



Investigative Report of Potential Post-Employment Ethics Violations

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This is a version of the report prepared for public release.

SYNOPSIS

We initiated this investigation based on information submitted by Melinda Loftin, Designated Agency Ethics Official, Departmental Ethics Office, Office of the Solicitor, U.S. Department of the Interior (DOI). Loftin reported that Anne Castle, former DOI Assistant Secretary for Water and Science and now an employee of the nonprofit S.D. Bechtel Jr. Foundation, may have had communications with U.S. Geological Survey (USGS) employees that violated restrictions against former Federal employees contacting current employees and requesting that they take official action (18 U.S.C. § 207(c)). Loftin said she learned that Castle, who had received ethics advice from DOI attorneys before she left DOI and again after she began working for the Foundation, had emailed one USGS employee and may have participated in a meeting with another USGS employee.

We found that in March 2015, Castle emailed several DOI employees about the Foundation and participated in a conference call with DOI and Foundation employees. We also learned that a USGS hydrologist attended a meeting that Castle was participating in with non-Federal representatives from a regional water council, although Castle did not know that he would be present.

It appeared that Castle's emails violated the prohibition against former Federal officials contacting employees from their previous agency. Both Castle and Deputy Solicitor for General Law Ed Keable stated in their interviews, however, that they felt Castle had received unclear ethics advice from the DOI attorney advisor she consulted after she began working for the Foundation.

BACKGROUND

Relevant Rules and Regulations

The primary source of restrictions that may limit the activities of individuals after they leave U.S. Government service is 18 U.S.C. § 207. This section seeks to avoid even the appearance of public office being used for personal gain by preventing former Federal employees from using information, influence, and access acquired during their Government service for an improper and unfair advantage in later dealings with their agencies.

To help accomplish this goal, 18 U.S.C. § 207(c) prescribes a 1-year “cooling-off period” for some former high-ranking Federal officials. Section 207(c) prohibits such former employees from “knowingly mak[ing], with the intent to influence, any communication to or appearance before any officer or employee of [his or her former agency] on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency.”

During the cooling-off period, the former officials may not contact current employees of their former agencies and ask them to take any form of official action. Executive Order No. 13490 (“Ethics Commitments by Executive Branch Personnel”) requires certain senior employees to sign a presidential ethics pledge that extends the cooling-off period by one more year.

In addition, 5 C.F.R. Part 2641 sets out interpretive guidance from the Office of Government Ethics concerning all of the substantive prohibitions and exceptions in 18 U.S.C. § 207.

DETAILS OF INVESTIGATION

On May 1, 2015, the Office of Inspector General (OIG) opened an investigation based on information we received that Anne Castle, the U.S. Department of the Interior’s (DOI) former Assistant Secretary for Water and Science, had had communications with U.S. Geological Survey (USGS) employees that might have constituted a violation of 18 U.S.C. § 207(c). USGS is one of the two DOI bureaus under the jurisdiction of the Assistant Secretary for Water and Science.

Specifically, DOI Designated Agency Ethics Official Melinda Loftin, Office of the Solicitor (SOL), reported that Castle, now an employee of the nonprofit S.D. Bechtel Jr. Foundation, had contacted a USGS associate regional director on behalf of the Foundation, and that she had participated in a meeting with a USGS hydrologist.

Castle’s Post-Employment Ethics Advice

We interviewed a deputy DOI ethics official, who said that in September 2014, Castle indicated she would be leaving Government service and requested counseling on post-Government employment rules. On September 5, 2014, he emailed Castle a post-Government employment document, and the two later met to discuss her departure from Government service.

The deputy ethics official said that Castle had another commitment and thus only scheduled 30 minutes (instead of the usual hour) for them to discuss the regulations, documents, and instructions regarding 18 U.S.C. §§ 203 and 207, including an explanation of the restrictions against contacting current DOI employees under 18 U.S.C. § 207(c). He said that Castle's 1-year 18 U.S.C. § 207(c) restriction was extended by an additional year under the pledge she took pursuant to Executive Order No. 13490. He said that it was his understanding that Castle did not have a set plan for future employment when she left Government service. Castle retired on September 30, 2014.

On February 24, 2015, the deputy ethics official said, Loftin received an email from Castle indicating that she had a job opportunity and wanted additional post-employment guidance. Loftin and the deputy ethics official assigned an attorney advisor with SOL's Ethics Office to assist Castle. The attorney advisor spoke with Castle by telephone on February 27, 2015, and gave her further post-Government employment advice.

