

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: EDO

To: Caputo, OI

AUTHOR: James Foster Cys: EDO
AFFILIATION: AFF UNK DEDMRS
ADDRESSEE: Dale Klein DEDR
SUBJECT: Jim Foster says the SSA found most of the good stuff and carefully buried it in their report DEDIA
AO

ACTION: Appropriate

DISTRIBUTION: Chairman, Comrs, OIG, OGC

LETTER DATE: 09/01/2007

ACKNOWLEDGED: No

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NOTES:

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DATE DUE: DATE SIGNED:

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Date: Sat, Sep 1, 2007 10:57 PM

Subject: JIM FOSTER SAYS THE SSA FOUND MOST OF THE GOOD STUFF AND CAREFULLY BURIED IT IN THEIR REPORT

I have read the attached SSA report, and it appears to me that their 11-person review team found almost all of the important things. Then they very carefully camouflaged them and deeply buried them in their report. I can only guess that the withheld portions would not disclose any startling facts. It's a sham, pure and simple; not what the NRC Commission wanted.

1. They found that OI did not have a statutory basis for conducting criminal investigations (this would normally rate as a major finding), and recommended that they obtain legislative changes to address this. OI personnel would certainly not have given the SSA folks the documents I have.
2. They found that OI investigations mostly consist of interviews with court reporters present, and that this would be considered as extremely unusual by other federal investigative agencies. This should have rung many bells...
3. They found that OI personnel issued firearms only qualify twice per year, versus four times a year for other federal criminal investigative agencies. They deleted this from the body of the report, but forgot that it was in the summary! This should have rung many more bells as to WHY do they qualify semiannually, and HOW can they justify this.
4. They did not look carefully at the OI requests for deputation, but amazingly concluded that since DOJ deputized them, it must have been OK. This means that they did not look at the basis (maybe they did) for the requests (hazards to the investigators, number of times this happened). Their approach is so very, very wrong that it suggests that they found out more...
5. They did a poor job of looking at training, and their finding that titles of courses at the Federal Law Enforcement Training Center had changed suggests that little post-employment training (discussed in the most general

of terms in the report) is being conducted.

6. Their entire review of OI techniques addressed conformance with OI procedures and the above interviews with court reporters present. Note: an interview with a court reporter present is done in non-threatening situations only, due to the hazard to the court reporter.

Yes, they gave Guy Caputo just what he wanted, including recommending having new employees immediately apply for deputation. If they were aware that OI only ever did administrative-type interviews, why did they recommend deputation?

The authors are not identified. The number 11 is mentioned, so one has to assume that they were SSA personnel. SSA may mean Secret Service Annex.

After a short period with OI, any good auditor, after discussing the NRC definition of "wrongdoing," finding that they had never arrested anyone (this should have been a major audit finding), and their statutory authority (or lack thereof), their interviews with court reporters present, and their firearms qualifications, would know he was not dealing with criminal investigators..they knew.

Jim Foster

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Subject: JIM FOSTER SAYS THE SSA FOUND MOST OF THE GOOD STUFF AND CAREFULLY BURIED IT IN THEIR REPORT

Creation Date Sat, Sep 1, 2007 10:53 PM

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Expiration Date: None

Priority: High

ReplyRequested: No

Return Notification: None

Concealed Subject: No

Security: Standard

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Junk Mail settings when this message was delivered

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SOCIAL SECURITY

March 3, 2005

Guy Caputo
Director, Office of Investigations
Nuclear Regulatory Commission
11545 Rockville Pike, Mail Stop 03F1
Rockville, MD 20852

Re: Report on the Qualitative Assessment Review of the Nuclear Regulatory Commission's
Office of Investigations

Dear Mr. Caputo:

Members of the Social Security Administration's (SSA) Office of the Inspector General (OIG) completed a review of the internal safeguards and management procedures of the U.S. Nuclear Regulatory Commission's Office of Investigations (NRC OI), in accordance with guidelines established by the President's Council and Integrity and Efficiency (PCIE) and the *Attorney General's Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority*.

