



**OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS**

## REPORT OF INVESTIGATION

<b>CASE TITLE:</b> OSY Investigation of [REDACTED] (OSY/ITMD)	<b>FILE NO.:</b> 19-0108
<b>TYPE OF REPORT:</b> <input type="checkbox"/> Interim <input checked="" type="checkbox"/> Final <input type="checkbox"/> Supplemental	

### BASIS FOR INVESTIGATION

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG) initiated this investigation in November 2018 based upon information received from a confidential complainant (Complainant).

In November 2018, the Complainant reported that in [REDACTED]—after the Investigation and Threat Management Division (ITMD), Office of Security (OSY) initiated an investigation into the [REDACTED] [REDACTED]—the federal employees assigned to [REDACTED] were sequestered to different conference rooms within the Herbert C. Hoover Building (HCHB) for a period of approximately 10 months without any duties. The Complainant further alleged that the [REDACTED] employees did not receive performance appraisals for a period of at least 28 months, did not perform the [REDACTED] functions of their job series, and were refused access to the DOC information technology (IT) network.

### SUMMARY OF INVESTIGATION

OIG's investigation substantiated that DOC paid a total salary of \$1,179,154 to the eight [REDACTED] employees while they reported to work without duties for a collective total of 127 months. OIG's investigation also revealed that the same eight federal employees reported to the HCHB for a period of more than 28 months, respectively, under no official performance plan, and received no official performance appraisal until years later, in violation of Department Administrative Order (DAO) No. 202-430 §§ 5.01, 6.01 (*Performance Management*

Distribution:	OS
Signature of Case Agent: [REDACTED]	Signature of Approving Official: [REDACTED]

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*System*), May 15, 2006, available at [www.osec.doc.gov/opog/dmp/daos/dao202\\_430.html](http://www.osec.doc.gov/opog/dmp/daos/dao202_430.html) (last visited June 16, 2020),<sup>1</sup> and 5 U.S.C. § 2302(b)(12) (Prohibited Personnel Practices).

**METHODOLOGY OF INVESTIGATION**

Throughout the course of the investigation, OIG interviewed relevant witnesses, reviewed records, and researched applicable legal standards. The witness interviews included both current and former DOC employees, and some witnesses were interviewed more than once. Two witnesses declined requests to be interviewed, one of which provided only a narrative to summarize their recollection of events. OIG obtained records from the Complainant, witnesses, and relevant DOC offices.

**DETAILS OF INVESTIGATION**

**BACKGROUND**

[REDACTED]

In [REDACTED], [REDACTED] consisted of 10 federal DOC employees: The Director, [REDACTED]; the Deputy Director, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. The [REDACTED] also had one [REDACTED] detailee, and one [REDACTED] representative. The [REDACTED] and the [REDACTED].

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<sup>1</sup> DOC DAOs are available at [www.osec.doc.gov/opog/dmp/daos.html](http://www.osec.doc.gov/opog/dmp/daos.html) (last visited June 16, 2020).

<sup>2</sup> Current DOC DOOs are available at [www.osec.doc.gov/opog/dmp/doos.html#20](http://www.osec.doc.gov/opog/dmp/doos.html#20) (last visited June 16, 2020).

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[REDACTED]

[REDACTED] reassigned the [REDACTED] functions of [REDACTED] to the ITMD, and delegated [REDACTED] functions to BIS. On [REDACTED], [REDACTED] assigned [REDACTED] as the [REDACTED] [REDACTED] on an interim basis, a position previously held by [REDACTED].

During the [REDACTED] and prior to [REDACTED] on [REDACTED], [REDACTED] became the [REDACTED]. When [REDACTED] at the end of the previous administration, [REDACTED] began performing the non-exclusive duties of the [REDACTED], which [REDACTED] performed until [REDACTED], when [REDACTED] joined the Department as [REDACTED]. [REDACTED] then began serving as [REDACTED].

In [REDACTED], after [REDACTED] began performing the non-exclusive duties of the [REDACTED], [REDACTED] introduced [REDACTED] to [REDACTED] and began to explain [REDACTED] situation. [REDACTED] stated [REDACTED] was unaware and pressed [REDACTED] for more information. [REDACTED] advised that the [REDACTED] was shut down due to an investigation by OSY, which would soon be completed. By [REDACTED], the investigation had not concluded, and the eight [REDACTED] employees were now sitting in a room in the "swing space" of HCHB.

[REDACTED] coordinated with [REDACTED] and [REDACTED] and in [REDACTED], detailed [REDACTED], and [REDACTED]. [REDACTED] and [REDACTED] remained in the swing space of HCHB without any assigned duties.

