



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Special Reviews

OFFICE OF INFORMATION AND TECHNOLOGY

Alleged Misuse of Official
Time and Possible Ethics
Violation by an Information
Technology Employee

ADMINISTRATIVE
INVESTIGATION

REPORT #17-04969-202

JULY 28, 2020



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Executive Summary

The Office of Inspector General (OIG) investigated an allegation that a GS-14 information technology supervisor in VA's Office of Information and Technology (the employee) misused his government email account by sending personal emails during duty hours. The complaint further alleged that the employee took advantage of his full-time telework arrangement to handle personal matters at home, also during his duty hours.

The investigation confirmed that the employee did not strictly adhere to his duty hours. The employee teleworks on a full-time basis supervising the work of VA employees and contractors, which results in down time while he awaits deliverables from others. The employee acknowledged his use of VA's email system to send personal emails and his attention to other personal matters during his scheduled duty hours. However, to ensure that his work was completed, he also sent emails and engaged in work activities outside of his regularly scheduled duty hours. His supervisor described his performance as outstanding and did not observe any effect on his productivity. The OIG thus could not substantiate that the employee misused official time or made excessive personal use of VA resources.

While investigating these allegations, the OIG became aware that the employee had referred VA facilitators responsible for conference planning to his wife, who is a sales manager for a large hotel chain. He then sent a number of emails in which he provided direction and otherwise inserted himself into the process of making arrangements for two events involving his work group. The facilitators thereafter booked rooms for these two meetings at hotels for which the employee's wife had sales responsibility. Although the facilitators made the decision and the arrangements were advantageous to VA, the OIG concluded that the employee's conduct appeared contrary to ethical rules prohibiting an employee from using his public office for "his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity...." The OIG made one recommendation relating to a supervisory review of the employee's conduct and consideration of appropriate administrative action, if any.

A handwritten signature in cursive script that reads "R. James Mitchell".

R. JAMES MITCHELL, ESQ.
Acting Assistant Inspector General
for the Office of Special Reviews

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Abbreviations

OIG	Office of Inspector General
OIT	Office of Information and Technology



Introduction

The Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that a VA employee who is a GS-14 information technology supervisor (the employee) in the Office of Information and Technology (OIT) misused his government email account by sending personal emails during duty hours and took advantage of being a full-time telework employee to handle personal matters at home, also during his duty hours.¹ The OIG could not substantiate these allegations.² However, during the investigation, the OIG became aware that the employee had referred VA facilitators responsible for making arrangements for official meetings to his wife, who is a sales manager for a large hotel chain, and inserted himself into the process of booking rooms for two such meetings. The OIG concluded that his conduct appears to be contrary to ethical rules applicable to government employees.

Findings and Analysis

Finding 1: The OIG Could Not Substantiate that the Employee Misused Government Resources or Official Time

In his role as an associate director in OIT, the employee supervises government employees and oversees the work of contractors. The employee has teleworked full-time since August 2011 and works on a team with members located all over the United States. From June 26, 2016, through December 23, 2017, the employee's duty hours were from 8:00 a.m. to 4:30 p.m., Monday through Friday. OIG investigators identified emails sent by the employee during his duty hours related to a variety of personal matters, including household responsibilities, finances, and dependent care.³

Federal employees have a duty to protect and conserve government property and may not use it for other than authorized purposes.⁴ VA Directive 6001 allows for limited personal use of government office equipment, including email, if the use does not interfere with official business

¹ As part of an organizational realignment, the staff of the OIG's former Administrative Investigations Division have been merged with staff from the Office of Special Reviews, which has assumed responsibility for supervising and publishing the results of the Administrative Investigation Division's pending cases.

² The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Investigations*. The OIG *substantiates* allegations when the facts and findings support that the alleged events or actions took place. The OIG *does not substantiate* allegations when the facts show the allegations are unfounded. The OIG *cannot substantiate* allegations when there is no conclusive evidence to either sustain or refute the allegation.

³ As described below, he also sent work-related emails outside of his duty hours.

⁴ Government property includes telecommunications equipment and government emails. 5 C.F.R. § 2635.704(b)(1), *Use of Government Property* (1997).

and involves minimal additional expense to the government.⁵ Such personal use should take place during the employee's non-work time,⁶ and must not result in a loss of employee productivity or interfere with official duties.⁷ This directive characterizes this limited use as a privilege extended "... as a matter of management's recognition of employees' personal and family needs."⁸ In addition, federal employees are required to use official time in an honest effort to perform official duties.⁹ VA employees are expected to be on duty during the full period of their duty hours unless absent on approved leave.¹⁰

The employee acknowledged that he used his VA computer and email for personal communications during his duty hours. The employee's supervisor told OIG investigators that she was unaware of the employee's personal use of email.

