

Alexander, et al. v. FBI, et al. CA 96-2123 and
Grimley, et al. v. FBI, et al. CA 1:97CV1288
(Consolidated Actions)

Defendant EOP's Response to Plaintiffs' Second
Set of Document Requests

DR# 93

Doc. Nos. 1025038-84

Title: White House Liaison Office
Office of the Under Secretary for Management
U.S. Department of State

Privacy Act Violation
OIG Case No. 93-173

Date of Report: January 31, 1994

Type of Report: Administrative Referral

Reporting Agents: Special Agent
 Special Agent

Approved By: Robert S. Terjesen, Assistant Inspector
General for Investigations

EXECUTIVE SUMMARY

On September 1, 1993, a piece entitled: "Found! Jennifer Fitzgerald's Personnel File" appeared in Al Kamen's "In the Loop," column on the Federal Page of *The Washington Post*. The item stated that Clinton administration officials had reviewed retired personnel files of 160 Department political appointees from the Bush administration, and related that each appointee had two files: one a standard résumé file, and the other a working file which contained complaints or supportive comments. The item further noted that the working file for former Deputy Chief of Protocol, Jennifer Fitzgerald, was empty and that the file for former Assistant Secretary for Consular Affairs, Elizabeth Tamposi, included a memorandum from a senior Department official suggesting that she was not qualified for her proposed position.

In its preliminary assessment of whether the contents of personnel files had been improperly released to the public, Department administrators learned that the Department's White House Liaison Office maintained a system of records of Department political appointees, that these files recently had been retrieved by Clinton administration appointees in that office, that these files were separate and distinct from the Department's Official Personnel Files (OPF) maintained by the Bureau of Personnel, and that the White House Liaison Office (WHLO) records were established pursuant to and protected by the provisions of the Privacy Act. Based upon advice from the Legal Adviser, the Assistant Secretary for Administration referred this matter on September 2, 1993, to the Office of Inspector General (OIG) for investigation, as a potential violation of the Privacy Act.

Between September 2, 1993, and November 8, 1993, the OIG's Office of Investigations conducted 62 interviews with Department personnel, White House personnel, and various other sources of information. Key witnesses were placed under oath. Additionally, OIG investigators reviewed records maintained by the White House Liaison Office during both the Bush and Clinton administrations, and examined telephone records, logs, and other relevant materials. Finally, OIG referred records to the Federal Bureau of Investigation for fingerprint analysis.

The White House Liaison Office serves as an intermediary between the White House and the Department in the processing of political appointments. In July 1993, Bush WHLO records were retrieved and reviewed by employees of the Department's White House Liaison Office. At that time, the WHLO staff was comprised of the Director, Joseph E. Tarver, the Deputy Director, Simon Peter Kahn, and the Staff Assistant, Hannah Bond, all of whom were Schedule C appointees. At Tarver's direction, Bond requested the retrieval of retired WHLO records. Twelve boxes of records were retrieved from storage and received by the White House Liaison Office about July 13, 1993.

Tarver stated that the decision to retrieve the files was his and his alone. Neither White House nor Department officials directed or were in any way involved in that decision. Tarver's primary purpose in retrieving the Bush administration WHLO records was to assist him in understanding the functions and duties of the Office. Tarver stated that he had been tasked by the White House with creating a "road map" for all political appointments in the Department. Tarver said he also wanted to determine if any of the records contained information that might have related to the Clinton passport investigation. Tarver had complied with a subpoena for records pertaining to that investigation in January 1993 and said that he felt obligated to provide any relevant documents.

On July 26, 1993, the White House Liaison Office received nine security violations for improper storage of classified documents. The security violations related to material in nine of the twelve boxes of Bush WHLO records. The security guards who found the violations stated that the boxes were seized, sealed, and stored in a secure area. All security guards involved in the inspection denied having any knowledge of the contents of the boxes. On July 27, 1993, the WHLO staff retrieved the nine boxes from the Bureau of Diplomatic Security and were directed to properly store all classified records. That same day, the three members of the WHLO staff reviewed for classification and storage purposes the material contained in the Bush administration WHLO records, discarded materials they felt they did not need, and stored the remainder. Approximately four burn bags of records were discarded. Correct records disposal procedures were not followed by White House Liaison Office staff, and a technical violation of Federal Records Management statutes might have occurred in this process.