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At the end of [REDACTED] ITMD reported they required no further assistance from DOC OIG; however, ITMD planned to provide DOC OIG with the results of their investigation. The DOC OIG Special Agent-in-Charge placed its investigation in a “completed” status pending the receipt of relevant results from ITMD.

In [REDACTED] the FOIA backlog diminished, as did the need for all [REDACTED] employees. [REDACTED] and [REDACTED] left [REDACTED] and rejoined the others in the swing space.

One month later, [REDACTED] detailed [REDACTED] to [REDACTED] to [REDACTED] its [REDACTED] resources. From [REDACTED], [REDACTED] detailed [REDACTED] to [REDACTED] to assist with [REDACTED] resource database.

By the end of [REDACTED] [REDACTED] and [REDACTED] were in [REDACTED] working a [REDACTED] detail, [REDACTED] was detailed to research DOC [REDACTED] and [REDACTED] employees ([REDACTED], [REDACTED], [REDACTED], and [REDACTED]) were in the swing space; [REDACTED] of whom ([REDACTED] and [REDACTED]) had no duties since [REDACTED].

After DOC announced the [REDACTED] [REDACTED] inundated the BIS.<sup>3</sup> [REDACTED] and [REDACTED] coordinated with [REDACTED] for assistance with the [REDACTED] so [REDACTED] coordinated with [REDACTED]. [REDACTED] authorized the [REDACTED] employees for the [REDACTED] Exclusion Mission and [REDACTED] detailed [REDACTED], [REDACTED], [REDACTED], and [REDACTED] to process [REDACTED].

The [REDACTED] employees have remained in these details since [REDACTED].

In [REDACTED], [REDACTED] referred three [REDACTED] employees to [REDACTED], U.S. Department of Justice (DOJ), Washington, D.C., for the offense of 18 U.S.C. § 1001 (Statements or entries generally), pursuant to violations committed during the conduct of the investigation. In [REDACTED], DOJ declined prosecution of these employees and [REDACTED] referred ITMD’s findings back to DOC Human Resources Management for action deemed appropriate. As of [REDACTED], ITMD’s investigation into [REDACTED] is still ongoing. Once completed, [REDACTED] will refer all ITMD’s findings of security violations to the DOJ.

<sup>3</sup> See generally [REDACTED] (last visited Feb. 19, 2020).

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**Allegation: The DOC OIG's investigation determined that DOC paid a salary of \$1,179,154 to eight [REDACTED] employees while they sat without duties for a collective total of 127 months.**

Interviews with the [REDACTED] employees revealed that between [REDACTED]—the date when all the [REDACTED] employees were actively detailed—the eight [REDACTED] employees reported to the HCHB without duties for a collective total of 127 months: [REDACTED] and [REDACTED] for 10 months; [REDACTED] and [REDACTED] for 14 months; [REDACTED] for 19 months; [REDACTED] for 18 months; and [REDACTED] and [REDACTED] reported to the HCHB with no duties from [REDACTED]—a total of 21 months.

A pay analysis conducted by OIG determined that DOC paid a salary totaling \$1,179,154.87 to these employees during these months. This amount did not account for employee benefits, retirement contributions, transportation subsidies, or other peripheral overhead costs.

Testimony from [REDACTED] employees indicated that on the day ITMD shutdown the [REDACTED] [REDACTED] and for the next 2 days, a member of OSY monitored the [REDACTED] employees while they sat in a conference room on the fifth floor of HCHB. The next week OSY removed the monitor and the [REDACTED] employees continued to sit and wait for ITMD's investigation.

[REDACTED] employees told OIG that during the months without duties, they sat and watched Netflix videos, read books, put together puzzles, or played on their smartphones; one [REDACTED] employee stated [REDACTED] made "gummy bear art."

[REDACTED] refused requests for interviews; however, did provide a narrative of the events as [REDACTED] remembered them. In [REDACTED] summary, [REDACTED] recalled that [REDACTED] limited involvement with regard to the [REDACTED] closure as it related to the [REDACTED] employees was merely to answer questions from the affected [REDACTED] employees about the conditions of the conference room in which they sat—for example, what newspapers they could access, when they could use their phones, what snacks they could eat and their schedules." [REDACTED] also stated that [REDACTED] did not have "the information to provide guidance to these [REDACTED] employees about the nature or timing of the underlying investigation" nor was [REDACTED] "privy to most of the specifics of the investigation or [REDACTED] decision-making process related to them."