The team reviewed the NRC OI internal policies and procedures to ensure compliance with the guidelines. The review was conducted at NRC OI headquarters in Rockville, Maryland, and in the four NRC OI regional offices located in King of Prussia, Pennsylvania; Atlanta, Georgia; Lisle, Illinois; and Arlington, Texas. During the process, the team reviewed 28 closed cases and training records at all of these offices.

Although the review was conducted using the PCIE's *Guide for Conducting Qualitative Assessment Reviews for Investigative Operations of Offices of Inspector General*, training records were reviewed but were considered separately from the other areas of the PCIE peer review process. This is because the NRC OI is not required to adhere to the training requirements described in section 812 of the Homeland Security Act of 2002 (Public Law 107-296). The training requirements listed in the Act only apply to certain offices of presidentially appointed Inspectors General.

In the opinion of the team that conducted the review, the investigative function of the NRC OI for the period ending February 2004 is in substantial compliance with the quality standards for investigations as established by the PCIE. The finding of substantial compliance, rather than full compliance, was based on inconsistencies in following the PCIE standards in three areas – not maintaining a case planning document in closed case files; not documenting the periodic case file reviews that are conducted by supervisors; and having prosecution reports contain the

opinions and conclusions of the investigating agent.

A separate finding of substantial compliance would have been given if training had been considered as part of the process. That finding would have been based on the frequency of required firearms qualifications. The PCIE requires quarterly firearms qualifications, while the NRC OI requires its agents to complete firearms qualifications on a semiannual basis. This was the only difference noted. All other aspects of training were in accordance with PCIE requirements.

In addition to conducting a review following PCIE peer review guidelines, the team expanded its review to include independent observations about other aspects of how the NRC OI conducts its investigations that are not included in the PCIE review process. This was done at your concurrence. The purpose for the additional, more in-depth review was to study issues not raised during a PCIE review that would have been addressed in an independent review of the NRC OI had the NRC proceeded with plans to hire a private contractor to conduct an assessment of OI's investigative techniques. It should be noted that the SSA OIG team felt confident that it could provide a comprehensive review of the NRC OI based on the investigative experience and knowledge of law enforcement administration that the 11-person review team possessed.

The findings and suggestions made by the review team regarding policies, procedures, and practices are enclosed with this letter.

The cooperation and assistance provided by your staff to our review team allowed for a thorough review of your organization. Please extend my thanks and appreciation to all of your employees who assisted our team in this activity.

Please call me at (410) 966-2436 if you wish to discuss this matter.

Sincerely,



Richard A. Rohde
Assistant Inspector General
for Investigations

Enclosure

cc:

Inspector General Hubert T. Bell

REVIEW OF ALLEGATION PROCESS

A review of the U.S. Nuclear Regulatory Commission's (NRC) allegation process was performed to determine:

1. How does the NRC handle allegations
2. Who determines that an allegation should be opened as a criminal investigation
3. What criteria is used to determine if the allegation involves criminal wrongdoing

The following materials were reviewed as background:

1. Policies and procedures manual of the NRC Office of Investigations (NRC OI)
2. NRC Directive 8.8, "Management of Allegations"

Records on file at the NRC OI headquarters office in Rockville, MD, were reviewed and discussions were held with several employees involved in the allegation process.

The allegation process is well documented in the NRC manuals cited above. The NRC regional offices have toll free telephone numbers available to those who wish to report allegations. Each regional office has an office allegation coordinator (OAC) who serves as the point of contact between the complainant and the NRC to gather pertinent information and make contact with the complainant as appropriate. Allegations are entered into an allegation management system data base and are tracked.

Allegations are brought before an Allegation Review Board (ARB) where they are reviewed and a determination is made as to whether the allegation warrants investigation by OI. The NRC has established a goal of 30 days to convene the ARB from the time the allegation is received. During the review, the ARB has available to them pertinent documents that have been gathered by the OAC or other technical staff. Violations and citations are identified to determine if the allegation falls within their jurisdiction. The priority (e.g., high, medium, or low) of the allegation is also taken into consideration. If it is determined an OI investigation is warranted, OI has two working days to open a case from the date of the ARB decision. In an emergency the ARB is convened to address allegations that warrant immediate attention.

