

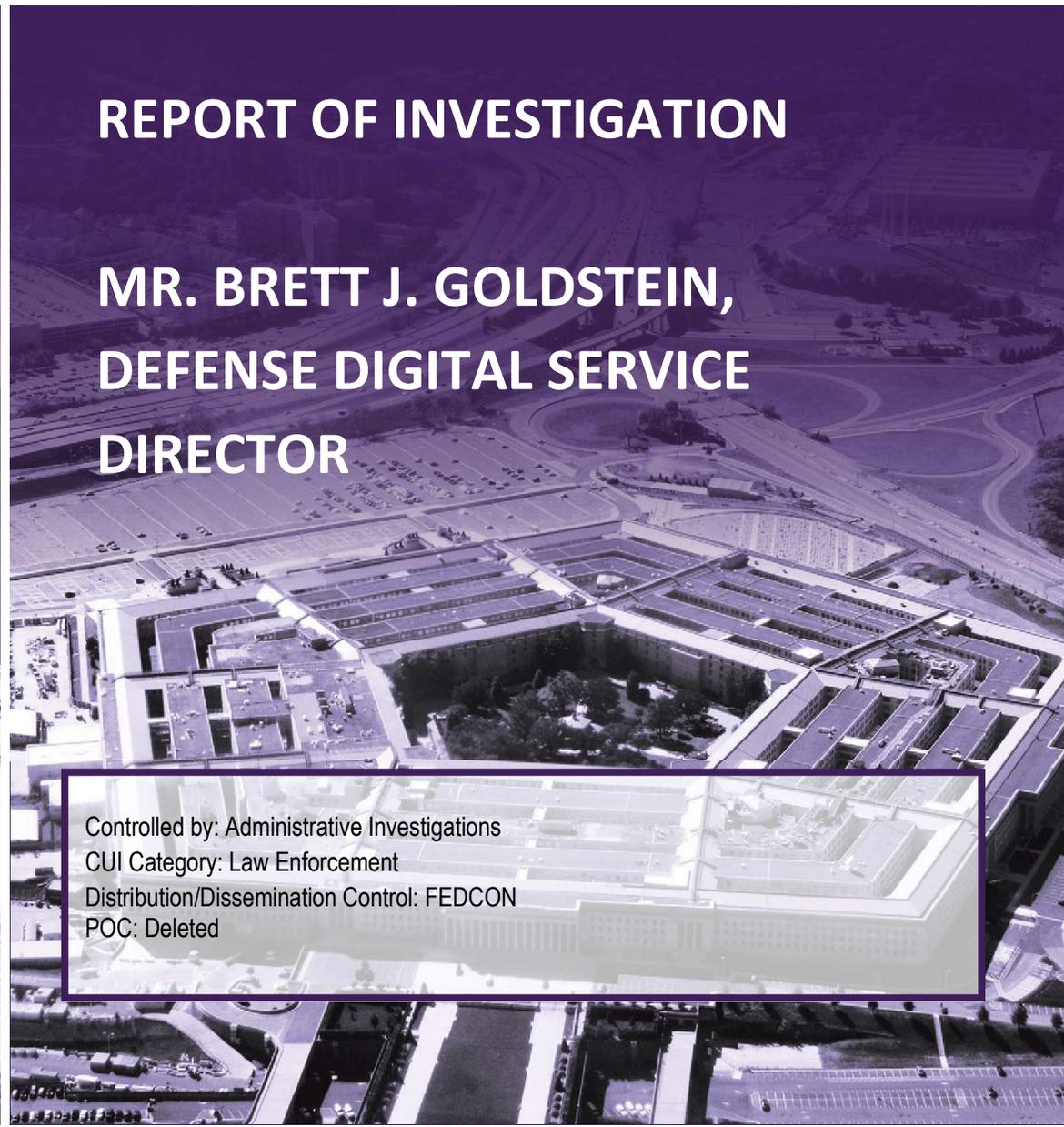


**CUI**

# INSPECTOR GENERAL

*U.S. Department of Defense*

JUNE 21, 2021



## REPORT OF INVESTIGATION

### MR. BRETT J. GOLDSTEIN, DEFENSE DIGITAL SERVICE DIRECTOR

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**REPORT OF INVESTIGATION:  
MR. BRETT J. GOLDSTEIN  
DEFENSE DIGITAL SERVICE DIRECTOR**

## **I. INTRODUCTION AND SUMMARY**

### *Complaint Origin and Allegations*

From March 22, 2020, through June 18, 2020, the DoD Hotline received thirty complaints against Mr. Brett J. Goldstein, Director, Defense Digital Service (DDS). Most of the complainants were anonymous and generally alleged that Mr. Goldstein fostered a negative work environment by failing to treat his subordinates with dignity and respect. On June 19, 2020, the DoD Office of Inspector General (OIG) initiated an investigation into the allegations.

During the course of our investigation, we also examined an emergent allegation that Mr. Goldstein used and condoned the use of an unauthorized electronic messaging and voice-calling application to discuss official DoD information.

We present the applicable standards in full in Appendix A of this report.

