

EMPOWER OVERSIGHT

Whistleblowers & Research



June 9, 2022

VIA ELECTRONIC TRANSMISSION: OIGFOIA@USDOJ.Gov

Deborah M. Waller, Supervisory Government Information Specialist
Office of Inspector General
U.S. Department of Justice
441 G Street, N.W.
6th Floor
Washington, DC 20530

RE: OIG FOIA REQUEST No. 22-OIG-031

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.

On November 9, 2021, Empower Oversight filed with the Department of Justice’s Office of Inspector General (“DOJ-OIG”) a request for records under the Freedom of Information Act (“FOIA”).¹ The DOJ-OIG acknowledged receipt of the request and assigned it a tracking number, 22-OIG-031. In contrast to its obligation under Subsection a(6)(A) of the FOIA,² however, by May 2, 2022, the DOJ-OIG had not advised Empower Oversight about the volume of the records that the DOJ-OIG possesses that are responsive to the request; whether the responsive records are subject to one or more FOIA exemption(s) and, if so, which exemption(s); and when the DOJ-OIG will produce any responsive, non-exempt records.

¹ The FOIA is codified at 5 U.S.C. § 552.

² See generally, 5 U.S.C. § 552(a)(6)(A); Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n, 711 F.3d 180 (D.C. Cir. 2013).

On May 2, 2022, the DOJ-OIG sent Empower Oversight two letters referencing FOIA Request Number 22-OIG-031. One letter denies the request in full claiming that all information responsive to the request is classified. The second letter advises that the DOJ-OIG is actively processing FOIA Request Number 22-OIG-031, that its search for records has been initiated (and continues), and that after the search is complete the DOJ-OIG will review responsive records and render a disclosure determination.

In light of the DOJ-OIG's inconsistent May 2nd responses to FOIA Request Number 22-OIG-031 and the consequential deadline for filing an administrative appeal if the DOJ-OIG has indeed denied the request in full, Empower Oversight respectfully requests that the DOJ-OIG promptly advise which of its two May 2nd letters is correct.

Background

On July 6, 2021, the 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*.³ 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 former Special Agent in Charge ("SAC") and two Assistant Special Agents in Charge ("ASACs") of an unidentified FBI 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, in violation of FBI policy. The DOJ-OIG further determined that the SAC deliberately falsified a funding request for the classified undercover operation, also 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 resigned before the DOJ-OIG's investigation was completed.

Finally, the DOJ-OIG reported that the Department of Justice ("DOJ") declined prosecution, and that the DOJ-OIG has provided a classified report to the FBI for appropriate action.

The public has an interest in better understanding:

³ DOJ-OIG, *Investigative Summary 21-090: 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* (July 6, 2021), available at <https://oig.justice.gov/reports/findings-misconduct-then-fbi-special-agent-charge-and-two-then-fbi-assistant-special-agents> (last accessed on April 18, 2022).

1. Why the FBI's financial/procurement internal controls failed to prevent the SAC and ASACs from engaging in an unauthorized expenditure of \$2 million;
2. 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
3. Why the DOJ declined to prosecute three senior 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.⁴

Records Request

To shed light the internal controls that failed to prevent the SAC's and ASACs' misconduct, as well as the DOJ's response to such misconduct, Empower Oversight submitted to the DOJ-OIG a request for records pursuant to the FOIA on November 9, 2021. Empower Oversight's FOIA November 9th FOIA request seeks:

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."⁵

Empower Oversight also requested expedited processing and a waiver of all fees that may be assessed in connection with the DOJ-OIG's processing of its November 9th request.

Response to Records Request

By letter dated November 22, 2021, the DOJ-OIG acknowledged receipt of Empower Oversight's November 9th FOIA request, designated it FOIA Request Number 22-OIG-031, denied Empower Oversight's request for expedited processing, and committed to "answer [the] request as quickly as possible."⁶

⁴ See, e.g., Brady v. Maryland, 373 U.S. 83 (1963).

⁵ Empower Oversight's November 9, 2021, FOIA request is attached as Exhibit 1.

⁶ The DOJ-OIG's November 22, 2021, letter acknowledging Empower Oversight's November 9th FOIA request is attached as Exhibit 2.