NRC has initiated a pilot program to handle allegations of discrimination. Persons who bring forth allegations of discrimination are offered an alternative dispute resolutions (ADR) process in lieu of an OI investigation. Both parties involved must be in agreement to use the ADR process. The complainant can choose to terminate the ADR process up to three days after a settlement agreement has been reached. Under the pilot program, the ADR process is being offered to all complainants who report allegations of discrimination who have a "prima facia case."

The pilot program was initiated shortly before the time of this review. No data is yet available to evaluate the program's effectiveness. NRC intends to evaluate the ADR pilot program after two years. There is concern that a safety issue or other matter may not be appropriately addressed if

the individual who was discriminated against for raising the safety issue utilizes the ADR process.

Suggestions:

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NRC OI CASE FILE REVIEW

The NRC OI maintains their closed case files at their headquarters location in Rockville, MD. A review of 20 case files that were closed from 12/1/03 to 11/30/04 was conducted. Eight additional cases were reviewed in the field. The NRC OI closed approximately 236 cases during this time period. Our review encompassed a variety of case types including unauthorized use of radioactive material, discrimination against licensee employees for raising safety concerns, providing false information to the NRC, and failure to follow NRC regulations. Of the 236 cases closed, one case had received judicial action (Pre-Trial Diversion); one case had been accepted for prosecution by the US Attorney's Office and pending indictment; and 45 cases were presented to the US Attorney's Office but were declined in favor of administrative action. The case files were evaluated based on the President's Council on Integrity and Efficiency's *Quality Standards for Investigations*.

The reviewed case files demonstrated the following:

1. The NRC OI conducts its investigations in a fair and impartial manner and with the perseverance necessary to determine the facts.
2. The NRC OI employs the appropriate methods and techniques for the circumstances and objectives in each of their cases.
3. The NRC OI takes reasonable steps to ensure that all appropriate criminal, civil or administrative remedies are considered.
4. The NRC OI's findings are adequately documented in the case files.
5. The NRC OI conducts its investigations in a timely manner.

There were three areas in which inconsistencies with PCIE *Quality Standards for Investigations* were identified. These areas are:

1. The NRC OI is inconsistent in documenting the periodic case file reviews that are conducted by their supervisors (see Section B of the PCIE standards).
2. The NRC OI does not maintain a case planning document in its closed case files (see Section A of the PCIE standards).
3. The NRC OI Report of Investigation (ROI) contains the investigating agent's analysis of the evidence and OI's conclusions regarding wrongdoing (see Section C of the PCIE standards).

Suggestions:

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REVIEW OF INVESTIGATIVE TECHNIQUES

A review of the NRC OI's investigative techniques used during the conduct of criminal investigations was performed to determine:

1. What investigative techniques are most used by NRC OI agents.
2. Who determines what techniques should be used during an investigation
3. What criteria is used to determine if the technique is required

The following materials were reviewed as background:

1. Policies and procedures manual of the NRC Office of Investigations
2. Closed case files

Closed cases on file at the NRC Office of Investigations headquarters office in Rockville, MD, as well as closed cases held at the four field offices were reviewed and discussions were held with several employees involved in the investigative process.

The investigative process is well documented in the NRC OI Investigation and Procedures Manual (IPM). A review of randomly selected closed investigative case files indicated that agents generally follow the proscribed policies while conducting investigations.

One investigative technique that appears to be more commonly used by NRC OI agents than agents from other federal law enforcement agencies is the use of court reporters to record and transcribe interviews.

Suggestions:

Mail Covers

- A. A mail cover is used to record information on the outside container, envelope, or wrapper of mail, including the name and address of the sender and the place and date of postmarking. Obtaining information from the cover of a piece of mail from a Postal Inspector or any other postal employee, without an authorized mail cover, is illegal and can jeopardize a case that goes to court.
- B. Mail covers may be authorized only in criminal cases where information is needed to locate a fugitive or to obtain evidence of the commission or attempted commission of any crime punishable by imprisonment for a term of more than one year (felony). The mail cover is not an exploratory action and should not be requested as the initial step in any investigation.
- C. A mail cover request must be sent in writing to the Postal Inspection Service's Inspection Service Operations Support Group (ISOSG) that covers the area where the mail cover activity will occur.

