



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Alleged Ethics Violations by a Senior Political DOI Employee

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

I. EXECUTIVE SUMMARY

We investigated allegations that a senior political employee of the U.S. Department of the Interior (DOI) violated their Federal ethics pledge under Executive Order 13770 by communicating with a former employer during the required 2-year recusal period following the employee's Federal appointment in the spring of 2017.

We found that the senior political employee notified the DOI's Departmental Ethics Office (DEO) three times between the summer of 2017 and the summer of 2018 that they planned to interact with individuals or entities connected to their previous employer. In one instance, the employee declined to meet with an individual because the DEO had not advised whether the meeting was permissible; in the other two instances, the DEO advised the employee interacting with certain entities was permissible because the entities were not directly related to the former employer. We determined that the employee's actions in these instances were proper and accorded with DEO guidance.

We did find, however, that the employee did not seek ethics guidance before contacting a scientist who worked for their former employer in late 2017 and then meeting with that scientist the next month. We determined that these contacts violated the senior political employee's ethics pledge, but the evidence indicates that the employee interacted with the scientist under the mistaken belief that these communications were permissible because they involved sharing scientific data. We found no evidence that these contacts were used for the benefit of the senior political employee or for the benefit of the former employer or the scientist.

We provided our report to the Chief of Staff for the Office of the Secretary for any action deemed appropriate.

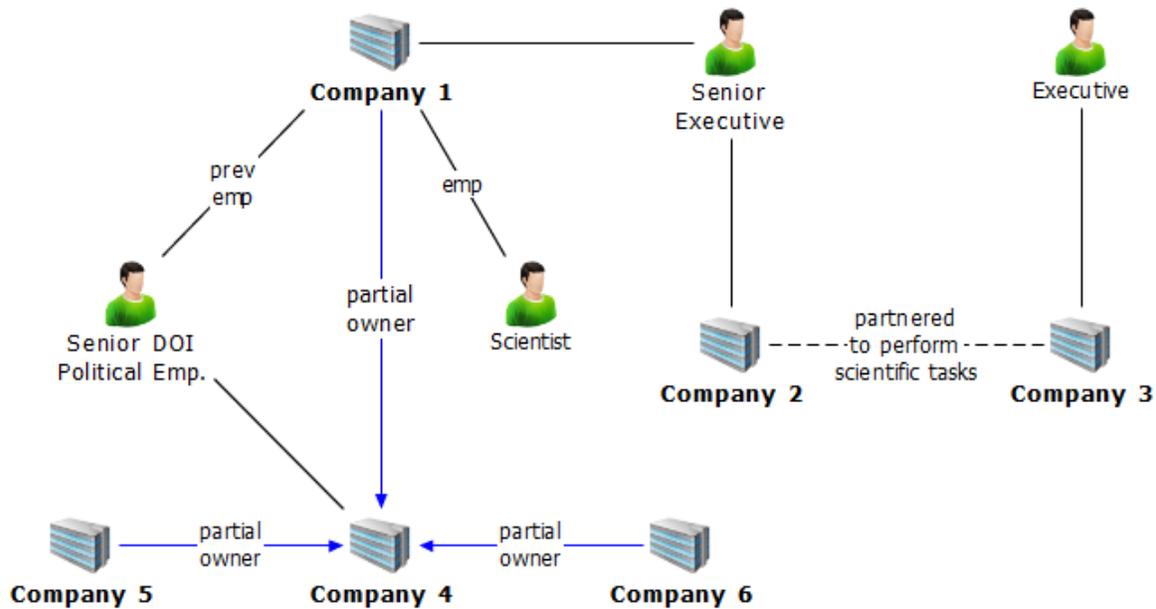
II. BACKGROUND

Before coming to the U.S. Department of the Interior (DOI) in 2017, the senior political employee worked for a company (which we will refer to in this report as Company 1) that provides various environmental support services to its clients. Company 1 also provides data to the U.S. Fish and Wildlife Service (FWS) to help the FWS protect endangered species from being disturbed by human activity.

A senior executive of Company 1 also served as a senior executive of a second company, referred to here as Company 2, which collects and provides scientific data to its clients. Company 2 also interacts with the FWS, submitting applications to the FWS for permits to do work that might affect some endangered species. Another company discussed in this report, Company 3, partners with Company 2 to perform certain scientific tasks.

