



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

Office of the Secretary Employee Did Not Comply With Federal Ethics Pledge

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

REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

We investigated allegations that a then senior political employee did not comply with the recusal periods required by the ethics pledge under Executive Order No. 13770 when the employee communicated with a former employer and participated in particular matters involving the former employer. The senior political employee left the U.S. Department of the Interior (DOI) in summer 2019.

We determined that the senior political employee's one-on-one communications with the former employer did not comply with paragraph 6 of the Federal ethics pledge because the communications were made during the mandatory 2-year recusal period and did not occur at a meeting or event where participation was open to all interested parties. Furthermore, we found that the senior political employee's participation in the membership processes for two councils containing applicants from the former employer did not comply with paragraph 6 of the ethics pledge because the senior political employee was prohibited from participating in any particular matter involving specific parties that were directly and substantially related to the former employer during the mandatory 2-year recusal period. We did not find, however, that the senior political employee violated paragraph 7 of the Federal ethics pledge because the evidence did not show that the senior political employee worked on the particular matters at issue within 2 years before the date of the employee's appointment.

In making these findings, we note that the senior political employee met with a Departmental Ethics Office (DEO) attorney several times shortly after the senior political employee's DOI appointment in 2017 to review the senior political employee's previous work and identify matters from which the senior political employee was recused from working while with the DOI. We found, however, that the senior political employee did not receive formal, written ethics guidance from the DEO on specific recusals until spring 2019, after the ethics violations at issue occurred. We found no further communications between the senior political employee and representatives of the former employer after the senior political employee received this guidance.

We provided this report to the Chief of Staff for the Office of the Secretary.

II. RESULTS OF INVESTIGATION

In fall 2017, the senior political employee signed a Federal ethics pledge when joining the DOI. The pledge prohibits participation in "any particular matter involving specific parties" directly and substantially related to a former employer for 2 years following appointment to a Federal position.¹ In addition, the ethics pledge prohibits participation in "any particular matter" on which the employee worked or "in the specific issue area in which that particular matter" fell for a period of 2 years following appointment to the DOI.² We received a complaint alleging that the

¹ Exec. Order No. 13770 of Jan 28th, 2017, 82 Fed. Reg. 9,333 (Section 1, paragraph 6) (Feb. 3, 2017).

² *Id.*, paragraph 7.

senior political employee participated in work related to a former employer and work involving the same issues that the senior political employee worked on for the former employer.

A. Facts

1. The Senior Political Employee's Former Employment, Appointment at the DOI, and Federal Ethics Training

According to the DEO, the senior political employee reported working on more than 20 matters for the former employer. In fall 2017, a DEO attorney provided the senior political employee and several other political appointees with initial ethics training that addressed the ethics pledge and restrictions placed on Federal employees regarding their contacts with former employers. The senior political employee recounted to us signing and reading the Federal ethics pledge and having discussions with the DEO. The senior political employee told us that, after having done so, the senior political employee believed that communications with a former employer were allowed as long as at least five or more organizations were part of the conversation.

The senior political employee told us that during the initial ethics training, the DEO attorney wanted to have a “specific conversation” about the senior political employee’s recusals. The senior political employee recalled having several meetings with the DEO attorney in which the senior political employee and the attorney reviewed the senior political employee’s disclosure reports to identify matters from which the senior political employee should be recused from participating. The senior political employee reported to us the belief that these meetings probably occurred within the first couple of months of joining the DOI and should be reflected on the senior political employee’s calendar. A review of the senior political employee’s official DOI calendar showed three ethics discussions scheduled with the DEO attorney in fall 2017. The senior political employee told us that prior to receiving an ethics memo from the DEO in 2019, the senior political employee relied upon the guidance provided by the DEO attorney during their initial discussions. The senior political employee stated it was difficult to obtain direct answers or information in writing from the DEO attorney. As discussed in more detail below, the senior political employee told us that the 2019 ethics memo analyzed the ethics pledge and the senior political employee’s “role” and established a recusal screener.

The DEO attorney confirmed having had a “number of meetings” with the senior political employee after the initial ethics training. The DEO attorney said that they discussed paragraph 7 of the ethics pledge, likely discussed paragraph 6, and reviewed the senior political employee’s disclosure reports. The DEO attorney recalled providing oral guidance to the senior political employee whenever the attorney identified a matter on the disclosure reports from which the senior political employee should be recused. The DEO attorney did not recall the senior political employee asking about communicating one-on-one with representatives of the former employer and expressed an opinion that, if the senior political employee had asked, “it would have been—an easy question to answer. . . . it’s clear from the guidance . . . you are not supposed to communicate with a former employer regarding official duties unless there are . . . five interested stakeholders . . . present and no party matters are discussed.”