The USPIS Mail Cover Program has been consolidated into two locations. Mail Cover Requests for the eastern 40 states, Washington DC, Puerto Rico and US Virgin Islands should be sent to:

US Postal Inspection Service
Criminal Investigations Service Center
Attn: MC
222 South Riverside Plaza, Suite 1250
Chicago, IL 60606-6100

Mail Cover Requests for Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon and Washington should be sent to:

US Postal Inspection Service
Attn: MC
PO Box 882168
San Francisco, CA 94188-2168

- D. Where an emergency exists, the Postal Inspector in Charge of the area or designee may grant a mail cover based on an oral request. While the mail cover data will be released immediately, the requesting agency must submit a written request for the mail cover within three business days to the appropriate ISOSG.

E.

1. Reason the mail cover is needed to locate a fugitive or to obtain information regarding the commission of or the attempted commission of a felony.

2.

3.

4. How long the mail cover is to be in effect. Mail covers are usually authorized for 30 days, and extensions are available.

5.

6.

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REVIEW OF DEPUTATION POLICY AND FIREARMS

A review of the NRC OI policy regarding the obtaining of special deputation from the U. S. Marshals Service which allows certain agents to carry a firearm was examined to answer the following:

1. Does the current procedure appear to meet the needs of the NRC OI
2. What criteria is used to determine which agents receive the special deputation
3. Who determines when the agent should exercise the special deputation authority

The following materials were reviewed as background:

1. Policies and procedures manual of the NRC Office of Investigations
2. Closed case files

The special deputation authority granted by the U. S. Marshals Service and the issuance of firearms is relatively new to the NRC OI. To date, the NRC OI has been judicious in deciding when to request deputation and when firearms are to be carried. The fact that now more than half of the agents in the NRC OI have received this deputation is an indicator that the Marshals Service believes that the agents have exercised this authority responsibly and that the NRC agents are encountering more investigations in which the carrying of a firearm is justified. In order to obtain the special deputation from the Marshals Service, the agent must meet certain standards which all NRC OI agents do based on completion of their federal law enforcement training and experience along with their demonstrated ability to qualify with the firearms issued by the NRC.

Suggestions:

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- The NRC OI should consider obtaining special deputation for all of its agents. As a practical matter, since obtaining the special deputation takes time to receive, it is recommended that commence with a practice of having all new NRC OI agents apply for deputation as soon as they are hired. Since NRC OI only hires experienced federal agents, the agents are generally well trained and familiar with weapons when hired. Requiring agents to continue training with a firearm keeps their skills from diminishing over time.

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- Another suggestion is to consider seeking legislative changes to provide for statutory law enforcement authority under the Atomic Energy Act of 1954, as amended. The Code of Federal Regulations (CFR) Chapter 10, section 1.36, lists five duties performed by the Office of Investigations. A sixth duty added as sub-section *(f)* *makes arrests for violations of the Act and carries firearms* would help establish the law enforcement identity of the NRC OI. All internal and external parties with whom the NRC OI interacts with would have a clearer picture that the matter at hand that requires the involvement of the NRC OI is in fact a criminal investigation.

REVIEW OF TRAINING AND EMPLOYEE DEVELOPMENT PROGRAMS

A review of the NRC OI's training and employee development program was performed to determine:

1. If all agents completed basic criminal investigator training
2. If the NRC OI provides in-service training for agents to maintain skills needed to perform law enforcement duties

The following materials were reviewed as background:

1. Investigative Guidance Memoranda for Fitness, Firearms and Investigator Orientation Program
2. NRC OI Training Category Charts

Information available to the review team established that all criminal investigators have attended basic federal criminal investigator training. A review of the training plans that serve as guides for investigators at various stages of their career appear to be well designed and simple to accomplish. Investigators are able to take courses to learn about the duties and responsibilities of the NRC and to develop skills as investigators and as managers.

