



**Office of the Inspector General
United States Office of Personnel Management**

**Statement of the Honorable
Patrick E. McFarland
Inspector General**

before the

Committee on Oversight and Government Reform

United States House of Representatives

on

“D.C. Navy Yard Shooting: Fixing the Security Clearance Process”

February 11, 2014

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Good morning. My name is Patrick E. McFarland. I am the Inspector General of the U.S. Office of Personnel Management (OPM). Thank you for inviting me to testify at today’s hearing on policy issues related to background investigations conducted by OPM that are used to grant security clearances, as well as our recent investigative and audit work in that area.

Aaron Alexis

In response to a letter from Senators Claire McCaskill, Ron Johnson, Jon Tester, and Rob Portman, my office performed a review of the background investigation of Aaron Alexis. We reported the results of our review to the Senators, as well as to the distinguished Members of this Committee, in a letter dated November 5, 2013.

OPM conducted only one background investigation of Mr. Alexis: his initial background investigation in 2007. Therefore, OPM was not aware of any actions or incidents that occurred after 2007. This is because OPM conducts reinvestigations of individuals only at the request of their employing agencies.

Further, it is important to note that OPM is not involved in the decision to grant security clearances. Rather, OPM's background investigation reports are provided to customer agencies, which are then responsible for reviewing the available information and determining whether a clearance should be granted.

Based on the background investigation report provided by OPM, the U.S. Department of the Navy had these two critical pieces of information *before it granted Mr. Alexis a SECRET clearance in 2007*: (1) that he had been arrested for "malicious mischief" in 2004 and that the charge was dismissed and (2) that Mr. Alexis had falsely stated on his personnel security questionnaire that he had never been arrested. Thus, although the Navy did not know the details of the arrest, they did know of the arrest and that Mr. Alexis failed to disclose the arrest.

During our review of Mr. Alexis's background investigation, we determined that the background investigators complied with OPM's established procedures in force at the time. However, at issue is a particular OPM procedure, which permitted background investigators to rely exclusively on databases if they could not obtain information directly from local law enforcement organizations, which continues to be the current procedure.

Mr. Alexis's Arrest

The arrest for "malicious mischief" in 2004 involved a situation where Mr. Alexis shot the tires of a car with a firearm. Mr. Alexis confessed to this action to the investigating detectives from the Seattle Police Department and was booked into the King County jail.

The Office of the Inspector General's (OIG) investigators confirmed that in 2007, the Seattle Police Department released only conviction information to OPM background investigators. Incident reports concerning arrests that did not result in a conviction were not released. As a result, the background investigator did not obtain any records from the Seattle Police Department.

OPM Background Investigation Procedures

The type of background investigation requested by the Navy includes conducting checks of law enforcement and financial records. Because records checks revealed an arrest and financial issues, a background investigator was also tasked with conducting a subject interview of Mr. Alexis.

OPM's Federal Investigative Services' (FIS) Investigator's Handbook states that law enforcement records are typically obtained by computer link or inquiry. A background investigator is expected to obtain the law enforcement record and disposition of the case in any locations of known arrests. *If the law enforcement arrest records do not contain the disposition of the case, background investigators are expected to obtain court records as well.*

However, FIS informed the OIG that it “sometimes provides standard workarounds to investigators, such as using an automated database that captures local court records where prior history with a locality establishes that it is unwilling or unable to provide historical arrest records.”

Because the Seattle Police Department at that time did not release the required information, the background investigator accessed court records by computer link to the Washington Statewide District and Municipal Courts Database and the King County Superior Court’s Database. Based upon a review of these database records, the background investigator reported the 2004 incident as a charge for “malicious mischief,” with no mention of a firearm.

The OIG, however, contacted the King County District Court directly and obtained a document (referred to as a “Superform”) that *did* make reference to use of a firearm. The OIG learned that in 2007, the Superform would have been available in paper format if a background investigator had come to the courthouse in person or submitted a telephonic or written request, but it would *not* have been available electronically through a database. A representative of the King County District Court informed us that there was no record that a background investigator directly contacted the court regarding Mr. Alexis.