### *Scope and Methodology of the Investigation*

Using the information provided in the complaints, we identified and interviewed witnesses who worked at DDS, had direct interaction with Mr. Goldstein, or had information relevant to the allegations. In total, we interviewed 38 witnesses, including current and former subordinates, the named complainants, and Mr. Goldstein. We also reviewed more than 6 gigabytes of data, including more than 26,000 official e-mails and other electronic messages, personnel documents, and applicable standards.

### *Mr. Goldstein's Response to our Conclusions*

We provided Mr. Goldstein our tentative conclusions through his attorney on April 29, 2021 and gave him the opportunity to comment on the results of our investigation before finalizing our report. Mr. Goldstein's attorney notified us on May 13, 2021 that Mr. Goldstein had no comment for our report.

### *Conclusions*

#### Failing to Treat Subordinates with Dignity and Respect

We concluded that Mr. Goldstein did not fail to treat subordinates with dignity and respect. In this investigation, we considered the Joint Ethics Regulation, which emphasizes primary ethical values including fairness, caring, and respect that should guide all DoD employees. We also reviewed case law regarding hostile work environments.

Some subordinates made unfavorable comments about Mr. Goldstein's leadership, describing his style as hostile, aggressive, or authoritarian. Other subordinates described his leadership style with favorable comments such as measured, inspiring, trusting, and easygoing.

Although subordinates described the use of profanity as common in the DDS, including by Mr. Goldstein, subordinates denied that Mr. Goldstein yelled at them or directed profanities at them. We concluded that Mr. Goldstein's actions described by the subordinates we interviewed in this case could constitute matters of performance for consideration by his supervisor, but did not constitute matters of misconduct or failure to treat employees with dignity and respect.

### Use of an Unauthorized Electronic Messaging and Voice-Calling Application

We concluded that Mr. Goldstein used and condoned his subordinates' use of Signal, an unauthorized electronic messaging and voice-calling application, to discuss official DoD information.<sup>1</sup> We found that Mr. Goldstein used Signal regularly to communicate with DDS employees and other DoD officials to discuss official DoD information.

### Other Matters

The complaints included a variety of other allegations against Mr. Goldstein. Based on our review of witness statements, e-mails, and documents, we determined that the evidence did not support the allegations or that the alleged conduct did not violate a standard. We list these allegations in Appendix B.

The following sections provide the detailed results of our investigation. We first provide background information about Mr. Goldstein and the DDS. We then present the complaints and facts associated with Mr. Goldstein's alleged failure to treat subordinates with dignity and respect. Next, we discuss Mr. Goldstein's use of Signal. Finally, we present our overall conclusions and recommendations.<sup>2</sup>

## **II. BACKGROUND**

### *Mr. Brett J. Goldstein*

Mr. Goldstein's affiliation with the DoD began when he began working with the Department of the Navy in October 2017 as a highly qualified expert.<sup>3</sup> In the fall of 2018, while still serving with the Department of the Navy, Mr. Goldstein began his transition to the DDS. Mr. Goldstein became the DDS Director on June 24, 2019.

### *Defense Digital Service*

The DDS was established on November 18, 2015, as a DoD agency dedicated to improving technology within the DoD. According to its charter, the DDS is composed of commercially experienced software developers and designers, product managers, and problem solvers responsible for transforming the way digital services are delivered within the DoD. DDS employees include contractors, DoD civilians, and personnel detailed from other DoD agencies and the Military Services. DDS employees also include non-DoD personnel hired as GS-15 digital service experts.

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<sup>1</sup> Signal is a commercial messaging application that allows users to send and receive secure text messages, files, and pictures. Users can also use Signal to make and receive voice and video calls. Neither the application developers nor other third parties can access Signal messages and calls. Therefore, the use of Signal to discuss official DoD information does not comply with Freedom of Information Act requirements and DoD's records retention policies.

<sup>2</sup> We based our conclusions on a preponderance of the evidence, consistent with our normal process in administrative investigations.

<sup>3</sup> A highly qualified expert is an individual who possesses expertise or recognized knowledge, skills, and experience in an occupational field.

DDS employees are located at offices in the Pentagon; Augusta, Georgia; and Mountain View, California. One DDS employee works at the U.S Embassy in Paris, France.

### *DDS Relationship with the United States Digital Service*

The United States Digital Service (USDS) is an office within the Executive Office of the President that works across the U.S. Government to bring best practices and new approaches to support modernization efforts. This relationship allowed DDS to share USDS' hiring channel, allowing USDS employees to be detailed to the DDS and to work in the DoD. The DDS used the USDS recruiting and hiring channel to acquire qualified candidates until December 4, 2019.<sup>4</sup>

## III. ANALYSIS OF THE ALLEGATIONS

### *Chronology of Significant Events*

Table 1 lists the significant events related to this investigation.

