehicle, which in this case happened to be BAH." ██████ further

¹ Contract Advisory and Assistance, Systems Integration, Systems Engineering and Technical Assistance and Support (CASES II)

elaborated that as an Industrial Contractor, BAH can hire SME's fairly quickly and get the Government's requirement fulfilled in a timely manner, as opposed to the Government trying to hire the same SME which could take up to a year with the clearance process.

(U//~~FOUO~~) [REDACTED] said that BAH is not concerned with their IC's converting over to Government positions. She explained that IC's are not BAH employees therefore BAH does not invest in their future development such as training courses, continued learning, and certifications. Secondly she said, BAH does not provide or contribute to any insurances for IC's such as medical and dental. Lastly [REDACTED] said that sponsoring the clearance process for IC's does not cost BAH anything because the government provides this.

(U//~~FOUO~~) D. MATHENY Interview

(U//~~FOUO~~) On 3 April 2018, IC IG interviewed MATHENY. MATHENY stated the first time IARPA tried to hire [REDACTED] was by his predecessor, Peter T. HIGHNAM. The hiring process for [REDACTED] was on-going when he came into his current position. MATHENY explained that IARPA has an unusual hiring process in the sense that they don't post requirements for PM. Either through direct recruitment or whenever IARPA receives an interesting research proposal from someone, IARPA works with Human Resources (HR) to draft the selection memos and put together a COE. In [REDACTED] case, MATHENY said that [REDACTED] submitted a proposal while in private sector, post Doctorial studies to IARPA to provide research on Future Technology Forecasting. HIGHNAM was interested in this particular research and had offered [REDACTED] a COE.

(U//~~FOUO~~) MATHENY further stated when he became the Director of IARPA and contacted [REDACTED] to see how far along in the clearance process had he advanced. MATHENY learned [REDACTED] had decided to pursue an appointment in Singapore and would be unavailable for quite some time. Additionally, [REDACTED] was frequently traveling to China on business which would make his clearance process take even longer. IARPA had a need to launch a new program in Scientific and Technical Intelligence related to Technology Forecasting and needed someone immediately. MATHENY said that he asked [REDACTED] if he would be interested in a consulting position supporting IARPA while discussing rescinding his COE due to the fact that [REDACTED] was not available for IARPA at the time. MATHENY said that [REDACTED] agreed and that is when he passed [REDACTED] contact information to [REDACTED]

(U//~~FOUO~~) MATHENY explained that six months after [REDACTED] COE was rescinded, IARPA identified another candidate who already had his clearance but was unavailable to take the position for a different set of reasons. MATHENY said at this point, [REDACTED] was serving as a senior consultant to IARPA and since IARPA still had the need for a PM, [REDACTED] was offered a COE signed by MATHENY. MATHENY said that the only way [REDACTED] case is a little different from any other Government hire is that his initial COE was rescinded and reoffered at a later date. MATHENY explained that IARPA is currently working with ODNI management to streamline a system that would allow IARPA to hire SME's more expeditiously.

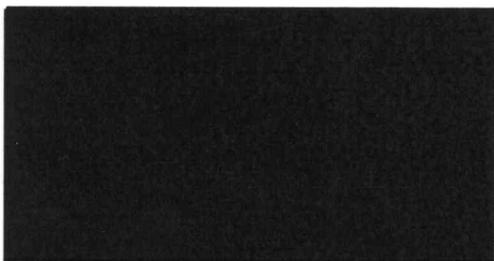
(U) IV. Conclusion

(U//~~FOUO~~) IARPA uses the Industrial Contractor currently in place to provide SME's when a need arises for an identified research work to be done. Identified SME's in the private sector or academia who are the ideal candidates to conduct the work for IARPA are put through a very lengthy security clearance process and by the time they get their clearance, IARPA's requirement may no longer be relevant. On the contrary, Industrial Contractors can engage the identified SME and have them complete IARPA's requirement as an IC in a timely fashion. IARPA's hiring process and mission requirements are unique from other ODNI components. IARPA's PM positions are identified either by proposals submitted from SME's to conduct research for the Government in their field of expertise or by IARPA identifying a study that the Government needs to expand on. Based on this, IARPA in coordination with ODNI HR, writes and presents the COE to the SME's. For all other positions in ODNI, the requirements are posted and individuals apply against the criteria in the vacancy announcement.

(U//~~FOUO~~) Based on our analysis of available information, IC IG did not find evidence of hiring Improprieties therefore, the allegation is unsubstantiated.

(U) V. Recommendations

(U//~~FOUO~~) For the reasons articulated above, it is recommended that this matter be closed.



Investigator

Date