Figure 1, on p. 2, illustrates the relationships between the entities and individuals we discuss in this report. As shown in the figure, the senior political employee's responsibilities at Company 1, their former employer, included overseeing a joint venture (Company 4) that was partially owned by Company 1 and by two other corporations (Companies 5 and 6).

Figure 1: Relationships Between Entities and Individuals in This Report



III. FACTS

Below we detail the facts relevant to this case. We explain the senior political employee’s official duties at the DOI and their obligation, as a political appointee, not to contact their former employer, Company 1, for 2 years from the date of their appointment. We then discuss instances within that 2-year recusal period in which the employee interacted with, or planned to interact with, employees or entities connected to Company 1. In some of these instances, the employee interacted with these parties after receiving advice and clearance from the DOI’s Departmental Ethics Office (DEO), but twice the employee did not receive such clearance.

A. Senior DOI Political Employee’s Ethics Responsibilities and Training

After leaving Company 1, the employee came to work for the DOI in the spring of 2017. As a political appointee, it was required under Executive Order 13770, that the employee sign an ethics pledge agreeing not to contact their former employer for a period of 2 years from the date of their appointment.

According to training records provided by the DEO, the employee received ethics training 2 days after starting at the DOI. The employee told us that the training generally covered financial disclosure forms and conflicts of interest, and that the employee and the ethics official who gave the training discussed the employee’s current position at the DOI and employment history at Company 1. The employee told us, however, that they did not recall their ethics training covering the ethics pledge or its requirements; in addition, the DEO training records did not specify whether the training addressed matters related to the pledge.

The senior political employee signed the ethics pledge in 2017, about 2 months after beginning with the DOI.

B. Senior DOI Political Employee Sought Ethics Advice in Summer 2017 Before a Conference Call

In the summer of 2017, an executive of Company 3 (the company partnered with Company 2, which, as Figure 1 shows, shared a senior executive with the senior political employee's former employer), emailed the senior political employee requesting a conference call the following week with the employee and the senior Company 2 executive to discuss various projects. Two days later, the employee emailed the DEO's general inbox asking whether their ethics pledge recusal period would apply to such a conversation, since the senior Company 2 executive was also a senior executive at Company 1.

According to the employee, the DEO did not respond to this email in time for the planned call, so the employee told the Company 3 executive that they could not talk with the senior Company 2 executive until clearance was received to do so. Instead, the employee said, the employee and the Company 3 executive spoke at the scheduled time, without the senior Company 2 executive. The employee characterized the call as a consultation and told us they had similar meetings with other companies as part of their official duties.

An ethics attorney with the DEO replied to the senior political employee's email, but not until after the call had taken place. The attorney requested more details about the relationship between the employee and the senior Company 2 executive, but the employee told us they never responded to the attorney's email because they did not think anything had been discussed during the call that would have needed DEO clearance.

C. Senior DOI Political Employee Did Not Seek Ethics Advice Before Requesting Data From Company 1

In 2017, the senior political employee, as part of their official duties, began working with employees from the Bureau of Land Management (BLM) and the U.S. Geological Survey (USGS) to determine possible new methods for tracking endangered species.

As part of this project, the employee emailed an FWS supervisory wildlife biologist in late 2017 and asked for data on an endangered species. The supervisory wildlife biologist responded with some historical data; the senior political employee then asked whether any current data was available, or if the employee should get the needed information from a scientist with Company 1. The supervisory wildlife biologist responded that they did not have current information and recommended that the senior political employee contact the Company 1 scientist, who, the biologist said, was currently doing work related to the species.

The senior political employee forwarded this last email to the Company 1 scientist that same day, asking for the data and noting, "This is for a FWS/USGS/BLM science experiment we are running." The employee copied the BLM and USGS employees involved in the project, as well as two FWS employees, but did not send this email to any non-Federal parties other than the Company 1 scientist.

The next day, the Company 1 scientist emailed the senior political employee with some recent data, and the employee thanked the scientist for their help.