*Table 1. Chronology of Significant Events*

Date	Event
<b>November 2018</b>	Mr. Goldstein begins working at the DDS.
<b>May 2019</b>	The former DDS Director departs.
<b>June 24, 2019</b>	Mr. Goldstein assumes duty as the DDS Director.
<b>August 2019</b>	The USDS Administrator and Mr. Goldstein discuss several complaints against Mr. Goldstein from subordinates who allege that Mr. Goldstein bullied subordinates and treated women differently than men.
<b>December 4, 2019</b>	The Chief Management Officer updates the DDS charter, effectively removing the USDS
<b>March–June 2020</b>	The DoD Hotline receives 30 complaints against Mr. Goldstein.
<b>June 19, 2020</b>	The DoD OIG initiates this investigation.

### A. FAILING TO TREAT SUBORDINATES WITH DIGNITY AND RESPECT

The complaints against Mr. Goldstein included a variety of allegations that we broadly describe as fostering a negative work environment by failing to treat his subordinates with dignity and respect. We focused our investigation on interviewing witnesses who had direct observations or interactions with Mr. Goldstein regarding the allegations. Those witnesses provided names of other witnesses who might have information relevant to our investigation or who were identified to us as having direct and frequent interaction with Mr. Goldstein.

Based on the information provided by the witnesses, we grouped the allegations in four categories: treating female subordinates differently from male subordinates; making subordinates cry; screaming, yelling, and directing profanities at subordinates; and ineffective leadership. We examine each category below. Finally, we summarize Mr. Goldstein's statements to us addressing the allegations.

<sup>4</sup> On December 4, 2019, the Chief Management Officer updated the DDS charter and removed the requirement for DDS to consult with USDS on hiring issues. The updated DDS charter also reassigned responsibility for recruitment, hiring, and other personnel actions from USDS to Washington Headquarters Services.

### *Allegations of Treating Female Subordinates Differently from Male Subordinates*

One complaint alleged that Mr. Goldstein treated female subordinates differently from male subordinates. Some subordinates told us that the USDS Administrator asked Mr. Goldstein to resign due to the perception that Mr. Goldstein displayed sexist, misogynistic, or bullying behavior towards women.<sup>5</sup>

The USDS Administrator told us that he asked Mr. Goldstein to resign after speaking to several DDS staff members who alleged that Mr. Goldstein bullied subordinates and treated female subordinates differently than male subordinates. The Administrator told us that he “heard bad things from [redacted] [women]” that indicated to him that the DDS did not have “a hospitable work environment.” However, the Administrator also told us that he was not aware of any incident in which Mr. Goldstein “did something that was clearly offensive or sexist” but believed that women were either “not valued or heard at the level that other people were.”

Of the 16 female subordinates we interviewed, 13 told us that Mr. Goldstein did not treat female subordinates differently from male subordinates. However, three female subordinates told us that Mr. Goldstein treated female subordinates differently from male subordinates and described the following incidents in support of their assertions.

One female subordinate told us that during [redacted]

Another female subordinate told us that [redacted]

[redacted] The subordinate told us that she thought Mr. Goldstein was not joking but asked the question in an “aggressive” and “hostile” manner. The subordinate also told us that on another occasion Mr. Goldstein commented that she [redacted] and she felt that Mr. Goldstein would “never say that to a male counterpart.”

The third female subordinate told us that Mr. Goldstein did not treat her differently from anyone else, but that another female subordinate told her that Mr. Goldstein “screamed at her” over the phone about submitting her resignation and that she was now afraid to talk to Mr. Goldstein one-on-one. When we interviewed that female subordinate, she denied the incident occurred, told us that [redacted] and told us that she never witnessed or was aware of any misconduct by Mr. Goldstein. She also told us that she had no concerns about Mr. Goldstein’s conduct towards her or others.

### *Allegations of Making Subordinates Cry*

Four subordinates told us that they witnessed different incidents between Mr. Goldstein and a female subordinate who they said cried, was on the verge of tears, or left the room crying. We identified and interviewed the female subordinate described by the four subordinates as crying or on the verge of tears. She told us that Mr. Goldstein was extremely critical of her and told her that she was wrong, but that he did not yell at her or use inappropriate language. In addition, when she

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<sup>5</sup> Merriam-Webster defines “misogyny” as hatred of, aversion to, or prejudice against women.

described her interactions with Mr. Goldstein to us, she did not describe an incident with Mr. Goldstein that made her cry.

Six other subordinates told us that they either teared up, fought off tears, or they witnessed or heard about three other subordinates crying due to interactions and frustrations with Mr. Goldstein. However, neither the six other subordinates nor the subordinates identified as having cried described incidents in which they cried as a direct result of anything Mr. Goldstein said or did to them.

#### *Allegations of Screaming, Yelling, and Directing Profanities at Subordinates*

Several complaints alleged that Mr. Goldstein screamed, yelled, or directed profanities at subordinates. Most subordinates told us that the use of profanity was common in the DDS workspace and some even said that they used profanity more than Mr. Goldstein. Most subordinates also told us that they were not offended by Mr. Goldstein's use of profanity. However, two subordinates told us that they believed Mr. Goldstein's use of profanity in meetings with staff or senior DoD officials was unprofessional due to his senior position as the DDS Director.