During their telephone conversation on February 27, the attorney advisor said, Castle told him that she was working for the Bechtel Foundation, which was interested in providing financial assistance to DOI on USGS' Open Water Data Initiative (OWDI), an initiative that supports the integration of water data collected by various Federal agencies. The attorney advisor said that Castle wanted to know if she could participate in meetings with DOI on behalf of the Foundation. He said that he believed that Castle used the word "instigate" to describe the process of introducing Foundation representatives to DOI.

The attorney advisor said that he and Castle discussed 18 U.S.C. § 207(c) and Castle's responsibilities as a former senior executive, and he explained the prohibitions against Castle communicating with DOI employees.

The attorney advisor said that 5 C.F.R. § 2641.201(e), which analyzes whether a communication is made with the intent to influence, does not bar all communications. He said that if it did, it would be much simpler, but it would be impossible to enforce because it would prohibit, for example, social conversations. He said he explained to Castle that making a routine request that did not involve a potential controversy, making a factual statement, or asking a question would not be a communication with the intent to influence. When asked, he stated that he could not find the notes he took during the meeting.

Castle's Contact With DOI Employees

Our investigation revealed four instances in which Castle contacted DOI employees in a professional capacity within 6 months of leaving her Government position and being briefed on post-employment restrictions:

Date	Event
September 5, 2014	The deputy ethics official emails Castle a post-Government-employment document.
September 30, 2014	The deputy ethics official briefs Castle for 30 minutes on her post-employment restrictions.
September 30, 2014	Castle retires from DOI.
January 2015	Castle begins working for the Bechtel Foundation.
February 27, 2015	The attorney advisor and Castle have a phone discussion about her post-employment restrictions.
March 11, 2015	Castle emails employees from USGS, the Bureau of Land Management, and the Bureau of Reclamation to introduce the Bechtel Foundation.
March 25, 2015	Castle takes part in a conference call with DOI employees to discuss the OWDI.
March 30, 2015	Castle emails USGS employees to introduce a Foundation employee interested in working with DOI on the OWDI.
March 31, 2015	Castle attends the meeting at which a USGS hydrologist was present.

OWDI Conference Call With DOI Employees

Castle said that she began working as a consultant for the Bechtel Foundation sometime in January 2015. In late January or early February 2015, she said, she was contacted by a counselor to the Assistant Secretary for Water and Science, who asked Castle to participate in a teleconference with DOI employees interested in the OWDI. Castle told the counselor that she was interested, but needed to speak with the DOI Ethics Office before becoming involved.

Agent's Note: Castle did not provide an exact date that she began working for the Foundation. The counselor recalled learning that Castle was working for the Foundation through a January 24, 2015 email from an associate at the University of Texas.

When we interviewed the counselor, she said that Castle had been her supervisor from July 2014, when the counselor started working at DOI, until Castle left. The counselor said that she saw Castle at a social event in late 2014 and called her in December 2014 or early January 2015 to update her on some projects she was working on at DOI. She did not think that Castle was working for anyone when she spoke to her.

The counselor said that she sent a text message to Castle on February 26, 2015, requesting a meeting to discuss the OWDI. She explained that she wanted to update Castle on the OWDI project because she was excited about it and wanted to inform Castle of her progress. She confirmed that Castle replied that she had to clear the communication through DOI's Ethics Office before she could agree to a meeting. The counselor recalled that Castle mentioned a 1- or 2-year ban against working with DOI employees. She said that she knew about the ban but had not given it much consideration until Castle brought it to her attention.

Castle said that when she spoke to the attorney advisor on February 27, 2015, she asked about meeting with the counselor and other DOI employees. She said that the attorney advisor told her that participating in a meeting that DOI employees were attending was not a “good idea,” as the employees might feel pressured by her presence. She stated, however, that he said it was permissible for her to participate in a conference call.

When asked if he told Castle she could participate in a conference call, the attorney advisor said that he did not remember clearly, but he “may well have” talked to her about it. He also said that he might have told her she could take part in the call if she only introduced Foundation employees and then did not say anything during the group discussion.

On March 25, 2015, Castle participated in the conference call. While none of the people we interviewed remembered the names of everyone who was on the call, the counselor recalled that a USGS official with the Office of Water Information and a Bureau of Reclamation official also participated. The counselor also provided the email invitation and said she believed that one of the invitees, a USGS civil engineer, was not on the call.