2. *The Senior Political Employee's Communications With Representatives of the Former Employer*

According to the senior political employee, shortly after joining the DOI, the senior political employee contacted individuals who would want to work with the DOI because it was the senior political employee's job "to work with the community." In particular, the senior political employee recalled speaking with a representative of the former employer (representative 1) to let representative 1 know the senior political employee was at the DOI and was looking forward to "catching up." The senior political employee further recalled speaking with representative 1 about topics related to the former employer.

We confirmed that the senior political employee exchanged emails and had discussions with representative 1 about topics related to the former employer during the 2-year recusal period set forth in the ethics pledge. These communications are detailed in the timeline that follows.

Date	Activity/Communication
Fall 2017	The senior political employee emails representative 1 to schedule time to discuss topics related to the former employer.
Fall 2017	Representative 1 expresses happiness for the senior political employee and attaches a comment letter prepared in 2017 by the former employer and eight other organizations. On this same day, the senior political employee forwards the comments to a DOI official.
Fall 2017	The senior political employee responds to representative 1 with a thanks for sharing and expressing interest in working with representative 1 in this new capacity.
Fall 2017	The senior political employee emails representative 1 again to inform representative 1 that the Secretary's office had not yet made a decision about the draft of plan 1 under discussion.
Fall 2017	Representative 1 emails the senior political employee additional information about plan 1 that representative 1 believed would be enlightening to the Secretary's office. On this same day, the senior political employee forwards the information provided by representative 1 to a DOI official.
Fall 2017	The senior political employee forwards a briefing paper from a senior DOI official to representative 1 and five individuals representing four other organizations with a similar interest, asking them to share any concerns or insights they had about the issue.
Fall 2017	Representative 1 responds to the senior political employee later that day, explaining that representative 1 was out of the office and was unable to provide a letter containing comments that a coalition of interested organizations sent to the DOI when plan 2 was under discussion in draft form.
Fall 2017	The senior political employee emails representative 1 that the senior political employee had already received the letter from another advocacy organization and asks whether the group would consider alternative options.

Date	Activity/Communication
Fall 2017	Representative 1 emails a copy of the coalition’s letter and a summary of concerns to the senior political employee and six other people (including the five people the senior political employee previously emailed) who had an interest in the same matters.
Fall 2017	Representative 1 emails a DOI attorney about plan 1, stating that when this person talked to the senior political employee about the issue the previous month, representative 1 believed that the Secretary’s office would not pursue the concerns that the former employer and other organizations had raised in comments.
Winter 2018	Representative 1 emails the senior political employee and another representative of the former employer (representative 2) additional comments that representative 1 had submitted to the DOI about plan 2. We found no response from the senior political employee, but the senior political employee forwarded that email to another DOI official.

Representative 1 recalled communicating with the senior political employee about these matters but said the senior political employee would not have worked on these matters while at the former employer because representative 1 was the only staffer who did so.

3. *The Senior Political Employee’s Direct Involvement With Nominations and Applications to the Two Federal Councils*

a. *Council 1*

In 2017, the senior political employee sent an email to a variety of individuals with information about the creation of Council 1, which was created to advise the Secretary of the Interior on particular issues that were of interest to a range of organizations, including organizations such as the former employer.

We found that the senior political employee received multiple nominations and applications to join Council 1 from various individuals and organizations, including representative 2 and a third representative of the former employer (representative 3). The evidence showed that the senior political employee forwarded all but one of the nominations and applications, including those from representatives 2 and 3, to a DOI committee management employee for review.

The DOI committee management employee said the DOI initially vetted between 70 and 80 applicants for Council 1 and confirmed receiving nominations from the senior political employee and forwarding them to the designated Federal official for Council 1. According to the DOI committee management employee, however, the DOI committee management employee did not view the senior political employee’s actions as attempting to influence the appointment of any particular applicant, including applicants from the senior political employee’s former employer, to Council 1.

The DOI committee management employee told us that once individuals were selected for Council 1, a decision had to be made whether term limits of 1, 2, or 3 years would apply. The

DOI committee management employee believed the DOI White House liaison office directed the DOI committee management employee to work with the senior political employee to determine the term limits for each position. The DOI committee management employee stated that several days after sending the senior political employee the list of selected applicants, the senior political employee provided the DOI committee management employee with the recommended term limits for each individual on Council 1. Representative 2 and a former member of the former employer's Board of Directors were among a number of individuals selected for Council 1. The senior political employee recalled attending Council 1 meetings as an observer to watch deliberations and presentations and to understand its members' concerns but reported having no input in those meetings.