OIG later learned that although [REDACTED] was the [REDACTED] sat in, as an [REDACTED] representative for DOC, on interviews ITMD conducted, as part of their investigation into the [REDACTED] employees, with the following individuals: [REDACTED]

[REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

Interviews with [REDACTED] determined that [REDACTED] advised [REDACTED] of the Security Personnel Division that due to the investigation, the [REDACTED] employees needed to maintain their security clearances, however, they did not have a "need to know" for classified information. [REDACTED] stated [REDACTED] made

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recommendations to [REDACTED] that OCIO give [REDACTED] employees new DOC email accounts, as ITMD seized their older ones as part of ITMD's investigation. [REDACTED] recalled one conversation where [REDACTED] told [REDACTED] to coordinate with [REDACTED] as to what work the [REDACTED] employees were to perform.

Email reviews and interviews disclosed there were serious concerns over what information the [REDACTED] employees could access due to the sensitive nature of ITMD's investigation. [REDACTED] indicated [REDACTED] felt conflicted about trying to find meaningful work for the [REDACTED] employees to do. [REDACTED] understood that the [REDACTED] employees could not be without duties, however, because of the allegations levied against the [REDACTED] employees, there were serious security risks to consider. When asked about those risks, [REDACTED] told the OIG, "As a matter of fact, I'm sure we were the most risk-averse voices in the conversation. Risk from a security standpoint. The other risk we talked about was the employee relations risk. . . . And I will just tell you that the security risk was going to outweigh, in my mind, the employee relations risk." In one email chain from [REDACTED], [REDACTED] coordinated with [REDACTED] and [REDACTED] for assistance in assigning the [REDACTED] employees to a detail for [REDACTED]. [REDACTED] concluded the [REDACTED] employees were able to work on the detail as long as their workspace met certain security elements. The detail never materialized and when asked, [REDACTED] could not recall the reason why.

**Allegation: DOC OIG substantiated that eight federal employees reported to the HCHB for more than 28 months under no official performance plan, and received no official performance appraisal until years later, which violates DAO No. 202-430, § 5.01 (Performance Management System) and 5 U.S.C. § 2302(b)(12) (Prohibited Personnel Practices).**

The OIG found sufficient evidence to substantiate that the [REDACTED] employees were under no official performance plan and did not receive a performance appraisal for at least 28 months. [REDACTED] and [REDACTED] went 28 months without a performance appraisal; [REDACTED], [REDACTED], [REDACTED], and [REDACTED] went 29 months without a performance appraisal; and [REDACTED] went 31 months without a performance appraisal.

The eight [REDACTED] employees received their CD-430 (*Performance Management Record*) and, in [REDACTED], signed their performance plan for fiscal year (FY) [REDACTED] appraisal period (i.e., October 1, [REDACTED] through September 30, [REDACTED]). All of the [REDACTED] employees received a "mid-year review" in April [REDACTED].

The [REDACTED] employees did not receive their FY [REDACTED] performance summary ratings until [REDACTED]. FYs [REDACTED] and [REDACTED] performance appraisals were combined into one performance record, which the employees signed between [REDACTED] and [REDACTED] of [REDACTED].

In [REDACTED], [REDACTED] prepared the FY [REDACTED] performance summary rating for [REDACTED], wherein he placed the following note: "[REDACTED]"

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[REDACTED]

[REDACTED]”

[REDACTED] prepared the FY [REDACTED] performance summary ratings for [REDACTED] subordinate employees. The summary rating narrative portion of their CD-430s was blank. [REDACTED], [REDACTED], [REDACTED], and [REDACTED] signed the CD-430s for FY [REDACTED] in [REDACTED] while [REDACTED] signed in [REDACTED] [REDACTED] refused to sign.

In [REDACTED] [REDACTED] prepared a memorandum and CD-430(d) hybrid performance summary rating for [REDACTED] detailing [REDACTED] performance and achievements from [REDACTED], through [REDACTED]. [REDACTED] signed [REDACTED] rating on [REDACTED].

To cover FYs [REDACTED], [REDACTED] prepared similar performance summary rating memorandums for [REDACTED], [REDACTED], [REDACTED], and [REDACTED], describing the [REDACTED] closure and summarizing each employee’s performance or accomplishments within their assigned details. The memorandum also included this paragraph to explain the delay in filing the evaluation: “Because of its closure, [REDACTED], Office of Human Resources Management, directed, with Office of the General Counsel concurrence, that performance plans would not be opened on [REDACTED] employees for fiscal years [REDACTED]. Consequently, this combined FYs [REDACTED] performance appraisal uses an adjective rating methodology, with the ratings based on [the employee’s] performance of the unclassified duties performed during this period under the [REDACTED] supervision.” [REDACTED] further prepared a summary rating portion of a CD-430. [REDACTED], [REDACTED], and [REDACTED], signed their FYs [REDACTED] performance rating in [REDACTED].