We spoke to the officials from USGS and the Bureau of Reclamation, both of whom said that they felt no pressure from Castle during the call. The USGS official said that Castle said “very carefully” that she was not calling based on her previous employment with DOI, only that the Foundation was interested in the OWDI as a “worthwhile” project and that the Foundation, as part of its “philanthropic activities,” was interested in understanding the OWDI better and in being introduced to him and the others. The Reclamation official said that the participants on the call discussed what the Foundation’s role might be in the OWDI project. She recalled Castle expressing concern about her participation in the project and the call given Castle’s previous role at DOI. She added that Castle “may have” said she did not want to “convey” the incorrect impression that there would be any expectation that DOI had to work with the Foundation because of her.

Email Communications With DOI Employees

On March 11, 2015, Castle sent a group email explaining the purpose of the Foundation to seven DOI employees (including the Reclamation official), two Bechtel Foundation employees, and two private consultants employed by the Foundation. Some of the recipients recalled receiving the email, but not replying to it; others did not recall receiving it until we contacted them. Those who recalled the email said that they felt no pressure to work with the Foundation because of Castle’s past employment with DOI.

We interviewed a USGS Water Science Center director who was one of the seven email recipients from DOI. He said that he and other DOI employees had been in contact with the Foundation months before Castle sent her email. He explained that he received an email from a program officer with the Foundation on November 9, 2014. In the email, the program officer stated that the Foundation was “exploring how water data [could] be better acquired, managed, and used to inform decision-making throughout California” and asked to set up a conference call. The Water Science Center director said that he and other DOI employees had a conference call with the Foundation on November 25, 2014, to discuss the Foundation. He said that Castle was

not on the November 25, 2014 conference call or the November 9, 2014 email exchange, and he did not know whether she was working for the Foundation at the time.

On March 30, 2015, Castle sent another email, this time addressed to the Water Science Center director and a USGS associate regional director. Castle stated in her email that the purpose of her communication was to introduce the two USGS employees to a Foundation consultant. She wrote that the consultant was primarily focused on open water data and that he had been “a trusted partner to the Bechtel Foundation for years.” She also wrote that the consultant would contact the two USGS employees about having a conversation on water data issues and about a possible grant that the Foundation was willing to make to DOI.

The Water Science Center director said that Castle did not ask him to do anything in her email and that he did not feel pressured to meet with the Foundation or talk to the consultant. He said that since he had already been in contact with the Foundation, he did not contact the consultant, and that he had no further contact with Castle after this email.

The associate regional director explained that he responded to the email and agreed to meet with the Foundation consultant, but he realized that Castle had not been away from DOI for a full year. He therefore forwarded her email to his ethics counselor at USGS, who sent the email to DOI’s Ethics Office. The associate regional director said that after he spoke with Loftin, he canceled his plans to meet with the consultant.

Castle said that she asked the attorney advisor during their February 2015 conversation if she could send an email requesting a meeting of DOI personnel and other Foundation employees, but he told her that she could not because that would be considered a request for official action. Castle said that she asked if she could email certain DOI employees to introduce a Foundation consultant, and the attorney advisor said that was permissible.

The attorney advisor confirmed that Castle asked if she could set up a meeting between the Foundation and DOI employees and that he told her no because setting up a meeting would violate the regulations. Castle also asked if she could ask DOI employees if they were interested in accepting a grant from the Foundation and if she could introduce Foundation employees to DOI employees. According to the attorney advisor, he told Castle she could ask DOI employees whether they were willing to accept a grant. He explained to her that if the question were limited solely to whether DOI was interested in a grant, it would “arguably” be something she could ask because it was a “yes or no” question and thus might not violate the rules. He also remembered telling her that “providing purely factual information,” such as “So-and-so works for Bechtel, [and] they’re going to be calling you,” was allowable.

The attorney advisor said that he did not know Castle was going to send an email to DOI employees, but he knew she was going to ask them about the grant and introduce a Foundation employee. We asked him if Castle gave him a copy of the email before she sent it, and he said she did not. He said that he did not follow up this phone conversation with any written instructions or opinions.

Castle said that it never occurred to her to have anyone in the Ethics Office review her email before she sent it. Regarding the content of the email, Castle said that because the attorney advisor had told her she could introduce a Foundation employee to DOI personnel, she had “followed [his] advice to the letter.” Castle said that she reviewed 18 U.S.C. § 207(c) prior to sending the email to make sure she was not violating the statute.