The employee told us they emailed the Company 1 scientist based on the FWS supervisory wildlife biologist's recommendation and did not contact the DEO before sending the email. The employee told us they had thought at the time that they did not need to obtain ethics advice because they were asking for scientific data that Company 1 was required to provide to the DOI¹ and not discussing any type of permit or any actions Company 1 was seeking from the DOI; the employee said their ethics training earlier that year had mentioned "certain exemptions" to conflict-of-interest rules if the purpose of the contact with the former employer involved "purely scientific data."² The employee said they had also thought that Company 1 providing data to the DOI would not benefit the company in any way.

D. Senior DOI Political Employee Did Not Seek Ethics Advice Before Meeting With Company 1 Scientist

Sometime after the exchange of emails between the senior political employee and the Company 1 scientist, a BLM analyst involved in the endangered species project requested a meeting with the employee, the Company 1 scientist, and several FWS and USGS employees. The employee's assistant scheduled the meeting, which took place in early 2018; the assistant invited everyone who had received the BLM analyst's email. The meeting took place at the employee's DOI office; the employee, the Company 1 scientist, the FWS supervisory wildlife biologist, and the BLM analyst were present, as well as representatives from the FWS, the BLM, and the USGS.

The employee said the purpose of the meeting was for the BLM analyst to obtain information from experts about the endangered species they were studying. The employee said the Company 1 scientist attended the meeting as one of the experts. The BLM analyst confirmed that the meeting participants all had "on-the-ground experience" in this type of research, and they discussed the species in the meeting.

The employee told us they did not seek ethics advice before participating in the meeting. As with the email sent to the Company 1 scientist in late 2017, the employee said they had believed when they met with the scientist that such a meeting was permissible because the purpose of the meeting was to share scientific data and because the meeting did not include discussions about permits or about actions Company 1 was seeking from the DOI.

A DOI ethics attorney, who gave the employee ethics advice later in 2018 on matters related to Companies 2 and 5 (which were associated with the employee's former employer, Company 1), told us that if they had known about this contact with the Company 1 scientist, they would have advised against it and would have explained that ethics rules covering former employers had no scientific or technical exceptions. The ethics attorney also said the employee could have

¹ The FWS supervisory wildlife biologist explained to us that Company 1 was required to provide scientific data on certain endangered species to the FWS under 50 C.F.R. § 18.128 ("Mitigation, monitoring, and reporting requirements") and the letters of authorization the company was operating under at the time.

² There is an exception under 5 C.F.R. § 2641.201(b)(3), but it does not apply to current Federal employees.

complied with the ethics pledge and accomplished the goal of obtaining data and information from Company 1 simply by having another DOI employee interact with the scientist.

E. Senior DOI Political Employee Sought Ethics Advice About Permit Applications

The senior political employee told us that in the spring of 2018 they learned that Companies 2 and 3 had submitted applications to the BLM and the FWS for permits to work on public land. The employee emailed the DEO to ask whether they could be involved with the permit applications, explaining in the email that Company 1 was their former employer and that the senior Company 2 executive was also an executive of Company 1. The employee asked whether, based on these factors, the “ban on engaging former employers” would apply.

The employee received a response from the ethics attorney, who told the employee there was no prohibition against the employee working on the permit application because the senior Company 2 executive, in that capacity, was not their former employer. In the attorney’s email to the employee, the attorney wrote that the definition of *former employer*, as interpreted by the U.S. Office of Government Ethics, did not extend to entities for which—as in this situation—the only link to the Federal employee was an officer of a third-party company who also had an interest in the actual former employer. The attorney explained to us that the employee “did not have an employer or client relationship with [Company 2],” and so the employee “has no recusals with regard to [Company 2].”

The senior political employee said that in the summer of 2018 they attended a 30-minute meeting about the FWS permit application with FWS employees, the senior Company 2 executive, and a Company 3 executive. The senior political employee said the meeting’s purpose was to introduce everyone to each other and to tell the company executives to work with the FWS employees to obtain the permit they sought. The employee explained that they had facilitated similar interactions with other companies as part of their DOI responsibilities.

F. Senior DOI Political Employee Sought Ethics Advice About Another Permit Application

As shown above in Figure 1, Company 1 is a partial owner of Company 4, which the senior political employee oversaw during their time with Company 1. The employee learned in the summer of 2018 that another of Company 4’s partial owners, Company 5, was also involved in one of the permit applications discussed in the previous section. Because of this relationship to the former employer, the senior political employee emailed the ethics attorney to ask if they could still work on the application.