[REDACTED] prepared a similar hybrid FY [REDACTED] performance summary rating for [REDACTED] and [REDACTED], which they both signed in [REDACTED].

The [REDACTED] employees told OIG that on [REDACTED]—the day of the [REDACTED] shutdown—[REDACTED] along with other members of ITMD, ordered everyone to exit the [REDACTED] and escorted them to an adjacent conference room. Within an hour of the shutdown, [REDACTED] reported ITMD’s actions to [REDACTED] and [REDACTED], both of whom responded that they were aware of the shutdown.

Although [REDACTED] rated the [REDACTED] of [REDACTED] provided testimony that [REDACTED] had “no role in the decision-making process” and that [REDACTED] made the decision to close the [REDACTED] [REDACTED] and, therefore, relieved the employees of their duties.

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The [REDACTED] employees recalled that approximately 3 weeks after the [REDACTED] shutdown, [REDACTED] met with them to, as they described, show leadership support, but they never saw [REDACTED] again. [REDACTED]

When asked if [REDACTED] discussed performance appraisals for the [REDACTED] employees, [REDACTED] told OIG that [REDACTED] did not “recall being involved in any of those conversations” related to completing performance appraisals for the [REDACTED] employees. [REDACTED] reasoned that since “we, collectively” removed the [REDACTED] employee’s ability to complete their performance plan, conducting a performance review would be “pretty hard to do.”

[REDACTED] confirmed that in [REDACTED], [REDACTED] reached out to [REDACTED] and [REDACTED], for guidance on completing the performance appraisals for FYs [REDACTED], as well as the FY [REDACTED] performance plans for the [REDACTED] employees.

[REDACTED] told OIG that [REDACTED] office became involved with the [REDACTED] employees in [REDACTED]. [REDACTED] requested HR guidance in retrieving [REDACTED] employees’ personal belongings from the [REDACTED]. Afterwards, [REDACTED] entered into discussions with [REDACTED]. [REDACTED] also stated that prior to [REDACTED], neither [REDACTED] nor [REDACTED] consulted the Office of Human Resources pertaining to the [REDACTED] employees.

According to DAO No. 202-430 ((May 15, 2006) *Performance Management System*), § 5.01, “Performance management is an inherent responsibility for those in leadership positions.” Sections 5.01(a)-(e) define individuals in the performance management process and their responsibilities. “Heads of Operating Units” are to ensure “fair and consistent application of this regulation in compliance with governing laws, rules, and regulations.” Approving officials are to ensure “that performance plans are linked to organizational goals; approve performance plans created by the rating officials; and approve final performance ratings and awards.” *Id.* Rating officials “ensure that employees are informed of the Department’s mission and the organization’s goals and objectives; develop performance plans for individual employees; conduct progress reviews; conduct final appraisals and prepare the final ratings; provide copies of the rating of record at the end of the appraisal cycle to employees; and recommend recognition as appropriate.” *Id.* It is the responsibility of the rated employee to “[p]articipate in development of performance plans; document work accomplishments for both the progress review(s) and the final appraisal; and participate in the progress review(s) and the final appraisal process.” *Id.* The Human Resources Office is to “[c]ommunicate to supervisors, employees, and appropriate exclusive bargaining unit representatives the purpose and procedures of the performance management system and its relationship to the overall management of human capital.” *Id.*

Failing to provide a performance evaluation violates 5 U.S.C. § 2302(b)(12) (Prohibited Personnel Actions). 5 U.S.C. 2302(b)(12) stipulates that it is a prohibited personnel action to “take or fail to take any other personnel action if the taking of or failure to take such action

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violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.” A performance evaluation under Chapter 43 of Title 5 of the U.S. Code is a “personnel action.” *Id.* § 2302 (a)(2)(A)(viii). Here, failing to provide performance evaluations over a period of fiscal years violates DAO 202-430 concerning the merit system principles of 5 U.S.C. § 2301, including but not limited to that “[t]he Federal work force should be used efficiently and effective” and “[e]mployees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.”