The employee described his VA duties as "transactional," and explained that he frequently completed work and sent assignments to contractors, which necessitated awaiting the return of contract deliverables for him to review. This often resulted in what he described as inactive periods lasting between fifteen minutes and two hours, during which he handled personal matters. His supervisor confirmed that their work had "ebbs and flows." According to the employee, he frequently worked outside his duty hours and on leave when necessary to complete his work. While his supervisor does not expect employees to work outside their duty hours, she said that the employee "takes a great deal of responsibility on himself" and confirmed that he responds to emails outside his duty hours or when on leave. The supervisor stated that she had not seen any decline in the employee's productivity, which she described as "in an outstanding manner to the betterment of the organization."

The OIG could not substantiate that the employee misused official time or made excessive personal use of VA resources. VA has not established criteria defining how much personal use of VA email is excessive and appears to have deferred to the judgment of its supervisors, who are in the best position to monitor employees' performance and productivity.

⁵ VA Directive 6001(2)(a), *Limited Personal Use of Government Office Equipment Including Information Technology*, July 28, 2000.

⁶ "Non-work time" is defined as time when the employee is not otherwise expected to be addressing official business, such as before or after a workday, lunch periods, authorized breaks, or weekends or holidays). VA Directive 6001(5)(a).

⁷ VA Directive 6001(2)(a).

⁸ VA Directive 6001(5)(f).

⁹ 5 C.F.R. § 2635.705(a) (1992); VA Handbook 5025, *Legal*, Appendix A, para. 5, April 15, 2002.

¹⁰ VA Handbook 5011, *Hours of Duty and Leave*, Part II, Chapter 2, 1(a)(5)-4, April 15, 2002.

Finding 2: The Employee Engaged in Conduct that Appeared Contrary to His Ethical Obligations to Avoid Using His Official Position for Private Gain

While reviewing the allegations described in Finding 1, an OIG investigator identified emails reflecting conduct by the employee that could impermissibly benefit his wife, and this issue was added to the scope of this investigation. Allegations of this nature are generally referred to as conflicts of interest, which may be addressed either as a violation of administrative regulations or criminal law. The relevant administrative regulations are found in the *Standards of Ethical Conduct for Employees of the Executive Branch*, which prohibit an employee from using his public office for “his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity....”¹¹

These same regulations also address “conflicting financial interests,” and specifically note that an employee is prohibited by criminal statute from participating personally and substantially¹² in an official capacity in any particular matter¹³ 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.¹⁴ For purposes of both this administrative regulation and the criminal statute, 18 U.S.C. § 208(a), the financial interests of an employee’s spouse will serve to disqualify the employee to the same extent as if they were the employee’s own interests.

The OIG’s investigation determined that the employee inappropriately inserted himself into a process of procuring hotel rooms and conference space for meetings to be held by groups within

¹¹ 5 C.F.R. § 2635.702 (1992).

¹² 5 C.F.R. § 2635.402 (1997), citing 18 U.S.C. § 208(a) (1990). To participate “personally” means to participate directly and includes the direct and active supervision of the participation of a subordinate in the matter. To participate “substantially” means that the employee’s involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice on a particular matter. *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 C.F.R. § 2635.402.

¹³ The term “particular matter” encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The particular matters covered include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or arrest. *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 C.F.R. § 2635.402.

¹⁴ A particular matter will have a “direct effect” on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. *Id.*

OIT, encouraging the meeting facilitators to book the events at a hotel chain where his wife worked in a sales capacity. The evidence demonstrated that in April 2017, planning was underway for two meetings involving certain OIT staff to take place in July and August 2017 in Florida. The same facilitators were responsible for arrangements for both meetings.¹⁵

In the process of reviewing a proposal from a large hotel chain that could provide sufficient conference space and accommodations for attendees with no transportation costs, one of the facilitators recalled that the employee's spouse was employed by a large hotel chain.¹⁶ In an effort to ensure that they were "talking to the right people" while considering a proposal from that same hotel chain, the facilitators reached out to the employee via email on June 22, 2017, seeking a point of contact at the hotel chain.¹⁷ The employee reached out to his wife, who emailed one of her employees to inform him that he would be hearing from the meeting facilitators; this employee was already working with the facilitators.

The employee thereafter participated in a number of emails with the facilitators and his wife's subordinate in which the employee

- Asked his wife's subordinate whether a particular property was available for the August meeting, providing detailed information about the number of hotel rooms and size of conference space needed.
- Referenced the government rate to be applied to the hotel rooms and directed that the conference room fee be waived.
- Advised his wife's subordinate to "look to cross-sell" a different property in the hotel chain if the desired property did not have availability.
- Discussed which hotels were in his wife's portfolio and which properties needed additional business and advised facilitators to refrain from sending business to his wife's competitor, a hotel chain property that was a franchise hotel. (The facilitator assured the employee that they would not book at that property.)
- Provided the meeting facilitators with a list of the hotels for which his wife had sales responsibilities and advised one of the facilitators, "Anytime you are looking please let me know and I will send a request to [his wife] or her Sales Executives (I know all of them too)."