Two other subordinates told us that they witnessed Mr. Goldstein yelling at or directing profanities at subordinates. We identified and interviewed these subordinates, who denied that Mr. Goldstein yelled at or directed profanities at them. We found no other evidence to support the allegation that Mr. Goldstein screamed, yelled at, or directed profanity at subordinates.

#### *Unfavorable Comments About Mr. Goldstein's Leadership*

We asked all witnesses to describe Mr. Goldstein, his leadership style, and his personality. Three subordinates provided unfavorable comments about Mr. Goldstein's leadership behaviors. They described Mr. Goldstein as somewhat manic, abrupt and aggressive, and of a bullying nature.

Four other subordinates provided both unfavorable and favorable comments about Mr. Goldstein's leadership. For instance, these subordinates told us that Mr. Goldstein was a brilliant data scientist, had a clear vision for the DDS, and was "willing to make tradeoffs for the things that he felt were important." They also described Mr. Goldstein as tyrannical, authoritarian, very cutting, and the worst leader they had ever experienced. We asked each of the four subordinates for examples of Mr. Goldstein's leadership behaviors, and they provided the following examples for our consideration.

- The first subordinate told us that Mr. Goldstein exhibited bullying, undermining, and passive-aggressive behavior toward the subordinate. The subordinate specified that Mr. Goldstein [REDACTED]. The subordinate added that Mr. Goldstein [REDACTED].
- The second subordinate told us that Mr. Goldstein used an extremely aggressive questioning style [REDACTED] and would cut people off.

- The third subordinate told us that Mr. Goldstein required people to work on tasks they were not comfortable with, excited about, or experts in, and that he used “coercive behavior or coercive language.”
- The fourth subordinate told us that Mr. Goldstein did not take feedback well.

Additionally, three other subordinates believed Mr. Goldstein was not a strong leader, felt disappointed because they did not feel empowered by Mr. Goldstein, and thought Mr. Goldstein’s leadership was all about “optics.” Another subordinate told us that compared to the subordinate’s previous career experience, Mr. Goldstein did not provide the same “level of leadership, vision, and clarity.”

#### *Favorable Comments About Mr. Goldstein’s Leadership*

Eighteen subordinates made favorable comments about Mr. Goldstein’s leadership. For example, five subordinates described Mr. Goldstein as “measured,” “inspiring,” or “easygoing.” One subordinate specifically told us, “I think that as a leader [Mr. Goldstein] can be a very inspiring person,” “he makes you somebody who believes in the mission,” and “you want to work harder.”

Three other subordinates described Mr. Goldstein as an “engineer” and a “nerd,” or very “technical” or “tactical.” One of these subordinates described Mr. Goldstein’s leadership behaviors as “very tactical and focused on the mission and getting things done and ... the facts and how to move things forward.”

Another four subordinates described Mr. Goldstein’s leadership as “hands-off” or “trusting.” One of these subordinates told us:

I feel like he is hands-off, which is what I expected ... we are all senior enough to manage projects and move them forward. He’s responsive when we need support. I think some people within the team may not be happy about some of the direction he gives, but that’s his choice ... at the end of the day, it’s his job to try to get these projects moving through the pipeline, and so you know, sometimes he has to make those tough decisions.

One subordinate told us that some DDS employees suffered a “bit of culture shock” due to the changes in leadership style and personality between Mr. Goldstein and his predecessor. The subordinate characterized Mr. Goldstein’s leadership style as “logical [and] rational,” and said that he was not an “emotional or jovial person” but cared deeply about people. The subordinate also told us that Mr. Goldstein was one of the best leaders the subordinate ever worked for and could not think of a scenario where Mr. Goldstein was not “absolutely appropriate” and reasonable. The subordinate said that Mr. Goldstein had a very high standard for what he expected from subordinates, remembered conversations, and would follow up to determine if the subordinates completed their tasks.

Another subordinate told us that Mr. Goldstein was empathetic and a great leader. The subordinate told us that Mr. Goldstein faced leadership challenges because he implemented changes to increase accountability, and some employees did not appreciate the changes. For example, the subordinate stated that Mr. Goldstein tried to hold subordinates accountable for the timely completion of their projects, but got pushback from some of them. In addition, the subordinate said that Mr. Goldstein imposed changes that required appropriate justification for

official overseas travel, to reduce costs by limiting the number of employees on trips to those deemed necessary. The subordinate said that some subordinates were accustomed to traveling frequently, saw it as a “perk” [benefit] of the job, and really pushed back against Mr. Goldstein’s new restrictions.

*Mr. Goldstein’s Comments*

Treatment of Female Subordinates

Mr. Goldstein “strongly” denied the assertions that he treated female subordinates differently from male subordinates, and stated that hearing about the allegations that he exhibited sexist or misogynistic behavior was “remarkably hurtful.” Mr. Goldstein told us [REDACTED] and realized that his career field was male-dominated, he made a concerted effort to promote intelligent and talented females in the DDS and in his previous jobs.