We did not find evidence that the senior political employee consulted with or sought approval from the DEO regarding communications or participation in the above-mentioned matters.

b. Council 2

In 2017, the senior political employee emailed numerous potentially interested parties, including representatives 2 and 3, the link to the announcement for Council 2. Similar to Council 1, Council 2 was created to advise the Secretary of the Interior on a range of issues that were of interest to various organizations, including the former employer and other similar organizations.

After emailing the link to the announcement, the senior political employee received applications, nominations, and referrals for Council 2 from a variety of individuals and organizations, including representatives 1 and 3. The senior political employee told us that the announcement directed interested individuals to send their resumes to the designated Federal official for Council 2, but despite these instructions, some individuals sent their applications directly to the senior political employee. In these instances, the senior political employee recalled forwarding the applications to the designated Federal official. The senior political employee did not know how many applications the designated Federal official received.

Regarding the senior political employee's involvement with Council 2, the senior political employee recalled being in meetings about Council 2. When asked about a 2018 meeting listed on the senior political employee's official calendar as a discussion about Council 2 membership, the senior political employee said the DOI meeting participants discussed candidate applications to determine the candidates' suitability. According to the senior political employee, however, the senior political employee did not have a role in the final selection of candidates for Council 2 because it was "up to the senior leadership to decide who's on it." When we asked the senior political employee if the DOI meeting participants discussed personnel of the former employer or anyone else the senior political employee knew during that meeting, the senior political employee said, "Yeah, I knew a lot of people in the community. . . . I'm sure people brought up . . . [representative 3], 'cause [representative 3] had submitted . . . info." Later that day, the senior political employee emailed the then Chief of Staff for the Office of the Secretary asking whether the Chief of Staff had time that week to discuss Council 2, noting that participants had narrowed down what they believed to be a strong group of individuals for review.

In 2018, the senior political employee sent the then Chief of Staff a list of prospective nominees to Council 2. The list included representative 3 and a fourth representative of the former employer (representative 4). According to information provided by the DOI committee management employee, in 2018, the Secretary appointed individuals to Council 2 as primary members, which included the prospective nominees that the senior political employee sent to the then Chief of Staff.

We did not find evidence that the senior political employee consulted with or sought approval from the DEO regarding communications or participation in the above-mentioned matters.

4. The Senior Political Employee's Meeting with a DEO Official in Summer 2018 Regarding Recusal Obligations Under the Ethics Pledge and Receipt of Written Ethics Guidance in Spring 2019

A now-former DEO official recalled learning in spring 2018 that a DEO attorney had been working with the senior political employee since fall 2017 to identify issues from which the senior political employee had to be recused. According to the DEO official, the DEO official told the DEO attorney that the DEO attorney needed to give the senior political employee “firm advice on [the senior political employee’s] recusals,” which the DEO official acknowledged took several more months. However, the DEO official recalled personally meeting with the senior political employee in summer 2018 and “very specifically” told the senior political employee that the senior political employee had to be recused from “dealing with [the former employer]” and from anything the senior political employee formerly worked on for the former employer unless the senior political employee received prior DEO approval. The evidence showed that in summer 2018, after a discussion with the DEO official, the senior political employee began seeking DEO guidance before working on matters related to the former employer.

In spring 2019, the DEO issued the senior political employee a memorandum explaining ethics obligations under Federal law, along with the senior political employee’s recusal obligations pursuant to the ethics pledge. The guidance also established a screening process to assist the senior political employee in identifying recusals in DOI work related to the senior political employee’s previous work with his former employer. We found no evidence that the senior political employee communicated with the former employer or was otherwise involved in official matters relating to prior work during the time between receipt of the DEO memorandum in spring 2019 and the senior political employee’s departure from the DOI in summer 2019.

B. Analysis

Every political appointee in the executive branch must sign the ethics pledge contained in Section 1 of Executive Order No. 13770 (“Ethics Commitments by Executive Branch Appointees”). The senior political employee’s actions described above implicated paragraphs 6 and 7 of the ethics pledge. For the reasons discussed below, we found that the senior political employee did not comply with paragraph 6 of the ethics pledge. We did not find that the senior political employee violated paragraph 7 of the ethics pledge.