Thus, the background investigation report relied only on electronic databases for information pertaining to the 2004 arrest of Mr. Alexis. If the King County District Court had been contacted directly in 2007, the background investigator would have obtained the Superform and thus been aware of – and presumably reported – the fact that the 2004 arrest involved a firearm. This incident proves that overreliance on automated records and databases may result in missing critical information.

Based on our review, the OIG made the following recommendations in the November 5, 2013 letter:

1. Review of whether national policy concerning the adjudication of security clearances should specifically address whether individuals who provide material false statements on personnel security questionnaires be deemed ineligible for SECRET security clearances.
2. Revision of national policy to require reinvestigation for SECRET security clearances more often than once every ten years, as is the current policy.
3. Continued focus on efforts to improve background investigators’ access to State and local law enforcement records.
4. Revision of OPM policy to require direct contact with courts and review of the complete court record when relevant court records have been identified in a database and are substituted for unavailable law enforcement records.

Qui Tam Lawsuit Against USIS

In August 2011, the OIG was notified by the Department of Justice (DOJ) that a *qui tam* complaint had been filed against U.S. Investigative Services, LLC (USIS) which included allegations that USIS had violated the False Claims Act by not performing contractually-required quality reviews of Reports of Investigation (ROIs).

The OIG immediately began investigating the allegations and has been working closely with OPM's FIS and DOJ on this matter. DOJ filed its notice to intervene in the *qui tam* lawsuit on October 30, 2013, and filed its official complaint on January 22, 2014.

Because our investigation is still ongoing and the case is currently being litigated in Federal Court, I must stress that I may discuss only that information that is in the public domain. To do otherwise would compromise the Government's ability to ensure that those who violate the law are held accountable.

I would also like to note that after OPM and the OIG were informed of the *qui tam* lawsuit, OPM began taking steps to address the issue and prevent dumping from occurring. The most recent of these steps was announced last week, when OPM Director Katherine Archuleta determined that USIS would no longer have any role in the final closing review function, and that this function would be performed only by Federal employees. OPM is in a better position to describe its other reforms.

Background

As background, USIS holds two contracts with OPM: (1) a Fieldwork Contract to perform investigative fieldwork and (2) a Support Contract to perform support services. Multiple companies hold Fieldwork Contracts with OPM, but USIS is the only contractor that holds a Support Contract.

In performing a background investigation under a Fieldwork Contract, the contractor's employees conduct assigned interviews and/or review records, and then write "Reports of Investigation" or "ROIs." A single background investigation case may contain multiple ROIs written by different background investigators if, for example, the subject of the background investigation lived in multiple cities.

The Fieldwork Contracts required each contractor, including USIS, to perform a quality review of all its ROIs prior to releasing a case to OPM. The contractor was paid the majority of its fee when these cases were released to OPM.

Once a contractor completed a background investigation and released the case to OPM, OPM's procedures required the background investigation to receive a final closing review before it was sent to the customer agency. Prior to the aforementioned reform, many final closing reviews were performed by USIS employees under the Support Contract. Consequently, in many cases closed during the time period of the alleged dumping, both the fieldwork and final closing review were performed by USIS employees, albeit under separate contracts.

Allegations

Please note that this is a summary of the allegations made in the civil complaint filed by DOJ, pursuant to the investigation conducted by the OIG and FIS. These are only allegations and have yet to be ruled upon by a court.

According to the civil complaint,

[b]eginning in at least March 2008 and continuing through at least September 2012, USIS management devised and executed a scheme to deliberately circumvent contractually required quality reviews of completed background investigations in order to increase the company's revenues and profits. Specifically, USIS devised a practice referred to internally as "dumping" or "flushing," which involved releasing cases to OPM and representing them as complete when, in fact, not all ROIs comprising those cases had received a quality review as required by the Fieldwork Contract.

