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OIG Office of Inspector General

U.S. Department of State • Broadcasting Board of Governors

EXECUTIVE SUMMARY

Review of Selected Internal Investigations Conducted by the Bureau of Diplomatic Security (ESP-14-01)

OFFICE OF EVALUATIONS AND SPECIAL PROJECTS

This is an Unclassified Executive Summary of the Sensitive But Unclassified (SBU) report provided to Congress and the Department of State.

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REVIEW OF SELECTED INTERNAL INVESTIGATIONS CONDUCTED BY THE BUREAU OF DIPLOMATIC SECURITY (ESP-14-01)

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This review arose out of a 2012 OIG inspection of the Department of State (Department) Bureau of Diplomatic Security (DS). At that time, OIG inspectors were informed of allegations of undue influence and favoritism related to the handling of a number of internal investigations by the DS internal investigations unit. The allegations initially related to eight, high-profile, internal investigations.

This review assesses the Department's handling of those eight investigations. OIG did not reinvestigate the underlying cases. In conducting this review, OIG interviewed Department employees, examined case files, and reviewed 19,000 emails culled from the Department's electronic communications network. OIG's findings are not necessarily indicative of systemic issues affecting all DS cases. However, they reveal issues with current Department policies and procedures that may have significant implications regarding actual or perceived undue influence.

Appearance of Undue Influence and Favoritism in Three Cases

In three of the eight internal investigations, OIG found that a combination of factors in each case created an appearance of undue influence and favoritism by Department management. The appearance of undue influence and favoritism is problematic because it risks undermining confidence in the integrity of the Department and its leaders.

U.S. Ambassador

The *Foreign Affairs Manual* (FAM) provides that disciplinary action may be taken against persons who engage in behavior, such as soliciting prostitutes, that would cause the U.S. Government to be held in opprobrium were it to become public.¹

In May 2011, DS was alerted to suspicions by the security staff at a U.S. embassy that the U.S. Ambassador solicited a prostitute in a public park near the embassy. DS assigned an agent from its internal investigations unit to conduct a preliminary inquiry. However, 2 days later, the agent was directed to stop further inquiry because of a decision by senior Department officials to treat the matter as a "management issue." The Ambassador was recalled to Washington and, in June 2011, met with the Under Secretary of State for Management and the then Chief of Staff and Counselor to the Secretary of State. At the meeting, the Ambassador denied the allegations and was then permitted to return to post. The Department took no further action affecting the Ambassador.

OIG found that, based on the limited evidence collected by DS, the suspected misconduct by the Ambassador was not substantiated. DS management told OIG, in 2013, that the preliminary inquiry was appropriately halted because no further investigation was possible. OIG concluded, however, that additional evidence,

¹ 3 FAM 4139.14 (Notoriously Disgraceful Conduct).

confirming or refuting the suspected misconduct, could have been collected. For example, before the preliminary inquiry was halted, only one of multiple potential witnesses on the embassy's security staff had been interviewed. Additionally, DS never interviewed the Ambassador and did not follow its usual investigative protocol of assigning an investigative case number to the matter or opening and keeping investigative case files.

Department officials offered different justifications for handling the matter as a "management issue," and they did not create or retain any record to justify their handling of it in that manner. In addition, OIG did not discover any guidance on what factors should be considered, or processes should be followed, in making a "management issue" determination, nor did OIG discover any records documenting management's handling of the matter once the determination was made.

The Under Secretary of State for Management told OIG that he decided to handle the suspected incident as a "management issue" based on a disciplinary provision in the FAM that he had employed on prior occasions to address allegations of misconduct by Chiefs of Mission. The provision, applicable to Chiefs of Mission and other senior officials, states that when "exceptional circumstances" exist, the Under Secretary need not refer the suspected misconduct to OIG or DS for further investigation (as is otherwise required).² In this instance, the Under Secretary cited as "exceptional circumstances" the fact that the Ambassador worked overseas.³

DS managers told OIG that they viewed the Ambassador's suspected misconduct as a "management issue" based

on another FAM disciplinary provision applicable to lower-ranking employees. The provision permits treating misconduct allegations as a "management issue" when they are "relatively minor."⁴ DS managers told OIG that they considered the allegations "relatively minor" and not involving criminal violations.