1. The Senior Political Employee Did Not Comply With Paragraph 6 of the Ethics Pledge While Interacting With the Former Employer

We determined that the senior political employee did not comply with paragraph 6 of the ethics pledge because of the nature of the senior political employee communications with representatives from the senior political employee's former employer. We also found that the senior political employee's involvement in the membership processes for Councils 1 and 2, which included membership applications from personnel from the former employer, was not consistent with paragraph 6 of the ethics pledge. These instances occurred before the senior political employee received formal written guidance on specific recusals from the DEO in spring 2019, and we identified no similar communications or activities after the senior political employee received the DEO's ethics guidance.

a. The Senior Political Employee's Communications Involving Matters Related to the Former Employer

The evidence showed that the senior political employee had multiple interactions with the former employer prohibited by paragraph 6 of the ethics pledge. Paragraph 6 of the ethics pledge states, "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 Section 2 of the Executive Order expanded the definition of "particular matter involving specific parties" to include "any meeting or other communication relating to the performance of one's official duties with a former employer or former client, 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."⁴

Office of Government Ethics (OGE) memorandum DO-09-011 describes the expansion of the definition of "particular matter involving specific parties" and clarifies 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."⁵

In sum, under the standard articulated in the OGE memorandum, the ethics pledge prohibits any meeting or other communication with a former employer relating to the performance of the appointee's official duties unless the communication is (1) "about a particular matter of general applicability and (2) is made at a meeting or other event at which participation is open to all

³ Exec. Order No. 13770 of Jan 28th, 2017, 82 Fed. Reg. 9,333 (Section 1, paragraph 6) (Feb. 3, 2017).

⁴ *Id.*, § 2(s).

⁵ "Ethics Pledge: Revolving Door Ban--All Appointees Entering Government," OGE DO-09-11 (2009).

interested parties.” This second part may be satisfied if the meeting includes a “multiplicity of parties.”⁶

Here, the senior political employee’s one-on-one communications with representative 1 in fall 2017 constituted communications with the former employer relating to the senior political employee’s performance of official duties and occurred within the ethics pledge’s 2-year recusal period. The senior political employee acknowledged that official duties of the position required working “with the community” on matters related to the former employer. As previously noted, the senior political employee corresponded with representative 1 in fall 2017, well within the 2-year recusal period under paragraph 6 of the ethics pledge. The communications the senior political employee had with the former employer were prohibited under the ethics pledge because they were with the senior political employee’s former employer and did not satisfy the second part of the two-part exception articulated in the OGE memorandum: they were not made at a meeting or other event at which participation was open to “all interested parties” or a “multiplicity of parties.”⁷

b. The Senior Political Employee’s Participation in the Membership Processes for Councils 1 and 2

As discussed above, paragraph 6 of the ethics pledge prohibits those who sign the ethics pledge from participating in any particular matter involving specific parties that is directly and substantially related to their former employer or former clients within 2 years after the date of their appointment. The ethics pledge defines “participate” to mean “participate personally and substantially.”⁸ OGE regulations further provide, “[t]o participate ‘personally’ means to participate directly,” and “[t]o participate ‘substantially’ means that the employee’s involvement is of significance to the matter.”⁹ “Participation may be substantial even though it is not determinative of the outcome of a particular matter,” and “[p]ersonal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.”¹⁰ According to the OGE, 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.”¹¹ Examples of particular matters involving

⁶ OGE memorandum DO-09-011 states, “An appointee may participate in communications and meetings with a former employer or client about these particular or nonparticular matters if the meeting or event is open to all interested parties.” The memorandum acknowledges, though, that because meeting spaces are typically limited and because time and other practical considerations also may constrain the size of meetings, “common sense” demands that reasonable limits be placed on what it means to be “open to all interested parties.” *Id.* at 2.

⁷ We need not address the first part of the two-part exception—whether the matter involved a particular matter of general applicability—because both parts need to be satisfied for the exception to apply. In addition, although representative 1 stated the senior political employee had not specifically worked on these matters, we note that the relevant standard does not require this but instead more broadly prohibits meetings and communications with the former employer relating to the performance of official duties. As described below, however, this information is relevant to the alleged violations of paragraph 7 of the ethics pledge.

⁸ Exec. Order No. 13770, of Jan 28th, 2017, 82 Fed. Reg. 9,333 (Feb. 3, 2017).

⁹ 5 C.F.R. § 2640.103(a)(2).

