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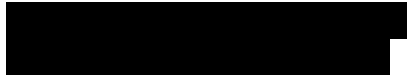


UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

March 20, 2017

Mr. John Greenewald
The Black Vault



Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 17-00040-OIG

Dear Mr. Greenewald:

This is the final response to your February 1, 2017 request for the Office of Inspector General (OIG) report, 15-ENF-0273-I.

Access is granted in part to OIG report, 15-ENF-0273-I. Information within the report is being withheld under 5 U.S.C. § 552(b)(5), (6) and (7)(C), 17 CFR § 200.80(b)(5), (6) and (7)(iii).

Since information within this report forms an integral part of the pre-decisional process it is protected from release by the deliberative process privilege embodied in FOIA Exemption 5. Under Exemption 6 the release of the redacted information would constitute a clearly unwarranted invasion of personal privacy. Under Exemption 7(C) release of the information could reasonably be expected to constitute an unwarranted invasion of personal privacy. Further, public identification of Commission staff could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives.

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(d)(5)(iv). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address. Also, send a copy to the SEC Office of the General Counsel, Mail Stop 9612, or deliver it to Room 1120 at the Station Place address.

You also have the right to seek assistance from an SEC FOIA Public Liaison, whose contact information can be located at <https://www.sec.gov/oso/contact/foia-contact.html>. In addition, you may contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or <https://ogis.archives.gov/?p=/ogis/index.html>.

If you have any questions, please contact me by email at sifordm@sec.gov or by telephone at (202) 551-7201. If you cannot reach me please contact Mr. John J. Livornese, the SEC's FOIA Officer, by calling (202) 551-7900 or by sending an e-mail to foiapa@sec.gov.

Sincerely,



Mark P. Siford
Counsel to the Director/Chief FOIA Officer
Office of Support Operations

Enclosure

REPORT OF INVESTIGATION

CASE# 15-ENF-0273-I



Office of Inspector General

U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6),(b)(7)(C)
Title: Senior Counsel
Level: (b)(6),(b)(7)(C)
Office: Division of Enforcement
Region: Washington, DC

Case #: 15-ENF-0273-I
Origin: Office of Inspector General

Security Clearance: Y ☐ / N ☒
Level: N/A

Investigation Initiated: March 18, 2015

Investigation Completed: MAY 29 2015

Summary and Conclusion

On August 12, 2014, the U.S. Securities and Exchange Commission (SEC), Office of Inspector General (OIG), discovered that (b)(6),(b)(7)(C) Senior Counsel, Division of Enforcement (ENF), may have transmitted nonpublic information from his work email to his personal America Online (AOL) email account. Specifically, during the course of investigative activities related to OIG Case # 14-ENF-0726-I, the OIG found that (b)(6),(b)(7)(C) forwarded an internal SEC email dated December 17, 2013, *RE: Questioning concerning responding to a FOIA request when independent consultant's work is ongoing*, concerning a FOIA request. It appears that (b)(6),(b)(7)(C) forwarded this email to his personal AOL address on January 9, 2014. The content discussed in the email included two case numbers from the Hub, with a brief synopsis of each case. As a result, on March 18, 2015, the OIG initiated a separate investigation concerning (b)(6),(b)(7)(C) improper release of nonpublic SEC information.

The investigation determined that the information (b)(6),(b)(7)(C) transmitted to his personal AOL email account on December 17, 2013, *RE: Questioning concerning responding to a FOIA request when independent consultant's work is ongoing*, constituted nonpublic information. Furthermore, on January 9, 2014, (b)(6),(b)(7)(C) admitted that he sent the email, which contained nonpublic information regarding a Freedom of Information Act (FOIA) request concerning (b)(6),(b)(7)(C) investigation, to his personal AOL email account. (b)(6),(b)(7)(C) acknowledged that he

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should not have forwarded the email and confirmed that he deleted it from his AOL email account. A cursory search by the OIG of (b)(6), (b)(7)(C) personal AOL email account yielded negative results for any SEC related email messages.