Later that summer, the ethics attorney emailed the employee to say that the employee’s involvement in the application was not prohibited because neither Company 2 nor Company 5 was their former employer. The attorney concluded in the email that Company 5 was not considered a former employer or client under the ethics pledge, and that the employee’s former relationship with Companies 1 and 4 did not bar participation in the permit application. The employee told us that their involvement in the application included responding to inquiries from the media and attending meetings with FWS staff.

IV. ANALYSIS

As noted above, the senior political employee's actions in these events implicate the ethics pledge they signed. Executive Order 13770, Paragraph 6, "Ethics Commitments by Executive Branch Appointees," requires every appointee in every executive agency to sign an ethics pledge that includes the following commitment: "I will not for a period of 2 years after the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts."³

The facts in this case break down into two general categories: (1) instances in which the senior political employee sought the DEO's advice before taking an action, and (2) those in which the senior political employee did not seek such guidance. We analyze the events in those categories below.

A. Senior DOI Political Employee Sought DEO Advice Before Interacting With Companies 2 and 5

As discussed above, the senior political employee sought ethics advice from the DEO before their contacts with Companies 2 and 5. In doing so, the employee's actions implicate 5 C.F.R. § 2635.107(b), the so-called "safe harbor" provision of Federal ethics regulations, which states, "Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances." Therefore, the key question here is whether the employee fully disclosed all relevant circumstances to the DEO and then relied in good faith on the DEO's advice. If those elements are satisfied, the employee would not face disciplinary action even if the interactions violated ethics rules.

We found no evidence that the employee made anything less than a full disclosure of all relevant circumstances in discussions with ethics attorneys about the companies. We also found that the employee appeared to rely in good faith on the DEO's advice. With that in mind, we concluded that the employee satisfied the elements of 5 C.F.R. § 2635.107(b). In making this finding, we note that the employee's behavior in these instances is an example of a DOI employee properly using the DEO to ensure their behavior did not violate the ethics pledge or any other Federal standards of ethical conduct.

³ The term "particular matter involving specific parties" is used in Federal regulations governing personal and business relationships (5 C.F.R. § 2635.502) and further clarified in Office of Government Ethics (OGE) memorandum DO-06-029. For the purposes of 5 C.F.R. § 2635.502, Federal regulations state that a particular matter involving specific parties "typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties" (5 C.F.R. § 2640.102(l)). OGE memo DO-06-029 clarifies that examples of particular matters involving specific parties include "contracts, grants, licenses," and other similar specific actions taken with regard to, or on behalf of, a party—a narrower interpretation of the term than that used for analysis under the Federal ethics pledge. Therefore, an action that might not violate 5 C.F.R. § 2635.502 because it does not meet the regulation's definition of a "particular matter involving specific parties" might still violate the Federal ethics pledge.

B. Senior DOI Political Employee Did Not Seek DEO Advice Before Contacting Company 1 Scientist

In contrast to the incidents described above, the senior political employee did not seek guidance from the DEO before the 2017 email exchange with the scientist who worked for Company 1, their former employer, or before participating in the 2018 meeting with the same scientist. Due to the employee's prior employment at Company 1, we must consider the interactions with the Company 1 scientist to determine whether the employee failed to fulfill their obligation, under the ethics pledge, to be recused from matters related to their former employer for 2 years after the date of their 2017 appointment to Federal service.

As previously stated, Paragraph 6 of Executive Order 13770 prohibits an employee from contacting their former employer for a period of 2 years from the date of their appointment to their Federal position. An Office of Government Ethics (OGE) memorandum, DO-09-011, provides more information on the relevant ethics pledge obligations. DO-09-011 explains that in order to determine whether an appointee's activities concern any particular matters involving specific parties, ethics officials must follow the longstanding interpretation of the term "particular matter involving specific parties" from 5 C.F.R. § 2641.201(h). Notably, however, the OGE memorandum states that the ethics pledge expands the scope of the term to include "any meeting or other communication with a former employer or former client relating to the performance of the appointee's official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties." The OGE states that meetings need not "be open to every comer, but should include a multiplicity of parties." The memorandum continues, "The purpose of this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view."