Mr. Goldstein told us that in August 2019, he and his staff were concerned about diversity and possible discrimination in the USDS hiring arrangements, and wanted to manage the DDS’s own recruitment and hiring process. Therefore, Mr. Goldstein asked the USDS Administrator to meet with him and his staff to discuss the hiring arrangements. Mr. Goldstein stated that after the meeting, the USDS Administrator asked him to resign because “he had received a series of allegations saying that [he] was a sexist, and things along those lines” including women subordinates leaving DDS because of Mr. Goldstein’s alleged behavior. Mr. Goldstein told us that he did not resign, was very surprised at the USDS Administrator’s request, and did not recall him describing any specific incidents.

Screaming, Yelling, Directing Profanities at Subordinates, and Making Subordinates Cry

Mr. Goldstein told us that he used profanity but did not recall directing profanities, yelling, or screaming at subordinates. Mr. Goldstein also told us that he used the expression “punch you in the face” when referring to report writing to ensure the message was clear for senior leaders reading the report. Furthermore, he told us that he did not recall ever using the word “violate” when providing feedback on report writing. Additionally, he told us that he did not recall making subordinates cry.

Failing to Treat Subordinates With Dignity and Respect

Mr. Goldstein told us that he did not have any examples when he might have been perceived as failing to treat subordinates with dignity and respect, and realized his tenure had been “bumpy.” Mr. Goldstein told us that DDS employee morale, including his, was “pretty low” when employees were leaving DDS. Mr. Goldstein added that he believed there was a lot of confusion in the beginning of his tenure because he was a different leader than his predecessor, the DDS was evolving into a more mature organization, the DDS was becoming more of an active participant with DoD senior leadership, and the DDS was working on harder projects. He added that he believed things got more difficult with an increase in workload and the ongoing pandemic.

Regarding the possibility of negatively influencing the DDS climate during his tenure, Mr. Goldstein told us that he worked at a very fast pace and that the DDS was a different organization than it was two years ago. Mr. Goldstein also told us that at times he gave feedback subordinates did not like. He told us that from the beginning of his tenure, he told subordinates that the DDS would focus on the military’s lethal capabilities. He added that as the DDS grew, he

believed it needed formal processes, and, therefore, he made some “exceptionally unpopular” decisions that subordinates were not happy about and which caused some frustration among the team. He provided several examples of some of those “unpopular” decisions.

- Enforced “the 80/20 rule” to ensure that 80 percent of a subordinate’s time was spent on the subordinate’s primary project and 20 percent was devoted to secondary tasks: Mr. Goldstein stated that this rule was a common practice in technology companies and that the rule was in place but not enforced before he became the director. He also told us that he was puzzled to learn that some subordinates would come to work and not have a project to work on.
- Timekeeping: Mr. Goldstein told us that early in his tenure as director, he noticed that the time and attendance system did not match what subordinates were reporting. He added that he also had concerns about how subordinates were using sick leave as vacation before leaving the DDS. He told us that made him very nervous and he asked human resources specialists “to overhaul the process, and provide some rigor.”
- “Shuttered” a series of projects: Mr. Goldstein said that he halted several projects that began under the previous director because he believed the projects were not part of the DDS mission, and he did not want to spend more money on them.
- Lethality: Mr. Goldstein told us that the Secretary of Defense and the Deputy Secretary of Defense told him to focus the DDS on increasing lethality and that this caused controversy for subordinates. Mr. Goldstein told us some subordinates who had been there for a long time saw this as big change.

#### *Conclusion on Failing to Treat Subordinates With Dignity and Respect*

We concluded that Mr. Goldstein did not fail to treat subordinates with dignity and respect. The preponderance of evidence did not support the allegations that Mr. Goldstein failed to treat subordinates with dignity and respect, demeaned subordinates, or treated them in an offensive or contemptuous manner. Additionally, we found insufficient evidence to support the allegation that Mr. Goldstein treated female subordinates differently than male subordinates. Finally, although witnesses described the use of profanity as common in the DDS, subordinates denied that Mr. Goldstein yelled at them or directed profanities at them.

Although a few subordinates used unfavorable terms to describe Mr. Goldstein’s leadership, the majority of his subordinates described his leadership favorably. Mr. Goldstein’s supervisor could consider his actions as matters of performance, but his actions did not constitute matters of misconduct. Accordingly, we did not substantiate the allegation.

## B. USE OF UNAUTHORIZED ELECTRONIC MESSAGING AND VOICE-CALLING APPLICATION

We reviewed Mr. Goldstein's electronic messages from May 2019 through August 2020 to search for information relevant to the complaints we investigated. During our investigation, we found evidence that Mr. Goldstein communicated with DDS employees via an unauthorized electronic messaging and voice-calling application known as Signal.<sup>6</sup>

### *Government E-mails and Slack Messages Encouraging Signal Use*

We found several Government e-mails and Slack messages in which Mr. Goldstein provided his Signal phone number and encouraged subordinates to contact him using Signal.<sup>7</sup> We found other messages in which DDS employees asked to be contacted on Signal when they were out of the office or had limited access to authorized DoD communication methods.