USIS engaged in the practice of dumping in order to meet budgeted goals and, therefore increase its revenues and profits. Given that USIS was paid by OPM for each completed case, the more cases USIS completed each month the more money it received from OPM. USIS's dumping practices also enabled the company to receive annual performance incentive payments that it would not otherwise have been entitled to receive absent the dumping.

As described in the complaint, initially, USIS dumped cases manually. Eventually, however, USIS used a software program called Blue Zone that enabled USIS to mark a large number of ROIs as "Review Completed," even if they had not in fact been reviewed. These cases were then automatically released to OPM with the notation "Review Completed" attached.

According to the allegations, each morning, USIS employees, including some in supervisory positions, identified all of the ROIs that needed to be reviewed that day in order to meet USIS's internal goals. At the end of the day, designated USIS staff determined how many assigned ROIs had not been reviewed that day. Using Blue Zone, these employees dumped some or all of those un-reviewed ROIs. Some ROIs were dumped even if they had not yet been assigned to a reviewer.

The allegations also state that soon dumping began to occur at various times during the day, not only at the end of the day, which increased the number of cases that were dumped. Although dumping occurred on a daily basis, the number of cases dumped tended to increase significantly at the end of the month, quarter, and year.

DOJ's complaint alleges that senior management at USIS were not only aware of but directed the dumping practices. Beginning in at least March 2008, USIS's President/Chief Executive Officer established the internal revenue goals for USIS. USIS's Chief Financial Officer determined how many cases needed to be reviewed or dumped to meet these goals. This information was passed down the corporate ladder.

As detailed in the civil complaint, during the time period March 2008 through September 2012, USIS released at least 665,000 background investigations to OPM and represented them as complete when, in fact, one or more of the ROIs comprising those background investigations had not received a quality review as required by the Fieldwork Contract. This represented approximately 40 percent of the total background investigations conducted by USIS during that time frame.

The civil complaint also describes various steps that USIS allegedly took to conceal its dumping practices from OPM. For example, in April 2011, OPM conducted a data analysis that showed that a small group of USIS employees were identified as having released a substantial number of cases when compared with the workload of other reviewers. In addition, the data analysis showed that some ROIs marked as “Review Complete” had not even been opened by a USIS reviewer. OPM wrote to USIS about these concerns. USIS failed to disclose its dumping practices and instead informed OPM that these issues were due to a variety of software problems and glitches. USIS also ceased dumping practices when OPM was onsite conducting audits.

Further, as alleged by DOJ, USIS personnel working on the Fieldwork Contract also improperly used information received by USIS pursuant to its responsibilities under the Support Contract in order to prevent OPM from discovering its dumping scheme. Those USIS employees reviewing cases under the Fieldwork Contract would determine which categories or types of cases that OPM was likely to target for review and closing by the FIS Federal staff after the case was transmitted to OPM, as opposed to those cases more likely to be directed to USIS employees under the Support Contract. As the civil complaint noted, this was done to minimize the risk that cases would be returned to USIS by FIS for further rework, and raise concerns at OPM about the quality of the review process.

USIS received performance awards for meeting OPM’s established goals in the areas of timeliness, quality, and program management for the years 2008, 2009, and 2010 totaling approximately \$11.8 million that it would not have received had OPM known of its fraudulent actions.

Effect of USIS’s Fraud

Recently, OPM has publicly stated that all background investigation cases dumped by USIS underwent subsequent quality reviews, thus implying that the quality of the background investigations provided by OPM to customer agencies is not in doubt. We feel that this statement is premature and overly confident. OPM is assuming that the final closing reviews conducted at the time were sufficient despite the fact that, as OPM’s support contractor, USIS personnel were performing many of the final closing reviews. As described earlier, the civil complaint alleges that USIS personnel working on the Fieldwork Contract improperly used information received by USIS pursuant to its responsibilities under its Support Contract to identify the case types that OPM intended to have FIS Federal staff review. USIS thereby avoided dumping those case types, choosing instead to dump cases that they expected to be reviewed by USIS support personnel. As mentioned earlier, the civil complaint stated that USIS did this to avoid raising concerns at OPM about the quality of the review process.