Suggestions:

- The category charts should be reviewed and updated. Some of the names of the training program at the Federal Law Enforcement Training Center have been changed. For example, the course formerly known as Technical Investigative Equipment Training Program was renamed as Covert Electronic Surveillance Training Program.
- The NRC OI should consider becoming a participating member of the Federal Law Enforcement Training Center if its budget permits. Although there is a cost to this, there is value to becoming a full member - reduced tuition, better availability of courses,

opportunities to participate in curriculum development conferences, and greater interaction with trainers from other agencies, to name a few.

INTERNAL AND EXTERNAL RELATIONS

Although the NRC encourages publicity regarding its efforts to safeguard items and activities covered by the Atomic Energy Act, the NRC OI does not appear to be an organization that seeks attention for the work it performs. Although there is nothing wrong with that philosophy, perhaps some of the misconceptions about how investigations are conducted could be alleviated if others in the NRC and in the regulated industry had a better understanding of NRC OI activities. Publicizing what the agents of the NRC OI do and why they do it is mentioned since the review team became cognizant of the fact that some of those with whom the agents come in contact with seem to think that the conduct of investigators is often threatening. Perhaps this type of perception could be eliminated if others were made aware of the investigative process and proper practices for criminal investigators to follow when conducting an investigation. These practices are included in the PCIE's *Quality Standards for Investigations*.

Suggestion:

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RESULTS OF ON-SITE REVIEWS AT NRC OI FIELD OFFICES

Review teams consisting of SSA OIG supervisory criminal investigators conducted on-site reviews at all four NRC OI regional offices. During the on-site visits the review teams examined the following:

- training
- allegation management issues
- investigative procedures
- case management
- evidence handling procedures
- public affairs / media relations

All four review teams reported finding well managed offices. The agents and managers alike were experienced, professional federal agents who came to the NRC from a variety of other federal law enforcement agencies. The NRC OI is often required to work joint investigations with other federal agencies. The Federal Bureau of Investigation was the agency mentioned most.

The individual agent's training records were well documented and complete. Agents who are issued firearms qualify according to the required interval.

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Field Office Directors are satisfied with the Allegation Review Board process. They particularly noted that they are able to self-initiate an investigation even if the review board does not necessarily believe that a criminal violation has occurred.

None of the agents or supervisors interviewed found the practice of recording interviews to be overused or burdensome. The complicated nature of the investigations often makes the use of recorded interviews essential. Agents in three of the four offices indicated that the use of court reporters during interviews has declined during the past few years. The use of recording devices has lessened the need for court reporters in some investigations.

Procedures for handling evidence and grand jury material are in effect and are followed.

Agents generally believe that the NRC encourages publicity regarding its efforts to safeguard items and activities covered by the Atomic Energy Act. The Field Office Directors meet regularly with the public affairs staff in their region.

SUMMARY

Although the SSA OIG review team is offering several suggestions for the NRC OI to consider, these suggestions represent the observations made by the team members during visits to the headquarters and regional offices of the NRC OI and are not intended to be critical of the NRC OI. In some instances the suggestions are more representative of how the SSA OIG operates rather than based on published standards. Other suggestions are based on standards followed by the federal inspector general community such as those set by the PCIE and those specifically mentioned in the *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority*.

The NRC OI generally adheres to the PCIE's *Quality Standards for Investigations*. The finding of "substantial compliance" is, in the opinion of the review team, a fair assessment of the operations of the NRC OI. This finding should be considered good by those who read this report, especially since the NRC OI is not bound by the PCIE standards.

The mission of the NRC OI is different from many law enforcement agencies in that the laws it enforces are more complicated than most, if not all, sections of the criminal codes enforced by other federal agencies. The policies, procedures, and practices that are in place and followed by the NRC OI are well founded. Although some of the practices used by the agents of the NRC OI would be considered out of the ordinary by some federal agents, these practices serve the NRC well.

In conclusion, the NRC should be pleased to have a professional investigative unit within its organization. The agents of the NRC OI are trained, experienced law enforcement professionals who take pride in their work as they perform their duties to enforce the civil and criminal provisions of the Atomic Energy Act.