### *Mr. Goldstein's and DDS Employees' Alleged Use of Signal*

Eleven subordinates told us that they used Signal to communicate with Mr. Goldstein and other DDS employees to discuss official DoD information. In general, the subordinates told us that they used Signal because they believed it was more secure than communicating with their Government-issued cell phones or approved communication tools.

Of the 11 subordinates who used Signal, 5 subordinates told us that there was a perception that Mr. Goldstein and DDS employees used Signal to discuss classified or sensitive information. Additionally, 4 of the 11 subordinates told us that there was a perception that Signal was used to avoid complying with the Freedom of Information Act requirements and DoD's records retention policies. For example, one subordinate told us that he or she believed the intent in using Signal was to conceal messages from official records and to be able to "deny the existence of a communication." Finally, 3 of the 11 subordinates told us that the Deputy Director contacted them via Signal to conduct official business, including official personnel matters.

### *Efforts to Approve the Use of Signal*

In reviewing Mr. Goldstein's Government e-mails, we found a March 2020 e-mail that showed DoD officials were discussing the potential use of Signal for some DoD components. The discussions also included concerns about Signal's ability to delete message history and that Signal's ability to delete messages did not comply with the DoD's records retention policies. However, we found no evidence that DoD officials approved Signal for use by Mr. Goldstein or any other DDS employee.

### *Mr. Goldstein's Comments on His Use of Signal*

Mr. Goldstein stated that he had been using Signal since the beginning of his tenure, [REDACTED]. He also told us that he considered standard phone calls and text messaging unsafe, and that using Signal was a secure way of making calls to discuss unclassified information.

<sup>6</sup> Appendix C provides a detailed analysis of current DoD policies addressing the use of electronic messaging accounts and applications to discuss official DoD information.

<sup>7</sup> Slack is a commercial messaging platform that allows users to send and receive text messages, files, and pictures. Users can also make and receive voice and video calls using Slack. Slack is approved for use by the DDS and allows DDS employees to communicate and discuss official DoD information. Unlike Slack, Signal is not approved by the DoD as an authorized electronic messaging and voice-calling application.

Mr. Goldstein told us that Signal was an unauthorized application, but he was working with the DDS's general counsel and the CIO's office to get it approved for some DoD components.

*Conclusion on Mr. Goldstein's Use of an Unauthorized Electronic Messaging and Voice-Calling Application*

We concluded that Mr. Goldstein used and condoned his subordinates' use of Signal, an unauthorized electronic messaging and voice-calling application, to discuss official DoD information in violation of DoD policies described in Appendix C.

#### **IV. OVERALL CONCLUSIONS**

We did not substantiate the allegation that Mr. Goldstein failed to treat subordinates with dignity and respect.

We substantiated the emergent allegation that Mr. Goldstein used and condoned the use of Signal, an unauthorized electronic messaging and voice-calling application, to discuss official DoD information.

#### **V. RECOMMENDATIONS**

We recommend that the Secretary of Defense take appropriate action regarding Mr. Goldstein's use of the unauthorized electronic messaging and voice-calling application.

## Appendix A: Standards

### DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, (Incorporating Changes 1- 7, November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates title 5 Code of Federal Regulations part 2635 (1992), "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," states in paragraph (b)(8) and (14): "Employees shall act impartially and not give preferential treatment to any private organization or individual. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

#### *Chapter 12, "Ethical Conduct"*

Section 4, "Ethical Values," states that ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties. These values include accountability, fairness, caring, and respect. Section 4, Paragraph 12-401, "Primary Ethical Values," elaborates on those characteristics as follows.

- Accountability includes avoiding even the appearance of impropriety because appearances affect public confidence.
- Fairness requires that individuals be treated equally and with tolerance. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious, or biased.
- Caring demands courtesy and kindness, both to those we serve and to those we work with, to help ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.
- Respect involves treating people with dignity, honoring privacy, and allowing self-determination. Respect is critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

**DoD Directive (DoDD) 1400.5, "DoD Policy for Civilian Personnel," January 12, 2005**

DoDD 1400.5 establishes principles that DoD components and civilian personnel must follow regarding civilian employees, including the following.

- Employee work performance must be evaluated fairly and objectively on a continuing basis, and the results of such evaluation must be discussed with the employee.
- Employees must be encouraged to express themselves concerning improvement of work methods and working conditions.
- Employees must be treated with full regard for their dignity as individuals, and no distinctions as to trustworthiness of employees can be made based on their wage levels or grades.

**Applicable Labor Law and Supreme Court Decisions**

The labor law and Supreme Court decisions that apply to this report include:

- Title VII of the Civil Rights Act of 1964;
- Meritor Savings Bank v. Vinson, 477 U.S. 57, 91 L.Ed.2d 49, 106 S.Ct. 2399 (1986);
- Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998); and
- Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993)

The following information provides the context for these laws and decisions.

- When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII of the Civil Rights Act of 1964 is violated.
- Mere utterance of an epithet, which engenders offensive feelings in an employee, does not sufficiently affect the conditions of employment to implicate Title VII of the Civil Rights Act of 1964.
- Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.
- "Simple teasing," offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the "terms and conditions of employment."