¹⁰ *Id.*

¹¹ OGE DO-06-29 (2006) at 3-4.

specific parties may “include contracts, grants, licenses, product approval applications” among other matters taken with regard to, or on behalf of, a party.¹² The OGE has explained “[i]n matters involving contracts, grants and other agreements between the Government and outside parties, the general rule is that specific parties are first identified when the Government first receives an expression of interest from a prospective contractor, grantee or other party.”¹³ The Code of Federal Regulations also explains that a “[p]articular Government matter involving a specific party” includes an “application . . . or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.”¹⁴

As discussed above, Councils 1 and 2 were created to advise the Secretary of the Interior on issues of interest to the senior political employee’s former employer and other similar organizations. We therefore determined that the United States had a direct and substantial interest in matters affecting these councils and that applications for membership on these councils, including the respective membership terms, from representatives of the former employer constituted particular Government matters involving specific parties. Here, the senior political employee received and forwarded nominations and applications from representatives of the former employer who were interested in serving on Council 1 to other DOI officials. The evidence also showed that the senior political employee then set term limits for the members, including representatives of the former employer, who were selected to serve on the council.

Similarly, the evidence also showed that the senior political employee received nominations and applications from representatives of the former employer who were interested in participating on Council 2, forwarded those applications to other DOI officials, and then discussed the applications with DOI officials. All of these actions occurred within 2 years after the date of the senior political employee’s Federal appointment. While the senior political employee’s involvement with the membership process for both councils was not determinative of the outcome, the senior political employee’s actions were personal and substantial under applicable OGE guidance. We therefore concluded that the senior political employee’s participation in the membership processes for these councils with respect to the applicants from the former employer did not comply with paragraph 6 of the ethics pledge.

2. The Senior Political Employee’s Actions Did Not Violate Paragraph 7 of the Ethics Pledge

We determined that the senior political employee’s communications related to these matters did not violate paragraph 7 of the ethics pledge because the evidence did not show that the senior political employee worked on these particular matters within 2 years before the senior political employee’s date of appointment.

Paragraph 7 of the ethics pledge states that if a person worked on a matter “within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter” on which that person worked within the 2 years before the date of that person’s appointment or

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ 5 C.F.R. § 2637.102(a)(7).

“participate in the specific issue area in which that particular matter falls.”¹⁵ For purposes of paragraph 7, a “particular matter” includes “any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding,”¹⁶ and “encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.”¹⁷ The term “does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons.”¹⁸

When we reviewed this matter with OGE officials, they explained that for the recusal requirements of paragraph 7 to apply, the senior political employee’s official activities would have had to involve the same specific matters the senior political employee worked on for the former employer. Here, however, both the senior political employee and representative 1 stated that the senior political employee did not engage in efforts that fell within the language of paragraph 7 on behalf of the former employer that involved the specific matters in question. We found no evidence contradicting their statements. Moreover, the OGE opined, and we agree, that the matters on which the senior political employee worked while at the former employer were broad policy matters that did not satisfy the definition of a particular matter for purposes of paragraph 7. Thus, we concluded that the senior political employee’s participation in these matters as a DOI official did not violate paragraph 7 of the ethics pledge.

Similarly, the recusal requirements of paragraph 7 would apply only if the senior political employee had worked on issues related to membership on Councils 1 and 2 while employed by the former employer. We were unable to interview the senior political employee about the activities related to these councils because the senior political employee had left the DOI and declined a second interview with us. However, the evidence showed that Council 1 and Council 2 did not exist until after the senior political employee had already left the former employer and joined the DOI. Thus, we concluded that it was unlikely that the senior political employee would have worked on these specific matters while working for the former employer and so did not substantiate that the senior political employee’s participation in these matters violated paragraph 7 of the ethics pledge.

III. CONCLUSION

We concluded that the senior political employee’s one-on-one communications with the former employer and involvement with the membership processes for Councils 1 and 2 with applicants from the former employer, did not comply with paragraph 6 of the ethics pledge. We also concluded that the senior political employee’s actions in those matters were not prohibited by paragraph 7 of the ethics pledge because the evidence did not show that the senior political employee worked on those particular matters within 2 years before joining the DOI.

¹⁵ Exec. Order No. 13770 of Jan 28th, 2017, 82 Fed. Reg. 9,333 (Section 1, paragraph 7) (Feb. 3, 2017).

¹⁶ 18 U.S.C § 207 (i)(3) (2016).

¹⁷ 5 C.F.R. § 2635.402(b)(3).

¹⁸ *See id.*

IV. SUBJECT

A senior political DOI employee.

V. DISPOSITION

We provided this report to the Chief of Staff for the Office of the Secretary.

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