Office of the Legal Adviser staff told OIG that the FAM's disciplinary provisions do not apply to Ambassadors who, as in this instance, are political appointees and are not members of the Foreign Service or the Civil Service.⁵

OIG questions the differing justifications offered and recommends that the Department promulgate clear and consistent protocols and procedures for the handling of allegations involving misconduct by Chiefs of Mission and other senior officials. Doing so should minimize the risk of (1) actual or perceived undue influence and favoritism and (2) disparate treatment between higher and lower-ranking officials suspected of misconduct.⁶ In addition, OIG concludes that the Under Secretary's application of the "exceptional circumstances" provision to remove matters from DS and OIG review could impair OIG's independence and unduly limit DS's and OIG's abilities to investigate alleged misconduct by Chiefs of Mission and other senior Department officials.

DS Manager

The second DS internal investigation in which OIG found an appearance of undue influence and favoritism concerned a DS Regional Security Officer (RSO) posted overseas, who, in 2011, allegedly engaged in sexual misconduct and harassment. DS commenced an internal investigation of those allegations in September 2011.

² 3 FAM 4322.2 states that incidents or allegations involving Chiefs of Mission that could serve as grounds for disciplinary action and/or criminal action must be immediately referred to OIG or DS to investigate. This section further states that "[i]n exceptional circumstances, the Under Secretary for Management...may designate an individual or individuals to conduct the investigation." No guidance exists describing what factors to consider in determining what constitutes "exceptional circumstances."

³ In the SBU report provided to Congress and the Department, OIG cited an additional factor considered by the Under Secretary—namely, that the Ambassador's suspected misconduct (solicitation of prostitution) was not a crime in the host country. However, after the SBU report was issued, the Under Secretary advised OIG that that factor did not affect his decision to treat the matter as a "management issue" and that he cited it in a different context. This does not change any of OIG's findings or conclusions in this matter.

⁴ 3 FAM 4322.3.a provides that a management official "must initially determine whether he, she, or another management official should be the investigating official, or whether the matter should be referred to" OIG or DS for further action. This section further provides that if the official determines that the "alleged misconduct is relatively minor, such as leave abuse or failure to perform assigned duties, that official or another management official may handle the administrative inquiry" and need not refer the matter to OIG or DS.

⁵ After the SBU report was issued, the Under Secretary of State for Management advised OIG that he disagrees with the Office of the Legal Adviser interpretation, citing the provisions in the Foreign Service Act of 1980 which designate Chiefs of Mission appointed by the President as members of the Foreign Service. See Foreign Service Act of 1980, §§ 103(1) & 302(a)(1) (22 USC §§ 3903(1) & 3942(a)(1)).

⁶ During the course of this review, OIG discovered some evidence of disparity in DS's handling of allegations involving prostitution. Between 2009 and 2011, DS investigated 13 prostitution-related cases involving lower-ranking officials. OIG found no evidence that any of those inquiries were halted and treated as "management issues."

However, at the time the investigation began, the RSO already had a long history of similar misconduct allegations dating back 10 years at seven other posts where he worked. A 2006 DS investigation involving similar alleged misconduct led to the RSO's suspension for 5 days.

OIG found that there was undue delay within the Department in adequately addressing the 2011 misconduct allegations and that the alleged incidents of similar misconduct prior to 2011 were not timely reported to appropriate Department officials.⁷ OIG also found that, notwithstanding the serious nature of the alleged misconduct, the Department never attempted to remove the RSO from Department work environments where the RSO could potentially harm other employees, an option available under the FAM.⁸ Notably, the DS agents investigating the 2011 allegations reported to DS management, in October 2011, that they had gathered "overwhelming evidence" of the RSO's culpability.

The agents also encountered resistance from senior Department and DS managers as they continued to investigate the RSO's suspected misconduct in 2011. OIG found that the managers in question had personal relationships with the RSO. For instance, the agents were directed to interview another DS manager who was a friend of the RSO, and who was the official responsible for selecting the agents' work assignments. During the interview, the manager acted in a manner the agents believed was meant to intimidate them. OIG also found that Department and DS managers had described the agents' investigation as a "witch hunt," unfairly focused on the RSO. Even though OIG did not find evidence of actual retaliation against the investigating agents, OIG concluded that these circumstances, including the undue delay, created an appearance of undue influence and favoritism concerning DS's investigation and the Department's handling of the matter.

Ultimately, in November 2013, based on evidence collected by DS and the Department's Office of Civil Rights, the Department commenced termination of employment proceedings against the RSO. The RSO's employment in the Department did not end until mid-

2014, approximately 3 years after DS initially learned of the 2011 allegations.