## Appendix B: Other Matters

### Matters That Did Not Warrant Investigation or Alleged Conduct That Did Not Violate a Standard

In this appendix, we address other allegations against Mr. Goldstein. Based on our review of witness testimony, e-mails, and documents, we determined that no evidence supported the allegations or that the alleged conduct did not violate a standard. Accordingly, we did not address these allegations in Section III of this report.

#### Nepotism, Improper Use of Program Funding, Acceptance of Gift Cards, Violation of Travel Policies, and Misuse of Government Purchase Card

Several complaints alleged that Mr. Goldstein engaged in nepotism when hiring his Deputy Director; lied about the DDS's size and capabilities to garner funding; misused program funding; accepted gifts from subordinates; and failed to follow DoD policies involving travel and the Government purchase card. We found no evidence that supported these allegations.

#### Allowing a DDS Employee to [REDACTED]

Complaints alleged that Mr. Goldstein knowingly allowed a [REDACTED]

[REDACTED] We found that Mr. Goldstein was not involved in [REDACTED] and that no evidence indicated a potential violation of a standard.

#### Encouraging Employees to Hack *FedScoop's* Best Bosses in Federal IT 2020 Competition

Complaints alleged that Mr. Goldstein encouraged DDS subordinates to hack the *FedScoop's* Best Bosses in Federal IT 2020 competition to enable him to win. *FedScoop* conducts this competition annually to recognize leaders across Government agencies who deliver innovative technology solutions to serve American citizens. Mr. Goldstein denied asking any subordinate to create a script so that he could win the competition. The DDS legal advisor told us that subordinates joked about creating a script that could submit votes for Mr. Goldstein but they were told that doing so would be inappropriate, which resolved the issue. We found no evidence that Mr. Goldstein took an action in violation of a standard as alleged in these complaints.

#### Supporting the Federal Bureau of Investigation (FBI) in Surveillance of Civilian Protesters

One complaint alleged that Mr. Goldstein offered support to the FBI in surveilling U.S. civilian protesters. Subordinates told us that a team of employees [REDACTED] had an established working relationship with the FBI to provide [REDACTED], which enabled the FBI to securely operate [REDACTED] in the United States. [REDACTED] that confirmed the FBI requested [REDACTED] support and not help with surveilling U.S. civilian protesters. We found no evidence to indicate that Mr. Goldstein was involved in this matter.

### Alleged Empowerment of Deputy Director's "Toxic" Leadership

Two complaints alleged that Mr. Goldstein empowered his Deputy Director's "toxic" leadership by enabling her to supervise subordinates despite her being in a non-supervisory role. Several subordinates told us that the Deputy Director lacked leadership skills, technical skills, and other qualifications needed to execute the Deputy Director role. Several subordinates told us that Mr. Goldstein failed to address his Deputy Director's "toxic" leadership, which ultimately cultivated a toxic work environment. However, the subordinates could not provide examples of the Deputy Director's conduct related to the alleged "toxic" leadership. Mr. Goldstein told us that the subordinates expressed either "frustrations" or "interpersonal issues" with his Deputy Director, and he addressed those issues with his Deputy Director. We determined that Mr. Goldstein's alleged conduct did not violate a standard.

### Alleged Nicknaming of Subordinates

One complaint alleged that Mr. Goldstein nicknamed DDS employees with "disparaging" names. ██████████ told us that Mr. Goldstein referred to subordinates as ██████████ and ██████████. The subordinate that Mr. Goldstein referred to as ██████████ told us that ██████████ spoke to Mr. Goldstein about the nickname and Mr. Goldstein stopped. The other subordinate that Mr. Goldstein called ██████████ did not respond to our request for an interview. Mr. Goldstein told us that the DDS used "call signs" for each other and he admitted using the nicknames ██████████ and ██████████ but he did not recall anyone voicing concerns about the use of nicknames. Mr. Goldstein also told us that he used the nickname ██████████ generically and that there was no "derogatory intent behind it." We concluded that Mr. Goldstein's alleged conduct is a matter of performance that could be considered by his supervisor.

### Alleged Firing or Reassignment of Subordinates for Providing Feedback

Two complaints alleged that Mr. Goldstein capriciously fired or reassigned subordinates who voiced opposing opinions or gave information to outside organizations that made the DDS look bad. ██████████ told us that Mr. Goldstein made comments about either wanting to fire or actually firing ██████████ subordinates because they dissented with Mr. Goldstein. However, we found no evidence supported the allegation that Mr. Goldstein fired or reassigned subordinates for voicing opposing opinions or making disparaging remarks about the DDS.

### Absorbing, Then Dismantling the ██████████

██████████ members of the ██████████ [redacted] ██████████ team told us that Mr. Goldstein either fired them, or fired other members of the team shortly after merging the ██████████ [Redacted] with the DDS. ██████████ told us that ██████████ was ██████████ ██████████ told us that ██████████ and had planned to join the DDS as a civilian employee, but decided to accept another job offer because of significant delays with the DDS's hiring process. Mr. Goldstein told us that he was aware that ██████████ We determined that both of those actions were beyond Mr. Goldstein's control. ██████████ We determined that Mr. Goldstein's alleged conduct did not violate a standard.