More than four months later, Empower Oversight had not received any further correspondence from the DOJ-OIG concerning FOIA Request Number 22-OIG-031 and, accordingly, on April 21, 2022, Empower Oversight wrote to the DOJ-OIG, pointing out that the 20 business days that Subsection a(6)(A) of the FOIA affords the DOJ-OIG to render a determination on Empower Oversight's November 9th FOIA request had expired on or about December 23, 2021, making FOIA Request Number 22-OIG-031 ripe for judicial review.^{7, 8} However, to avoid litigation that would be unnecessary if the DOJ-OIG's determination on FOIA Request Number 22-OIG-031 was imminent, Empower Oversight respectfully requested that the DOJ-OIG promptly respond concerning its progress processing the FOIA request.

On May 2, 2022, at 9:18 am, Empower Oversight received from the DOJ-OIG a letter denying its November 9th FOIA request on the grounds that information concerning the misconduct of the three high-level FBI employees is classified.⁹

Later on May 2, 2022, at 4:49 pm, Empower Oversight received a second letter from the DOJ-OIG.¹⁰ The second letter, without mentioning Empower Oversight's April 21st request for the status of the DOJ-OIG's processing of its FOIA request, claims to be an interim response to the November 9th FOIA request. It goes on to advise that the DOJ-OIG had initiated a search for responsive records (and the search continues) and that after the search is completed all potentially responsive records that the DOJ-OIG locates and compiles will be reviewed for a "disclosure determination"—albeit a tardy one.

In light of the DOJ-OIG's inconsistent May 2nd responses to FOIA Request Number 22-OIG-031 and the consequential deadline for filing an administrative appeal if the DOJ-OIG has indeed denied the request in full, Empower Oversight respectfully requests that the DOJ-OIG promptly advise which of its two May 2nd letters is correct. Alternatively, please advise how the two letters can be reconciled.

⁷ Empower Oversight's April 21, 2022, letter is attached as Exhibit 3.

⁸ See generally, 5 U.S.C. § 552(a)(6); *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013). Subsection a(6) of the FOIA requires agencies to make "determinations" on FOIA requests, and to notify the requesters of such determinations, within 20 business days, unless unusual circumstances exist. See, 5 U.S.C. § 552(a)(6). To make a proper "determination" under the FOIA, an agency:

must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the "determination" is adverse.

See, *Citizens for Responsibility & Ethics in Washington*, 711 F.3d at 188.

If an agency fails to comply with the applicable FOIA deadlines, then the requester "shall be deemed to have exhausted his administrative remedies" and may seek judicial review. See, 5 U.S.C. § 552(a)(6)(C)(i).

⁹ The DOJ-OIG's May 2, 2022, letter denying Empower Oversight's November 9th FOIA request is attached as Exhibit 4.

¹⁰ The DOJ-OIG's second May 2, 2022, letter, which advises Empower Oversight of the status of the DOJ-OIG's processing of its November 9th FOIA request, is attached as Exhibit 5.

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

Cordially,

/Jason Foster/

Jason Foster
Founder & President

Exhibit 1

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

Exhibit 2



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

November 22, 2021

Bryan Saddler
bsaddler@empowr.us

Subject: Freedom of Information/Privacy Act Request [22-OIG-031]

Dear Mr. Saddler:

Your request for information relating to the above-cited subject was received in this office on November 9, 2021.

Your request will be handled under the provisions of the Freedom of Information Act (5 U.S.C. §552) and the Privacy Act (5 U.S.C. §552a). It has been assigned the following control number: 22-OIG-031. Please cite this number in any further inquiry about this request.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). The Director has determined that your request for expedited processing should be denied. Please be advised that, although your request for expedited processing has been denied, it has been assigned to an analyst in this office and our processing of it has been initiated.

We will answer your request as quickly as possible. If you have further questions, please address your inquiry to U.S. Department of Justice, Office of the Inspector General, 950 Pennsylvania Avenue, N.W., Suite 4726, Washington, D.C. 20530 or to check the status of your request contact us at (202) 616-0646.