In sum, under the standard articulated in the OGE memorandum, the ethics pledge bans any meeting or other communication with a former employer relating to the performance of the appointee's official duties, regardless of whether the interactions amount to the longstanding definition of a particular matter. The OGE memorandum also creates a two-part test for exceptions to the ethics pledge's ban on an appointee communicating with a former employer or client. An appointee may communicate with a former employer or client if the communication is (1) "about a particular matter of general applicability" and (2) "made at a meeting or other event at which participation is open to all interested parties"; this second part may be satisfied if the meeting includes a "multiplicity of parties."

1. Email Exchange With Company 1 Scientist

There is no doubt that the senior political employee's 2017 email exchange with the Company 1 scientist constituted communication with their former employer relating to the performance of official duties and was therefore prohibited under the ethics pledge. Moreover, the evidence established that this communication did not satisfy the two-part exception articulated in the OGE memorandum that requires the communication to be both "about a particular matter of general applicability" and "open to all interested parties." As noted above, the communication fails to

meet the second test because the scientist was the only “interested party”; that is, the only non-Federal party to the communication.

We note that the employee told us that they believed at the time of the email exchange that ethics advice was not needed because they were asking Company 1 for scientific data that Company 1 was required to report to the DOI, and, therefore, were not discussing permits or any actions the company wanted the DOI to take. The employee said they had also thought that Company 1 providing data to the DOI would not benefit the company in any way. In addition, the employee said, they had thought the ethics rules did not apply to this situation because their ethics training had mentioned exemptions to conflict-of-interest rules if the purpose of the contact with the former employer involved scientific data. As mentioned above in footnote 2, however, this exception does not apply to current employees.⁴

Accordingly, we concluded that the employee’s 2017 email exchange with the Company 1 scientist violated their ethics pledge. This finding is consistent with the OGE memorandum’s purpose of protecting against even the appearance of privileged access being given to former employers.

2. Meeting With Company 1 Scientist

As with the 2017 email exchange, the employee’s meeting with the Company 1 scientist in 2018 violated the ethics pledge because it constituted a meeting with the former employer of the employee relating to the performance of official duties. The OGE two-part exception to the ban did not apply since the meeting was not open to all interested parties.

The employee said they did not contact the DEO before attending the meeting because the purpose of the meeting was not to discuss DOI actions or permits related to Company 1, but rather to allow the BLM analyst to obtain scientific information from the Company 1 scientist and the other participants. The employee said they believed at the time that there were exemptions to the conflict-of-interest rules if the contact with the former employer involved scientific data. As noted above, however, such considerations do not apply to this analysis.⁵

We therefore concluded that the employee’s attendance of the meeting violated their ethics pledge. Again, this finding is consistent with the OGE memorandum’s purpose of protecting against the appearance of privileged access.

⁴ We note that although the potential benefit of an employee’s actions is not part of the ethics pledge analysis, such considerations are an element of 5 C.F.R. § 2635.502(a), the Federal ethics provision governing personal and business relationships. Since the senior political employee worked for Company 1 within 1 year of sending the emails to the scientist in 2017, we reviewed whether the senior political employee ran afoul of Section 502(a) as well. Section 502 has a considerably narrower interpretation of the phrase “particular matter involving specific parties” than the ethics pledge prohibition analyzed above, and the email to the Company 1 scientist does not meet that definition for the purposes of Section 502. Therefore, we concluded that this email exchange did not violate 5 C.F.R. § 2635.502(a).

⁵ As with the email exchange discussed above, we reviewed whether the senior political employee’s 2018 meeting contravened their obligations under 5 C.F.R. § 2635.502(a) and found that the meeting with the Company 1 scientist did not rise to the level of a “particular matter involving specific parties” within the scope of Section 502(a). Therefore, we concluded that this meeting did not violate 5 C.F.R. § 2635.502(a).

For both interactions with the Company 1 scientist, the evidence shows that the employee acted under the mistaken belief that communications involving scientific data were permissible. We also found no evidence that they used either interaction for their own benefit or for the benefit of Company 1 or the scientist.

V. SUBJECT

A senior DOI political employee.

VI. DISPOSITION

We provided our report to the Chief of Staff for the Office of the Secretary for any action deemed appropriate.

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 Mail Stop 4428 MIB
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