## Appendix C: Current DoD Policy on Discussing Official DoD Information on Non-Official Electronic Messaging Accounts

DoD Instruction (DoDI) 5015.02, "DoD Records Management Program," February 24, 2015, (Incorporating Change 1, August 17, 2017), states, "Non-official electronic messaging accounts, with very few exceptions, must not be used to conduct official DoD communications in accordance with DoDI 8550.01, "DoD Internet Services and Internet-Based Capabilities," September 11, 2012.<sup>8</sup> It also states, "If a DoD employee uses a non-official electronic messaging account, the employee must copy the message to his or her official electronic messaging account when the record is first transmitted, or must forward a complete copy of the record to their official electronic messaging account within 20 days of the record's original creation or transmission pursuant to" title 44 of the United States Code.

The DoD Chief Information Officer (CIO) issued a memorandum on April 6, 2015, to the DoD senior leadership, titled, "Use of Non-Official Electronic Messaging Accounts and Records Management."<sup>9</sup> In this memorandum, the CIO clarified guidance set forth in DoDI 8550.01 and DoDI 5015.02 as it relates to DoD records management.<sup>10</sup>

In the memorandum, the DoD CIO included examples that might warrant use of non-official electronic messaging accounts such as:

- the lack of availability to official messaging accounts and the mission requires use of a non-official messaging account to communicate;
- when technological difficulties render use of available messaging accounts impractical or unreliable; and
- when use of an official messaging account would substantially delay or hinder the transmission of purely administrative communications, or would be inconsistent with the individual's ability to conduct work efficiently.

The DoD CIO's memorandum also stated that "in the event circumstances exist that would warrant use of a non-official electronic messaging account, DoD personnel must never transmit classified information on that account, and should use good judgment regarding the transmission of other potentially sensitive information." Finally, the CIO reiterated that DoD personnel who use any non-official electronic messaging account to conduct official business must copy the message to their official electronic messaging account at the time of creation, or within 20 days after transmitting the original message.

On January 16, 2018, the Deputy Secretary of Defense issued another memorandum to all DoD personnel, titled, "Conducting Official Business on Electronic Messaging Accounts," re-emphasizing that "non-official electronic messaging accounts, including personal e-mail accounts, must not be used to conduct official DoD communications, with very few exceptions." The

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<sup>8</sup> DoD does not define "official DoD communications." However, DoDI 5230.09, "Clearance of DoD Information for Public Release," January 25, 2019, defines official DoD information as "all information that is in the custody and control of the DoD, relates to information in the custody and control of the DoD, or was acquired by DoD personnel as part of their official duties or because of their official status within DoD."

<sup>9</sup> DoDI 5015.02 defines "electronic messaging account" as any account that sends or receives electronic messages. It also defines electronic messages as e-mail and other types of electronic messages that people use to communicate, including, messages created by chat, text, and e-mail systems.

<sup>10</sup> DoDI 8550.01 was superseded by DoDI 8170.01.

Deputy Secretary of Defense clarified that “when a DoD official is out of the office without access to official communication channels and must send an urgent DoD mission-related e-mail” is an example of an extraordinary circumstance. The Deputy Secretary of Defense also referred DoD personnel to the DoD CIO’s April 6, 2016 memorandum for examples of exceptions to this policy.

DoDI 8170.01, “Online Information Management and Electronic Messaging,” January 2, 2019, states, “DoD personnel must not use personal e-mail or other nonofficial accounts to exchange official information and must not auto-forward official messages to nonofficial accounts or corporate accounts.” The Instruction also states, “Personal, nonofficial accounts may not be used to conduct official DoD communications for personal convenience or preferences.” Specifically, the Instruction states: “DoD personnel may not use personal, nonofficial accounts, to conduct official DoD communications ... . Exceptions must meet the combined three conditions:

- (1) Emergencies and other critical mission needs.
- (2) When official communication capabilities are unavailable, impractical, or unreliable.
- (3) It is in the interests of DoD or other USG missions.”

On March 18, 2020, the DoD CIO’s Chief of Staff distributed refresher guidance on defending the DoD information network with “do’s” and “don’ts” to DoD senior officials, including Mr. Goldstein, for dissemination to their components. One of the don’ts listed under the cybersecurity guidance on defending the DoD information network was “[Do Not] use any non-DoD instant messaging applications to share DoD information.”

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### **U.S. DEPARTMENT OF DEFENSE**

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## **For more information about DoD OIG reports or activities, please contact us:**

### **Congressional Liaison**

703.604.8324

### **Media Contact**

[public.affairs@dodig.mil](mailto:public.affairs@dodig.mil); 703.604.8324

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Report No. DODIG-2021-092

Report of Investigation  
Mr. Brett J. Goldstein  
Defense Digital Service Director



DEPARTMENT OF DEFENSE | OFFICE OF INSPECTOR GENERAL

4800 Mark Center Drive  
Alexandria, Virginia 22350-1500  
[www.dodig.mil](http://www.dodig.mil)  
DoD Hotline 1.800.424.9098

