OIG
Office of Inspector General
U.S. Department of State • Broadcasting Board of Governors

7/16/2020

Melanie Sloan
American Oversight
1030 15th Street NW
Washington, DC 20005

Subject: OIG Freedom of Information Act Request re: American Oversight v. U.S. Department of State, et al. Civil Action No. 20-0434. Final Response

Dear Ms. Sloan:

We received, by email, a Freedom of Information Act (FOIA) request to the Department of State (DOS) Office of Inspector General (OIG), dated September 30, 2019, seeking "all whistleblower complaints submitted to the State Inspector General containing allegations that concern the conduct of Secretary Mike Pompeo." That request was logged in our files on October 3, 2019. The request was given the FOIA Case number of 2019-109. We have responded to you with an acknowledgement response letter dated March 10, 2020.

You also sought "Records sufficient to identify how many whistleblower complaints were submitted to the State Inspector General containing allegations that concern the conduct of Secretary Mike Pompeo." That request was logged in our files on October 3, 2019. The request was given the FOIA Case number of 2019-110. As per your previous discussion with DOJ counsel, we consider this request to be subsumed in to our FOIA Case 2019-109 as a final response.

In response to your request, we conducted a search of the OIG's Office(s) of Investigations and Evaluations and Special Projects. That search identified 1 record (4 pages) responsive to your request. We reviewed the responsive record under the FOIA to determine whether it may be disclosed to you. Based on that review, this office is providing the following:

1 record (4 pages) released in part

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in violation of the Privacy Act. Information is also protected from disclosure pursuant to Exemptions b5, b6, b7A, b7C, b7D of the FOIA further discussed below.

Exemption 5, 5 U.S.C. § 552(b)(5)

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Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). DOS-OIG is invoking the deliberative process and attorney client privilege of Exemption 5 to protect information that falls within that privilege's domain.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of "personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6)(emphasis added). DOS-OIG is invoking Exemption 6 to protect the names of lower level investigative staff, third parties, subjects and any information that could reasonably be expected to identify such individuals.

Exemption 7(A), 5 U.S.C. § 552(b)(7)(A)

Exemption 7(A) authorizes the withholding of "records or information compiled for law enforcement purposes . . . to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). DOS-OIG is invoking Exemption 7(A) to protect information pertaining to investigations within this list of narratives that include ongoing proceedings.

Although other exemptions may be applicable to this information, DOS-OIG is not in a position to assert other exemptions at this time since these matters are still pending. An enclosure to this letter provides a brief explanation for additional exemptions that may be present.

Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)

Exemption 7(C) protects from public disclosure "records or information compiled for law enforcement purposes . . . [if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). DOS-OIG is invoking Exemption 7(C) to protect the names of lower level investigative staff, third parties, subjects and any information contained in these investigative records that could reasonably be expected to identify those individuals.

Exemption 7(D), 5 U.S.C. § 552(b)(7)(D)

Exemption 7(D) protects records or information compiled for law enforcement purposes, the release of which could reasonably be expected to disclose the identities of confidential sources. 5 U.S.C. § 552(b)(7)(D). DOS-OIG is invoking Exemption 7(D) to protect information that could reasonably be expected to identify confidential informants and information furnished by those individuals.

Appeal

Although I am aware that your request is the subject of ongoing litigation and appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of

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your right to file an administrative appeal.[1] If you choose to file an administrative appeal it must be received within 90 days of the date of this response. Please address any appeal to:

You have the right to appeal this response. Your appeal must be received within 90 calendar days of the date of this letter. Please address any appeal to:

Appeals Officer
Appeals Review Panel
Office of Information Programs and Services
U.S. Department of State
State Annex 2 (SA-2)
515 22nd Street, NW
Washington, DC 20522-8100
Facsimile: 202-261-8571

Both the envelope and letter of appeal should be clearly marked, "Freedom of Information Act/Privacy Act Appeal." Your appeal letter should also clearly identify the DOS-OIG's response. Additional information on submitting an appeal is set forth in the DOS regulations at 22 C.F.R. § 171.13.

For further assistance and to discuss any aspect of your request you may contact Rebecca Cutri-Kohart, Federal Programs Branch-Civil Division, U.S. Department of Justice Tel: (202) 514-0265.

Sincerely,

Kevin S. Donohue
Acting General Counsel
Department of State
Office of Inspector General

Enclosure

[1] For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. 5 U.S.C. 552(c) (2006 & Supp. IV 2010). 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.

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Hotline Intake
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OIG Hotline Submission Form

--------- CONFIDENTIALITY

Submit as anonymous: no

Willing to waive confidentiality: no

--------- YOUR INFORMATION ---------

Name: (b) (7)(D)

E-mail: (b) (7)(D)

Phone number: (b) (7)(D)

--------- COMPLAINT INFORMATION ---------

Location of incident: Washington, DC, other locations in the U.S. including New York and Florida, and overseas (b) (7)(D)

Dates of incident: (b) (7)(D)

Types of waste/fraud/abuse: (b) (5)

Summarize incident: I am (b) (7)(D) and most recently served as a (b) (7)(D) on the (b) (6), (b) (7)(C) (b) (7)(D) (b) (7)(D) directly witnessed and/or heard numerous firsthand accounts from those I (b) (7)(D) of the

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following behavior by the (b) (6), (b) (7)(C)(b) (6), (b) (7)(C)

--(b) (5)
(b) (5)
(b) (6), (b) (7)(C)
(b) (5)
(b) (6), (b) (7)(C)
(b) (5)

-- False or misleading statements (b) (5)
(b) (5)
(b) (6), (b) (7)(C)

(b) (5)

-- Direction by (b) (7)(A)
(b) (7)(A)
(b) (5)
(b) (5)

(b) (5)
(b) (6), (b) (7)(C)
(b) (5)
(b) (5)

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Name of company or individual responsible for incident: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Title of person responsible: (b) (6), (b) (7)(C)

How do you know this incident occurred: See above; I directly witnessed much of the behavior described above (b) (7)(A) I did not directly witness behavior by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (5) but I was a (b) (7)(D) to several (b) (6) other (b) (7)(D) (b) (6), (b) (7)(C) tried on several occasions to obtain clarifications and guidance from senior leadership in S/ES and from the Office of the Legal Advisors, but were blocked from doing so (b) (7)(A)

Do you have further evidence: yes

--------- DOES ANYONE ELSE KNOW ABOUT THIS INCIDENT? ---------

Does anyone else know about this incident: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Title of other person: (b) (6), (b) (7)(C)

How other person knows of incident: (b) (5) witnessed these issues firsthand. (b) (5) (b) (6), (b) (7)(C)

--------- ADDITIONAL INFORMATION ---------

Any other details: (b) (7)(A) (b) (7)(A) were made aware of these concerns on repeated occasions between (b) (5) To my knowledge, none of them ever took action to resolve the issues, and several of them specifically directed subordinate staff to continue

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facilitating questionable activities after the concerns were raised. (b) (6) (b) (6) were also made aware of the issues; they expressed (b) (5) (b) (5) I am unaware that any resolution was reached, potentially because (b) (7)(A) (b) (7)(A) seek clarification or guidance from L despite requests from subordinates to do so.

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