Relevant Authorities

- Office of Information Technology Rules of the Road Concerning Use of Email
- SEC Administrative Regulations (SECR) 5-10, Electronic Mail

Basis and Scope

While conducting investigative activities related to OIG Case # 14-ENF-0726-I, the OIG determined that (b)(6), (b)(7)(C) sent nonpublic information from his official SEC work email to his personal AOL email account. (EXHIBIT 1)

On August 12, 2014, during the course of reviewing emails and telephone records for OIG Case # 14-ENF-0726-I, the OIG revealed that (b)(6), (b)(7)(C) sent an email containing information related to ENF matters from his official SEC email account to his personal AOL account (b)(6), (b)(7)(C) which may include nonpublic information. Specifically, on January 9, 2014 at 9:33 a.m., (b)(6), (b)(7)(C) sent an email containing nonpublic information regarding a FOIA request he was working on concerning (b)(6), (b)(7)(C) investigation. The email (b)(6), (b)(7)(C) forwarded to his personal email included an email he authored on December 17, 2013, to (b)(6), (b)(7)(C) Office of Chief Counsel, SEC, which states in part:

(b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

In the email, (b)(6), (b)(7)(C) went on to provide background information on both investigations that included nonpublic information. In one instance when providing information on the (b)(6), (b)(7)(C) investigation, (b)(6), (b)(7)(C) noted, "There have been a number of TCRs concerning (b)(6), (b)(7)(C) that have been subsumed under this matter." (EXHIBITS 2 & 3)

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[Agent's Note: The (b)(6),(b)(7)(C) investigation was opened by ENF to investigate circumstances surrounding (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) Additionally, the (b)(6),(b)(7)(C) investigation involves an incident (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

During the course of the investigation, OIG interviewed the following individuals:

- (b)(6),(b)(7)(C) Senior Counsel, ENF
- (b)(6),(b)(7)(C) Office of Chief Counsel, ENF
- (b)(6),(b)(7)(C) Office of the Associate General Counsel for Litigation and Administrative Practices, Office of General Counsel

In addition, the SEC OIG reviewed documents relevant to the investigation, including:

- SEC Employee Email and Telephone Records
- AOL Email Account Records

Investigative Activity

In an interview with the OIG (b)(6),(b)(7)(C) was provided a copy of (b)(6),(b)(7)(C) email and upon initial review she stated that it would "probably" be treated as nonpublic information as part of the Deliberative Process Privilege which is protected under FOIA (b)(6),(b)(7)(C) was asked to examine the email and advise specifically what portion of the email would be considered nonpublic information. After reviewing the document she advised (b)(5)

(b)(5) (EXHIBIT 4)

In an interview with the OIG, (b)(6),(b)(7)(C) stated that he did not know why he sent this information to his personal email address but surmised it was possibly due to connectivity issues he experiences when he teleworks on occasion (b)(6),(b)(7)(C) indicated he believed transmitting the information was secure because he was sending it from his secured SEC official email account. (b)(6),(b)(7)(C) was questioned regarding the number of times he used his personal email account to conduct official SEC business, and he responded, "Very, very rarely. Had you not brought this to my attention I might have said I don't know if I ever do." The OIG informed (b)(6),(b)(7)(C) that his personal email is not secure. He advised he was familiar with and has reviewed the SEC's Rules of the Road. He also acknowledged the information was nonpublic and apologized for this

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incident, (b)(6), (b)(7)(C) informed the OIG that he deleted the email in question, which he transmitted on January 9, 2014. Additionally, a cursory search by the OIG of (b)(6), (b)(7)(C) AOL email account yielded negative results for any SEC related email messages. (EXHIBITS 5 & 6)