### CONCLUSION

The DOC OIG’s investigation determined that DOC paid a salary of \$1,179,154 to eight [REDACTED] employees while they sat without duties for a collective total of 127 months, and further, substantiated the allegation that those same [REDACTED] employees reported to the HCHB for more than 28 months under no official performance plan, and received no official performance appraisal until years later, which violated DAO No. 202-430, § 5.01 (Performance Management System) and 5 U.S.C. § 2302(b)(12) (Prohibited Personnel Practices).

[REDACTED] neglected [REDACTED] responsibility to fulfill the inherent duties of [REDACTED] position as the [REDACTED], and [REDACTED]. After [REDACTED] was shuttered, [REDACTED] made no effort to secure details for the [REDACTED] employees or complete their performance plans. [REDACTED] representation of the DOC during ITMD’s questioning of SES employees contradicted [REDACTED] narrative that [REDACTED] was not “privy to most of the specifics of the investigation”. This also created a perception of a lack of impartiality, as [REDACTED] were the subject of ITMD’s investigation.

After authorizing the closure of [REDACTED] and reassigning its duties to other employees, [REDACTED] made minimal effort to secure detail work for the [REDACTED] employees, nor did [REDACTED] ensure the employees received performance appraisals. In [REDACTED] own words, [REDACTED] stated in reference to finding the [REDACTED] employees meaningful work, “We were talking about it. I don’t know if we were trying hard to find them meaningful work, but we were -- talking about -- we can’t just leave these people sitting doing nothing all day long.” [REDACTED] also related that completing performance plans on the [REDACTED] employees would be “pretty hard to do”, yet the [REDACTED] stated no one contacted [REDACTED] division about the [REDACTED] employees until [REDACTED] – approximately 18 months after the closure of [REDACTED].

In direct contrast, [REDACTED] made efforts to secure meaningful work and complete performance plans for the [REDACTED] employees. After learning of the [REDACTED] employee’s situation, [REDACTED] worked to secure work details for all the employees, arranged for the employees’

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access to the DOC IT network, consulted with HR to complete performance reviews, and met with the employees regularly to address personal and professional concerns.

As of [REDACTED], [REDACTED] remained closed and the ITMD investigation was still open. [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were still processing [REDACTED]. [REDACTED] and [REDACTED] remained in [REDACTED] working the FOIA detail, and [REDACTED] continued to research DOC [REDACTED]. [REDACTED] stated that DOC's HR office conducted suitability reviews on four [REDACTED] employees and [REDACTED] has drafted a proposal to restructure the "oversight and reporting structures of OSY, OCIO, and [REDACTED]. [REDACTED] research concluded that "[T]he transformation of the relationships between OSY, OCIO, and [REDACTED] must be planned, organized, and overseen by personnel possessing the innate knowledge of the interrelated offices and missions, as well as the foresight to understand how the offices can work together to achieve joint, interconnected, and successful mission outcomes."

OIG is referring this matter to the DOC Office of the Secretary.

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21	IRF— Interview ( )
22	IRF— 2nd Interview ( )
23	IRF— Declined Interview ( )
24	IRF—Document Review, Memorandums ( )
25	IRF—Confidential Complainant 2 Security Clearance Email ( )
26	IRF— Emails ( )
27	IRF— Interview ( )
28	IRF— Interview ( )
30	IRF— Interview ( )

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<b>CMS DOCUMENT No.</b>	<b>DESCRIPTION</b>
31	IRF— [REDACTED] Interview ( [REDACTED] )
32	IRF—Processing of Emails ( [REDACTED] )
33	IRF— [REDACTED] Emails ( [REDACTED] )
34	IRF— [REDACTED] 2nd Interview ( [REDACTED] )
35	IRF— [REDACTED] Interview ( [REDACTED] )
36	IRF— [REDACTED] Interview ( [REDACTED] )
37	IRF— [REDACTED] Interview ( [REDACTED] )
38	IRF— [REDACTED] Emails ( [REDACTED] )
39	IRF— [REDACTED] Emails ( [REDACTED] )
40	IRF— [REDACTED] Interview ( [REDACTED] )
41	IRF— [REDACTED] Performance Management Records ( [REDACTED] )
42	IRF— [REDACTED] Interview ( [REDACTED] )
44	IRF—WebTA Data Analysis Spreadsheets ( [REDACTED] )
45	IRF— [REDACTED] Department Organizational Orders ( [REDACTED] )
46	IRF—Pay Analysis ( [REDACTED] )
47	IRF—Performance Management Records ( [REDACTED] )
48	IRF— [REDACTED] 3rd Interview ( [REDACTED] )

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