

EMPOWER OVERSIGHT

Whistleblowers & Research



November 9, 2021

VIA ELECTRONIC TRANSMISSION: OIGFOIA@USDOJ.GOV

**Deborah M. Waller, Supervisory Government Information Specialist
Office of Inspector General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530**

**RE: FREEDOM OF INFORMATION ACT REQUEST:
RECORDS RELATED TO DOJ-OIG INVESTIGATIVE SUMMARY 21-090**

Dear Ms. Waller:

Introduction

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Background

On July 6, 2021, the Department of Justice Office of Inspector General (“DOJ-OIG”) posted on its website an item entitled *Findings of Misconduct by a then FBI Special Agent in Charge and two then FBI Assistant Special Agents in Charge for Their Roles in Unauthorized \$2 Million Purchase of Intellectual Property Related to Classified*

*Undercover Operation and Related Misconduct.*¹ The item includes a link to Investigative Summary 21-090, which advises that the DOJ-OIG investigated allegations that in 2014 high-level officials of the Federal Bureau of Investigation (“FBI”) spent \$2 million in government funds without authorization and engaged in other acts of misconduct related to that expenditure.

Specifically, the DOJ-OIG investigation substantiated an allegation that the then Special Agent in Charge (“SAC”) and two then Assistant Special Agents in Charge (“ASACs”) of an unidentified field division participated in a \$2 million purchase of intellectual property in connection with a classified undercover operation, and that the intellectual property purchase was made without the requisite authorization. The DOJ-OIG found that these actions violated FBI policy.

The DOJ-OIG investigation also found that, in connection with the underlying undercover operation, the ASACs failed to disclose accurate cash on hand figures in order to fund the unauthorized intellectual property purchase. This too violated FBI policy. Additionally, the DOJ-OIG determined that the SAC deliberately falsified a funding request for the classified undercover operation, in violation of FBI policy.

The DOJ-OIG investigation also substantiated that one of the ASACs showed a lack of candor related to the purchase. This too violated FBI policy.

Prior to the completion of the DOJ-OIG’s investigation, the SAC and one of the ASACs retired. Additionally, the second ASAC’s resigned before the DOJ-OIG’s investigation was completed.

Finally, the DOJ-OIG reported that prosecution was declined, and that it has provided a classified report to the FBI for appropriate action.

The public has an interest in understanding the FBI financial/procurement internal controls that failed to prevent the SAC and ASACs from engaging in an unauthorized expenditure of \$2 million; whether the FBI conducted a criminal investigation of the allegations that it referred to the DOJ-OIG (and, if not, why not; or, if so, what was the result of its investigation); and the reasons why the Department of Justice (“DOJ”) declined to prosecute three high-level law enforcement officials who, according to the plain text of the DOJ-OIG’s investigative summary, conspired to misuse \$2 million in Federal resources, and created and filed false records to conceal their misconduct.

The public also has an interest in knowing the jurisdiction to which the SAC was assigned and his or her identity—given that SAC is a senior level position with significant powers, authorities, and discretion.

¹ <https://oig.justice.gov/reports/findings-misconduct-then-fbi-special-agent-charge-and-two-then-fbi-assistant-special-agents>.

Records Request

To shed light the internal controls that failed to prevent the SAC's and ASACs' misconduct and the DOJ's response to such misconduct, Empower Oversight respectfully requests, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, copies of:

1. The DOJ-OIG investigative report—including attachments, exhibits, and appendices—described by DOJ-OIG Investigative Summary 21-090, without redactions of the SAC's name or the office which the SAC led.
2. The referral of allegations—including attachments, exhibits, and appendices—from the FBI to the DOJ-OIG that resulted in the investigation described by DOJ-OIG Investigative Summary 21-090.
3. Communications from or to the FBI or the DOJ-OIG, comprising or relating to referrals for prosecution of the misconduct of the SAC and/or ASAC(s) described by DOJ-OIG Investigative Summary 21-090.
4. Emails from or to the FBI or the DOJ-OIG, relating to the misconduct of the SAC and/or ASAC(s) described by DOJ-OIG Investigative Summary 21-090, from or to any email address ending in "house.gov" or "senate.gov."

Definitions

"COMMUNICATION(S)" means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

"DOCUMENT(S)" or "RECORD(S)" mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms "DOCUMENT(S)" or "RECORD(S)" include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound

recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

Instructions

The time period of the requested records is January 1, 2014, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “news media requester”² and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other

² As the Securities Exchange Commission recently conceded, with its issuances of ‘press releases’ describing its activities and findings, and its emails of research papers, FOIA updates, and news accounts of its activities to an address list more than 9,400 members of the press, Capitol Hill staff, and key thought leaders, Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA.

means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of DOJ's operations or activities. Specifically, the public has a significant interest in understanding the FBI financial/procurement internal controls that failed to prevent the SAC and ASACs from engaging in an unauthorized expenditure of \$2 million; whether the FBI conducted a criminal investigation of the allegations that it referred to the DOJ-OIG; and the reasons why the DOJ declined to prosecute three high-level law enforcement officials who conspired to misuse \$2 million in Federal resources, and created and filed false records to conceal their misconduct. The public also has an interest in knowing the jurisdiction to which the SAC was assigned and his or her identity.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the DOJ's practices will be disclosed publicly via its website, and shared copies with other news media for public dissemination.³

Request for Expedited Processing

Although Empower Oversight fully expects the DOJ-OIG to respond to this FOIA request within the 20 business days allotted by the FOIA, it requests expedited processing. Understanding the FBI financial/procurement internal controls that failed to prevent the SAC and ASACs from engaging in an unauthorized expenditure of \$2 million; whether the FBI conducted a criminal investigation of the allegations that it referred to the DOJ-OIG; and the reasons why the DOJ declined to prosecute three high-level law enforcement officials who conspired to misuse \$2 million in Federal resources, and created and filed false records to conceal their misconduct, is of widespread and exceptional media interest and the information sought involves questions about internal controls, investigative integrity, and prosecutorial decisions that affect public confidence in the activities and operations of the DOJ. There also is widespread media interest in knowing the jurisdiction to which the SAC was assigned and his or her identity. Empower Oversight is engaged in disseminating information to the public through its website and working with media.⁴ Accordingly, it is important that this request be processed and the results publicly disseminated as quickly as possible.

³ "Mission," Empower Oversight (<http://empowr.us/mission>).

⁴ "Mission," Empower Oversight (<http://empowr.us/mission>).

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format.

Thank you for your time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

/s/

Jason Foster
Founder & President