Findings

The investigation determined that the information (b)(6), (b)(7)(C) transmitted to his personal and non-secured AOL email account on December 17, 2013, *RE: Questioning concerning responding to a FOIA request when independent consultant's work is ongoing*, constituted nonpublic information. Furthermore, on January 9, 2014, (b)(6), (b)(7)(C) admitted that he sent the email, which contained nonpublic information regarding a FOIA request concerning (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) Investigation" and the (b)(6), (b)(7)(C) investigation, to his personal AOL email account. (b)(6), (b)(7)(C) acknowledged that he should not have forwarded the email and confirmed that he deleted it from his AOL email account. A cursory search by the OIG of (b)(6), (b)(7)(C) personal AOL email account yielded negative results for any SEC related email messages.

On the basis of the findings of our investigation, it appears that the following pertinent authorities were violated or could be applied to the case:

- **Office of Information Technology Rules of the Road Concerning Use of Email**

All users of SEC computing and network facilities, including Federal employees and contractors, must follow the SEC Rules of the Road, issued March 1, 2004, and updated on June 23, 2010, when using any SEC information technology source, including email. See Rules of the Road, available at http://wapps.sec.gov/oit/intranet/oit_learn/rules.html. The SEC Rules of the Road require SEC users to protect SEC networks and automated system assets and prohibit them from processing nonpublic information on non-SEC workstations unless such workstations are equipped with SEC-approved protection software.

Rule No. 3 of the Rules of the Road, "Use E-mail Responsibly and Sensibly," specifically prohibits users from sending material that is sensitive or that contains personally identifiable information to their personal email accounts. Id. Similarly, Rule No. 7, "Don't Transmit Nonpublic or Sensitive Information over Non-secure Systems" prohibits the transmission of nonpublic information or sensitive data through the Internet or via email, unless it is encrypted using the SEC's approved encryption software.

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- **SECR 5-10, Electronic Mail**

SECR 5-10, Electronic Mail, provides the policies, standards, responsibilities, and procedures for all personnel who utilize the SEC email system and directs, in relevant part, that users will ensure sensitive information is not entered, stored, or transmitted through Internet email further defining sensitive information as any information which could adversely affect the privacy to which individuals are entitled under Title 5 United States Code 552a, Privacy Act. (Section A(3)(j)(1), Responsibilities, Electronic Mail Users)

SECR 5-10 provides, in relevant part, that email users must exercise common sense, good judgment, and propriety in the use of email, and use Internet mail responsibly and in accordance with the guidelines in Section D of this regulation. (Section (A)(3)(j)(6), Responsibilities, Electronic Mail Users)

SECR 5-10 also provides, in relevant part, that it is unacceptable to use Internet mail for the purpose of transmitting confidential, non-public, or sensitive information. (Section (D)(13)(b), Use of Internet Electronic Mail, Unacceptable uses)

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Signatures

(b)(6),(b)(7)(C)

5/29/15

Date

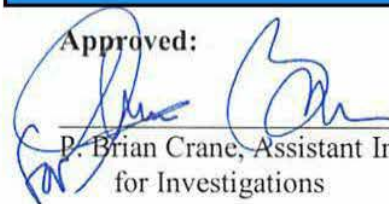
5/28/15

Date

5/20/15

Date

Approved:



P. Brian Crane, Assistant Inspector General
for Investigations

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Exhibits

1. **OIG Lead Initiation**, dated March 18, 2015.
2. **Memorandum of Activity, Review of Records of** (b)(6), (b)(7)(C) **dated August 12, 2014.**
3. **Memorandum of Activity, Review of Records of** (b)(6), (b)(7)(C) **dated July 25, 2014.**
4. **Memorandum of Activity, Interview of** (b)(6), (b)(7)(C) **dated August 13, 2014.**
5. **Memorandum of Activity, Interview of** (b)(6), (b)(7)(C) **dated October 31, 2014.**
6. **Memorandum of Activity, Review of Records of** (b)(6), (b)(7)(C) **dated March 10, 2015.**

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