In addition, a final audit report issued by the OIG in 2010 observed that USIS, in its role as OPM's support contractor, was frequently closing deficient cases. For example, an internal audit conducted by OPM in March 2009 found that 28.24 percent of cases closed by the support contractor were unacceptable during the second quarter of fiscal year 2009.

Consequently, the OIG is very concerned about the potential quality implications of USIS's alleged fraudulent actions. Indeed, the civil complaint alleges that USIS dumped ROIs *knowing* there could be potential quality issues associated with those ROIs. We have informed OPM of our concerns both in writing and orally during meetings. Although OPM disagrees, I would like to note for the record that the OIG continues to believe that USIS's fraud may have caused serious damage to national security.

OIG Audits of OPM's Background Investigations Program

The OIG is currently conducting an audit examining the operations of both FIS and its contractors. Specifically, the audit is examining whether:

1. FIS has adequate oversight controls in place to ensure that contractors are meeting their contract requirements.
2. The contractors' background review processes meet their contract requirements.
3. FIS has controls in place to ensure the Federally-conducted background investigations are reviewed.
4. FIS and its contractors have controls in place to ensure that their review personnel are trained to perform their duties.

Prior to this current audit, the OIG issued an audit report of the quality assurance process over background investigations on June 22, 2010 (2010 Audit). At that time, the OIG was particularly concerned about falsification of background investigations by both Federal and contractor background investigators. The primary objective of the 2010 Audit was to determine whether FIS had effectively implemented controls for the related quality assurance process. Our auditors were looking at the controls in place to prevent falsification and not the controls over the review of ROIs.

Conclusion

The issues addressed at today's hearing emphasize the critical need for greater oversight of the background investigations process. I offer my sincere thanks to Subcommittee Chairman Blake Farenthold, Ranking Member Stephen Lynch, and the other distinguished Members of this Committee for championing the OPM IG Act, which, as of February 7, 2014, is awaiting signature by the President. This Act will give the OIG the funding and resources necessary to increase oversight of the operations of FIS and the other Revolving Fund programs and hopefully help OPM improve its work in those areas. I assure you that I am determined and committed to

taking any and all steps available to work with OPM to strengthen the background investigations program, which has such a significant impact upon national security.

I am happy to answer any questions you may have.

**PATRICK E. MCFARLAND
INSPECTOR GENERAL
U.S. OFFICE OF PERSONNEL MANAGEMENT**

Patrick E. McFarland was sworn in as Inspector General of the United States Office of Personnel Management on August 9, 1990. His continuous service since that time makes him the longest-tenured Federal inspector general.

As Inspector General, Mr. McFarland is responsible for providing leadership that is independent, non-partisan and objective and is dedicated to identifying fraud, waste, abuse, and mismanagement in programs administered by the Office of Personnel Management. The audit and investigative programs that his office conducts are instrumental in assuring the integrity of the largest retirement and employee health insurance programs in the United States.

Mr. McFarland is a member of the Council of the Inspectors General for Integrity and Efficiency, the organization of presidentially appointed inspectors general and other federal officials established under the Inspector General Act. The purpose of the Council is to provide a government-wide forum for identifying and addressing issues related to fraud, waste, and abuse and to promote economy and efficiency in government programs and operations. Mr. McFarland is a member of the Council's Professional Development Committee and formerly served as chair of the Investigations Committee.

Mr. McFarland's law enforcement career spans over 50 years. He served with the United States Secret Service for 22 years, providing line and staff management oversight for protective activities involving six presidents of the United States and many chiefs of state and heads of government. Previously, he was a police officer and detective with the St. Louis Metropolitan Police Department and was a special agent with the Federal Bureau of Narcotics in Chicago, Illinois. He is a member of the Federal Investigators Association, the International Association of Chiefs of Police, and the Association of Government Accountants.

Mr. McFarland was born and raised in St. Louis, Missouri, and attended St. Louis University, graduating in 1965 with a Bachelor of Science degree. He earned his Master of Public Administration degree from The American University in 1986. He and his wife Kathy have four children and reside in Leesburg, Virginia.