Nominee To be U.S. Ambassador

The third DS internal investigation in which OIG found an appearance of undue influence and favoritism involved the unauthorized release in mid-2012 of internal Department communications from 2008 concerning an individual who was nominated in early-2012 to serve as a U.S. Ambassador. (The nominee's name was withdrawn following the unauthorized release.) DS commenced an internal investigation related to the unauthorized release of the internal communications. The then Chief of Staff and Counselor to the Secretary of State was alleged to have unduly influenced that investigation.

OIG found no evidence of any undue influence by the Chief of Staff/Counselor. However, OIG did find that the Assistant Secretary of State in charge of DS had delayed for 4 months, without adequate justification, DS's interview of the nominee, and that delay brought the investigation to a temporary standstill. OIG concluded that the delay created the appearance of undue influence and favoritism. The case was ultimately closed in July 2013, after the nominee was interviewed and after DS conducted additional investigative work.

No Undue Influence or Favoritism in Four Cases

OIG did not find evidence of perceived or actual undue influence or favoritism in four of the DS internal investigations reviewed, and, in two of those four, determined that no further discussion was warranted. However, two cases are discussed further in this review because OIG found one common issue in both cases that requires remedial action—the failure to promptly report alleged misconduct to the DS internal investigations unit for further review.

- Three DS special agents allegedly solicited prostitutes in 2010 while serving on the security detail for the Secretary of State. Although managers on the security detail learned of some of the alleged misconduct at

⁷ 3 FAM 1525.2-1.a provides that the Department must "take the necessary steps to ensure that" sexual assault and harassment allegations are "promptly investigated and addressed." 3 FAM 1525.2-1.c further states that "[f]ailure to report such incidents to [the Office of Civil Rights] will be considered a violation of this policy and may result in disciplinary action."

⁸ 3 FAM 4323.a states that "[a]t any time during the course of an administrative inquiry or disciplinary action, a management official may decide to exclude the employee from all or a part of the official premises based on a reasonable belief that the employee's continued presence in the workplace may pose a threat to the employee or to others."

or near the time it occurred, they did not notify the DS internal investigations unit, which normally handles such matters. A DS internal investigations agent only learned about the three cases while conducting an unrelated investigation. As a result, no action was taken to investigate the misconduct allegations until October 2011, 18 months after the first alleged solicitation occurred. As a result of the investigation then conducted, the three agents were removed from the Secretary's security detail, and their cases were referred for further disciplinary action. One agent subsequently resigned; the allegations against the other two agents were not sustained.⁹

- A DS special agent who worked in a domestic field office allegedly falsified time and attendance records over a 17-month period between January 2011 and May 2012. DS management in the domestic field office knew about the allegations but did not promptly report them to the DS internal investigations unit. In May 2012, during the course of an unrelated investigation involving the DS special agent, the DS internal investigations unit learned of the allegations of false time and attendance reporting. An internal investigation was then commenced, and the DS special agent subsequently resigned. DS also referred the matter to the Department of Justice, which declined prosecution of the case.

One Review Ongoing

The eighth DS internal investigation reviewed by OIG concerned the use of deadly force during three incidents that took place during counternarcotics operations in Honduras in 2012. OIG has commenced a joint review with the U.S. Department of Justice, Office of the Inspector General. The investigation remains under review, and OIG will issue a separate report on the matter.

OIG Recommendations

OIG recommends two actions:

1. The Department should take steps (as previously recommended in OIG's report on the 2012 inspection (ISP-I-13-18)), to enhance the integrity of DS's internal investigations process by implementing safeguards to prevent the appearance of, or actual, undue influence and favoritism by Department officials.
2. The Department should clarify and revise the Foreign Affairs Manual and should promulgate and implement additional protocols and procedures, in order to ensure that allegations of misconduct concerning Chiefs of Mission and other senior Department officials are handled fairly, consistently, and independently.

These recommendations remain open and unresolved.

⁹ In the SBU report provided to Congress and the Department, OIG noted that one agent subsequently resigned; the allegations against a second agent were not sustained; and the third agent had initiated a grievance proceeding, which was pending, challenging the discipline determination. However, after the SBU report was issued, the Department advised OIG that the third agent's grievance proceeding was resolved with a finding by the Foreign Service Grievance Board not sustaining the charges.