If you are not satisfied with OIG's determination in response to this request for expedition, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Kim Kochurka

Government Information Specialist
Office of the General Counsel

Exhibit 3

EMPOWER OVERSIGHT

Whistleblowers & Research



April 21, 2022

VIA ELECTRONIC TRANSMISSION: OIGFOIA@USDOJ.Gov

Kim Kochurka, Government Information Specialist
Office of Inspector General
U.S. Department of Justice
441 G Street, N.W.
6th Floor
Washington, DC 20530

RE: OIG FOIA REQUEST No. 22-OIG-031

Dear Ms. Kochurka:

Introduction

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Empower Oversight has filed with the Department of Justice’s Office of Inspector General (“DOJ-OIG”) a request for records under the Freedom of Information Act (“FOIA”).¹ The DOJ-OIG acknowledged receipt of the request and assigned it a tracking number, but to date—and in contrast to its obligation under Subsection a(6)(A) of the FOIA²—it has not advised Empower Oversight about the volume of the records that the DOJ-OIG possesses that are responsive to the request; whether the responsive records are subject to one or more FOIA exemption(s) and, if so, which exemption(s); and when the DOJ-OIG will produce any responsive, non-exempt records.

¹ The FOIA is codified at 5 U.S.C. § 552.

² See generally, 5 U.S.C. § 552(a)(6)(A); Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n, 711 F.3d 180 (D.C. Cir. 2013).

Empower Oversight respectfully requests that the DOJ-OIG promptly explain when it can expect to receive a determination concerning FOIA Request Number 22-OIG-031 as required by 5 U.S.C. § 552(a)(6)(A)(i) and why no such determination has been provided within the statutorily mandated timeframe.

Background

On July 6, 2021, the 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*.³ 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.

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The public has an interest in better understanding:

1. Why the FBI’s financial/procurement internal controls failed to prevent the SAC and ASACs from engaging in an unauthorized expenditure of \$2 million;
2. 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
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³ DOJ-OIG, *Investigative Summary 21-090: 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* (July 6, 2021), available at <https://oig.justice.gov/reports/findings-misconduct-then-fbi-special-agent-charge-and-two-then-fbi-assistant-special-agents> (last accessed on April 18, 2022).

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.⁴

Records Request

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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."⁵

Empower Oversight also requested expedited processing and a waiver of all fees that may be assessed in connection with the DOJ-OIG's processing of its November 9th request.

By letter dated November 22, 2021, the DOJ-OIG acknowledged receipt of Empower Oversight's November 9th FOIA request, designated it FOIA Request Number 22-OIG-031, denied Empower Oversight's request for expedited processing, and committed to "answer [the] request as quickly as possible."⁶

More than *four months* later, Empower Oversight has received no further correspondence from the DOJ-OIG concerning FOIA Request Number 22-OIG-031.

Analysis

As a consequence of the DOJ-OIG failing to render a determination on Empower Oversight's November 9th FOIA request within 20 business days, Empower Oversight has exhausted its administrative remedies and its FOIA request is ripe for judicial review.⁷ Without

⁴ See, e.g., Brady v. Maryland, 373 U.S. 83 (1963).

⁵ Empower Oversight's November 9, 2021, FOIA request is attached as Exhibit 1.

⁶ The DOJ-OIG's November 22, 2021, letter acknowledging Empower Oversight's November 9th FOIA request is attached as Exhibit 2.

⁷ See, 5 U.S.C. § 552(a)(6)(C)(i).

waiving its right to pursue judicial review, however, Empower Oversight respectfully requests the DOJ-OIG's prompt response concerning its progress processing the FOIA request. Specifically, please apprise Empower Oversight concerning:

- How many records the DOJ-OIG possesses that are responsive to the November 9th FOIA request;
- Whether the responsive records are subject to one or more FOIA exemption(s);
- If particular records are subject to one or more FOIA exemption(s), which exemption(s); and
- When the DOJ-OIG will produce responsive, non-exempt records.

Department of Justice Transparency Directive

During his confirmation hearing, on February 22, 2021, Attorney General Garland stated that he is "very much committed to transparency and to explaining Justice Department decision making."⁸

Consistent with his commitment to transparency, by a March 15, 2022, memorandum, the Attorney General advised the heads of all agencies and departments (hereinafter "agency" or "agencies") of the Federal Executive Branch of the United States of new FOIA guidelines that they must adhere to, at the risk of the DOJ refusing to defend such them in litigation.⁹

The core of the Attorney General's new guidelines is a presumption of openness to ensure transparency in government operations. Accordingly, the Attorney General reminds agency heads that the 2016 amendments to the FOIA provide that a Federal agency may withhold responsive records only if:

- (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or
- (2) disclosure is prohibited by law.¹⁰

Explaining the "foreseeable harm" standard of the 2016 amendments for agencies that process FOIA requests, the Attorney General added:

Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail. Moreover, agencies

⁸ United States Senate, *Committee on the Judiciary: The Nomination of the Honorable Merrick Brian Garland to be the Attorney General of the United States: Day 1*, at approximately 1:21:45, (February 22, 2021), available at <https://www.judiciary.senate.gov/meetings/the-nomination-of-the-honorable-merrick-brian-garland-to-be-attorney-general-of-the-united-states-day-1> (last accessed on April 18, 2022).