¹⁵ The person primarily responsible for the arrangements was a contract employee and the other was a full-time VA employee. Neither reported to or were supervised by the employee.

¹⁶ The employee's wife was responsible for sales for a specific portfolio of the hotel chain's properties in the meeting location. The hotel property that had been identified by a staff member as the best option was a franchised hotel chain property that was not in the portfolio of hotels managed by the employee's wife.

¹⁷ One day prior to the day the meeting facilitators contacted the employee for assistance, his wife had forwarded him a copy of her sales report, which reflected a significant decline in her hotels' total revenue.

- Told the facilitator that if she had a need for space for future events in other locations “you can still run the business through [his wife’s] group because they handle cross sell too.”

After a series of emails, some of which involved the employee, the facilitators arranged to hold the meetings at two hotel properties in the sales portfolio of the employee’s wife. One of the facilitators told OIG that she believed the employee was trying to be helpful, and that the decision on the meeting arrangements was made by the facilitators and the employee’s supervisor, not the employee, because there was “no cost” to VA because the hotel was charging only for the rooms and not the conference space and equipment. The other facilitator did not recall any involvement by the employee other than providing a contact name at the hotel chain.

The employee denied that his wife received any financial gain as a result of the two bookings, but he told OIG investigators that he did not know her compensation structure or whether she received any credit or compensation arising out of these bookings. He admitted to OIG investigators and his emails confirm that he was aware of his wife’s sales responsibilities and goals with the hotel chain and was also aware of a recent decline in revenues at her properties. Regardless of whether there was any specific, quantifiable financial benefit, the employee was aware that his wife had sales goals and that her management tracked bookings and revenue at her properties. Thus, booking rooms at her hotels appears to have been of at least some benefit to her.

The employee’s conduct in inserting himself into the reservation process for conferences involving OIT staff and advocating for hotels in his wife’s sales portfolio appears to have been contrary to ethical prohibitions against using his public office “for the private gain” of his wife.¹⁸ While he was asked to assist the facilitators by providing a point of contact at the hotel chain employing his wife, the employee went well beyond providing this basic information.

Conclusion

The OIG could not substantiate that the employee misused official time or government resources. The OIG determined that the employee’s involvement in the process of obtaining rooms for VA meetings at hotels for which his wife had sales responsibility appears to be contrary to ethical rules prohibiting him from using his public office for the private gain of his wife. The OIG recommends that his conduct be reviewed by his supervisor, in consultation with the Designated Agency Ethics Official and the Office of Human Resources and Administration, to determine whether any administrative action is necessary.

¹⁸ Because the conduct at issue could potentially be deemed to violate the provisions of 18 U.S.C. § 208, the OIG referred this matter to the U.S. Department of Justice, which declined to open an investigation.

Recommendations

1. The employee's supervisor confers with the Designated Agency Ethics Official and the Office of Human Resources and Administration to determine the appropriate administrative action to take, if any, with respect to the employee's conduct in connection with the procurement of hotel services from the employer of the spouse.

Management Comments

VA concurred with the OIG's finding and will determine appropriate administrative action within 90 days after receipt of the final OIG report. VA's response in its entirety can be found in Appendix A.

OIG Response

The OIG will evaluate any potential action taken after VA has made a final determination.

Appendix A: Management Comments

Department of
Veterans Affairs

Memorandum

Date: June 23, 2020

From: Principal Deputy Assistant Secretary for Information and Technology and Deputy Chief Information Officer (005A)

Subj: OIG Report, *Alleged Misuse of Official Time and Possible Ethics Violation by Information Technology Employee*, Project No. 2017-04969-IQ-0051

To: Acting Executive Director, Office of Special Reviews

Thank you for the opportunity to review the Office of Inspector General (OIG) draft report, *Alleged Misuse of Official Time and Possible Ethics Violation by Information Technology Employee*. The Office of Information and Technology submits the attached written comments. For questions related to OIT's comments on the OIG draft report, please contact Martha Orr, Deputy Chief Information Officer for Quality, Performance, and Risk at 202-461-5139, or have a member of your staff contact La Portia Pratt, Director, Office of Compliance Tracking at 202-461-6934.

(original signed by)
Dominic Cussatt
Attachment

OIG Recommendation 1: The employee's supervisor confers with the Designated Agency Ethics Official and the Office of Human Resources and Administration to determine the appropriate administrative action to take, if any, with respect to the employee's conduct in connection with the procurement of hotel services from the employer of the spouse.

OIT Comments: Concur. Based on the information contained in the OIG draft report, Human Resources Management and Consulting Services (HRMACS) Employee and Labor Relations will provide guidance on the appropriate administrative action to be taken consistent with Agency actions against similarly situated employees. Final recommendation, to include concurrence from the appropriate agency ethics official, cannot be provided until the OIG final report is received and reviewed.

Target Completion Date: 90 days after receipt of the final OIG report.

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