March 31, 2015 Meeting With a USGS Employee Present

We interviewed the USGS hydrologist who had attended the meeting at which Castle was present. The hydrologist said that for the last 2 years he had been detailed as the Federal liaison to the organization known as the Western States Water Council (WSWC). He said the council comprised 18 State and 13 Federal agencies, including DOI, that had water resource responsibilities in the western United States. He said that in his capacity as a DOI hydrologist, he had several opportunities to meet with and provide limited information to Castle when she was the Assistant Secretary for Water and Science.

The hydrologist said that the WSWC executive director told him that Castle was in town on March 31, 2015, and would be coming to the WSWC office for a briefing from the executive director and a principal developer for the Water Data Exchange (WADE), a project to facilitate the sharing of water data between Federal and State agencies. The hydrologist said that he was not specifically asked to attend this meeting; rather, he decided on his own to stop in to see Castle and help explain WADE’s “relevance” to Federal and State agencies. He said that the meeting consisted of a PowerPoint presentation on WADE and a discussion on the database’s status and plans, and how many States participated in the program. He did not believe that Castle knew he would be at the meeting, and, he said, she did not ask him to provide any information, contact anyone, or do anything afterward.

Castle explained that she had requested the meeting with WSWC to discuss various water projects. She said that the USGS hydrologist greeted her when she arrived at the WSWC office. She said that she did not know he worked at that office and that she was surprised to see him, although she knew that he was the WSWC liaison. She said that she spoke with him casually and then went to attend her meeting with the WSWC executive director and developer.

Castle said that the meeting had already begun when the hydrologist entered the room and sat down. She said that the meeting lasted approximately 1½ hours and that he stayed for just over half of it. She thought that he might have contributed to the conversation, but she did not recall asking him any specific questions. When asked, Castle said it never occurred to her that being in a meeting with the hydrologist might conflict with the advice the attorney advisor had given her.

Communication, Confusion, and Clarification on 18 U.S.C. § 207(c) Restrictions

Castle said that she received a phone call from the attorney advisor explaining that DOI’s Ethics Office had reviewed her March 30, 2015 email to the USGS associate regional director (which had been forwarded by the USGS ethics officer) and determined that it violated 18 U.S.C. § 207(c). The attorney advisor recalled that this call took place on April 3, 2015. That same day, he emailed Castle further guidance, including an opinion on a previous matter as an example. Castle

said that upon reflection, she felt that he had not been clear with his advice in February about what she could and could not do.

We interviewed Deputy Solicitor for General Law Ed Keable, who told us that he spoke with Castle and Ethics Office employees about whether Castle could contact certain DOI employees on behalf of the Foundation, and he determined that there “wasn’t a meeting of the minds.” Keable said that Castle was not clear about the advice she had received from the attorney advisor during their conversation in February 2015, so Keable asked the attorney advisor if he had “anything in writing” that he could share with Keable. Keable said that when he read the attorney advisor’s April 3 email to Castle, he felt it “answered the question definitively.”

The attorney advisor said that it was difficult to determine whether Castle’s March 30 email was an attempt to influence DOI employees. He felt that the email “kind of” fell “right on the line” between a purely factual statement and an attempt to influence, and he said that there was “debate” about the matter within the Ethics Office as well. Ultimately, though, the attorney advisor said that while Castle did not “explicitly” ask any USGS employee to take an official action, he felt the email violated 18 U.S.C. § 207(c) because she was trying to influence the recipient to meet with the Foundation consultant. He said that while Castle may have sent the March 30 email for “all the best motives,” given “the totality of the circumstances . . . this is really an intent to influence.”

The attorney advisor also said that he thought he and Castle had understood each other during their discussion in February 2015, but he realized in retrospect Castle might have misunderstood some of the information he was trying to give her. He did not think that Castle purposefully violated the restrictions in 18 U.S.C. § 207(c); he said he “sincerely felt” that Castle believed any contact with DOI regarding the grant did not constitute a communication with the intent to influence because the Foundation wanted to give DOI money and was not asking for anything in exchange.

SUBJECT

Anne Castle, former Assistant Secretary for Water and Science.

DISPOSITION

We presented this investigation to the Public Integrity Section, within the U.S. Department of Justice (DOJ), but DOJ expressed no interest in pursuing this matter. We provided this report to DOI Chief of Staff Tommy Beaudreau for any action he deems appropriate.