⁹ See generally, Memorandum for Heads of Executive Departments and Agencies from Attorney General Merrick B. Garland, with the Subject "Freedom of Information Act Guidelines, (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and> (last accessed on April 12, 2022).

¹⁰ Memorandum for Heads of Executive Departments and Agencies from Attorney General Merrick B. Garland, with the Subject "Freedom of Information Act Guidelines, p. 1 (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and> (last accessed on April 12, 2022).

are strongly encouraged to make discretionary disclosures of information where appropriate.¹¹

The Controlling Provisions of the FOIA

In relevant part, Subsection a(6) of the FOIA requires agencies to make determinations on FOIA requests, and to notify the requesters of such determinations, within 20 business days, unless “unusual circumstances” exist (*i.e.*, “[i]n unusual circumstances”) and the agencies provide the requesters with written notice “setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched,” as follows:

(6)

(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of—

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination—

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and

...

(B)

(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. . . .¹²

¹¹ Memorandum for Heads of Executive Departments and Agencies from Attorney General Merrick B. Garland, with the Subject “Freedom of Information Act Guidelines, p. 1 (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and> (last accessed on April 12, 2022).

¹² 5 U.S.C. § 552(a)(6).

To make a proper “determination” under the FOIA, an agency:

must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the “determination” is adverse.¹³

For purposes of the FOIA, “unusual circumstances” are limited to the need to search for and collect the records from facilities or establishments that are separate from the office processing the request; to search for, collect, and appropriately examine a voluminous amount of records; or to consult with another agency, or two or more components of the same agency, that has a substantial interest in the determination on the records request.¹⁴

The extension of the 20 business day deadline because of “unusual circumstances” is confined to no more than 10 additional business days, unless the agency notifies the requester that it cannot process the FOIA request within 30 business days and provides the requester with the an opportunity to narrow the scope of his/her/its request so that it may be processed within the deadline, or arrange an alternative time period for processing, as follows:

(B)

(i) . . . No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C). . . .¹⁵

If an agency fails to comply with the applicable FOIA deadlines, then the requester “shall be deemed to have exhausted his administrative remedies” and may seek judicial review.¹⁶

¹³ Citizens for Responsibility & Ethics in Washington, 711 F.3d at 188.

¹⁴ 5 U.S.C. § 552(a)(6)(B)(iii).

¹⁵ 5 U.S.C. § 552(a)(6); *see also*, 28 C.F.R. § 16.5(c).

¹⁶ 5 U.S.C. § 552(a)(6)(C)(i).

The DOJ-OIG Has Exceeded FOIA's 20-business Day Deadline for Rendering a Determination

On November 22, 2021, the DOJ-OIG acknowledged receipt of Empower Oversight's November 9th FOIA request, did not claim the existence of "unusual circumstances," which would have enabled it to invoke a 10-day extension, and committed to "answer [the] request as quickly as possible."

The 20 business days that subsection a(6)(A) affords the DOJ-OIG to render a determination on Empower Oversight's November 9th FOIA request expired on or about December 23, 2021. Hence, FOIA Request Number 22-OIG-031 is now ripe for judicial review.

Nonetheless, to avoid litigation that may be unnecessary if the DOJ-OIG's determination on FOIA Request Number 22-OIG-031 is imminent (but without waiving Empower Oversight's right to seek judicial review now or at any future time), Empower Oversight respectfully requests the DOJ-OIG's prompt response concerning its progress processing the FOIA request, as described above.

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

Cordially,

/Jason Foster/

Jason Foster
Founder & President

Exhibit 1

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

Exhibit 2



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

November 22, 2021

Bryan Saddler
bsaddler@empowr.us

Subject: Freedom of Information/Privacy Act Request [22-OIG-031]

Dear Mr. Saddler:

Your request for information relating to the above-cited subject was received in this office on November 9, 2021.

Your request will be handled under the provisions of the Freedom of Information Act (5 U.S.C. §552) and the Privacy Act (5 U.S.C. §552a). It has been assigned the following control number: 22-OIG-031. Please cite this number in any further inquiry about this request.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). The Director has determined that your request for expedited processing should be denied. Please be advised that, although your request for expedited processing has been denied, it has been assigned to an analyst in this office and our processing of it has been initiated.

We will answer your request as quickly as possible. If you have further questions, please address your inquiry to U.S. Department of Justice, Office of the Inspector General, 950 Pennsylvania Avenue, N.W., Suite 4726, Washington, D.C. 20530 or to check the status of your request contact us at (202) 616-0646.

If you are not satisfied with OIG's determination in response to this request for expedition, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Kim Kochurka

Government Information Specialist
Office of the General Counsel

Exhibit 4



Bryan Saddler <bsaddler@empowr.us>

FOIA Request Related to Investigative Summary 21-090

OIGFOIA (OIG) <OIGFOIA@usdoj.gov>
To: Bryan Saddler <bsaddler@empowr.us>

Mon, May 2, 2022 at 9:17 AM

Hello:

Attached is the OIG's response to your FOIA request.

Thank you.

From: OIGFOIA (OIG)
Sent: Monday, November 22, 2021 8:28 AM
To: Bryan Saddler <bsaddler@empowr.us>
Subject: RE: [EXTERNAL] FOIA Request Related to Investigative Summary 21-090

Hello:

Attached is the OIG's acknowledgment of your FOIA request.

Thank you.

From: Bryan Saddler <bsaddler@empowr.us>
Sent: Tuesday, November 9, 2021 11:44 AM
To: OIGFOIA (OIG) <OIGFOIA@OIG.USDOJ.GOV>
Subject: [EXTERNAL] FOIA Request Related to Investigative Summary 21-090

Dear Ms. Waller: Attached is a request, pursuant to the Freedom of Information Act, for records related to the matter disclosed in DOJ-OIG Investigative Summary 21-090.

Please contact me directly if you have any questions or I can be of any assistance in your processing of this request. Cordially, Bryan Saddler

22-OIG-031.pdf
119K



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

May 2, 2022

Bryan Saddler
bsaddler@empowr.us

Subject: Freedom of Information/Privacy Act Request [22-OIG-031]

Dear Mr. Saddler:

This responds to your request under the Freedom of Information Act for access to records maintained by the Office of the Inspector General (OIG). Specifically, your request seeks documents related to the OIG Investigative Summary 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." The information you are seeking is classified. The OIG does not have authority to release the classified records and does not have a role in the classification review process. For these reasons, the OIG is required to withhold the records pursuant to the FOIA, 5 U.S.C. §552(b)(1), as amended. This provision exempts from disclosure information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Pursuant to Section 3.6 of Executive Order 12958, I am required to notify you that a request for declassification review may be declined if the information you seek has been reviewed for declassification within the past two years, or if the information is the subject of pending litigation. Accordingly, these records are exempt from disclosure.

Please be advised that the OIG considered the foreseeable harm standard of the FOIA Improvement Act of 2016 when reviewing the responsive records and applying the appropriate FOIA exemptions. We consider this response as closing your request with the OIG.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller, at (202) 616-0646 for any further assistance with your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

If you are not satisfied with OIG's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Deborah M. Waller

Deborah M. Waller
Supervisory Government Information Specialist
Office of General Counsel

Exhibit 5



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

May 2, 2022

Bryan Saddler
bsaddler@empowr.us

Subject: Freedom of Information/Privacy Act Request [22-OIG-031]

Dear Mr. Saddler:

This is an interim response to your Freedom of Information Act request dated November 9, 2021, for information maintained by the Office of the Inspector General (OIG).

A search has been initiated for records responsive to your request. The appropriate component(s) within the OIG are conducting a search to locate and identify all records potentially responsive to your request.

After the search has been completed, the records will be forwarded to this office for review and a disclosure determination. We will contact you upon completion of the search and provide you with additional information.

Please contact us at (202) 616-0646 if you have any questions or would like to discuss this matter further. Please cite the FOIA request number listed above in all further inquiries about this request.

Sincerely,

Deborah M. Waller

Deborah M. Waller
Supervisory Government Information Specialist
Office of General Counsel