During their file review, the WHLO staff discovered that an appointee file for former Deputy Chief of Protocol, Jennifer Fitzgerald, was empty and that an appointee file for former Assistant Secretary for Consular Affairs, Elizabeth Tamposi, contained memoranda, including one from a high-level official, questioning her qualifications for an Assistant Secretary position. While staff were reviewing these records, Mark R. Schulhof, an Assistant in the Office of Public Affairs, visited the office and was told by Hannah Bond about the records retrieval and the contents of the Fitzgerald and Tamposi files.

Schulhof admitted to OIG investigators that he received information regarding Fitzgerald's appointee file from Bond and that he provided that information to Kamen, but he denied that he knew or passed on information about Tamposi. Schulhof also admitted that he provided Tarver's name to Kamen as a source of additional information concerning the White House Liaison Office records. Telephone records of Schulhof's direct office extension reveal that 45 telephone calls were placed to Kamen's direct line at The

Washington Post between April 26, 1993, and September 1, 1993. The telephone records also revealed that on July 27, 1993, a 13-minute telephone call was placed at 1:44 p.m. to Kamen's direct line at the Post from one of Assistant Secretary Donilon's two private lines while Donilon was out of town. This was the same day that the Bush administration WHLO records were reviewed by the White House Liaison staff. Schulhof admitted to OIG investigators that he "probably" made that telephone call. Other telephone records suggest with near certitude that he did. Schulhof's supervisor, Assistant Secretary for Public Affairs Thomas Donilon, advised that Schulhof was not authorized to speak to the press and that he had no knowledge of Schulhof's extensive communications with Kamen, nor would he have permitted it if he had known.

Tarver was detailed to the NAFTA Working Group at the end of July 1993, just a day or two following his office's review of the WHLO records. While at a NAFTA meeting at the Department, during the first week of August, Tarver was approached by Schulhof and told that Kamen wanted to discuss with him the empty Fitzgerald file. Tarver told Schulhof to have Kamen call him. Tarver told OIG investigators that the reason he spoke to Kamen was to explain that Kamen did not have a story just because the Fitzgerald file was empty, because a number of other appointee files were similarly empty. Tarver advised that Kamen contacted him by telephone approximately two days later in Tarver's office at the USTR.

At the beginning of their conversation, Tarver told Kamen it was "off the record." Tarver did not want Kamen to use his name as a source in the article. Tarver explained to Kamen that the White House Liaison Office maintained a filing system separate from the official personnel files of the Department. Tarver told Kamen that he had retrieved the Bush administration WHLO files, and he confirmed that Fitzgerald's appointee file was empty. Tarver raised with Kamen and discussed the subpoena he had received regarding the Clinton passport investigation and Kamen asked him if he had a personnel file for Tamposi. Tarver told Kamen that he had a file for Tamposi and that it contained typical government forms. Tarver denied releasing any information about the content of Tamposi's file, specifically the memorandum which questioned Tamposi's qualifications for her proposed position. While Tarver admitted discussing with Kamen concerns expressed by Department officials that Tamposi had not been qualified to be an Assistant Secretary, he denied tying that observation to any document in Tamposi's file.

In a reinterview Tarver was asked if he had more than one conversation with Kamen. He stated that he had a second conversation with Kamen near the end of August 1993. In this second conversation, Kamen told Tarver that he intended to "go with the article" and asked whether Tarver had anything else he wanted to add. Tarver stated that he did not discuss during this second

conversation the specific information that the article would contain. Tarver related that Kamen might have mentioned the Fitzgerald file, but did not mention the Tamposi file. Investigators questioned Tarver about how he could comment on whether he had any information to add to a story if he did not know the contents of the story. Tarver again denied knowing the contents of the article until he read it in *The Washington Post* on September 1, 1993. When Tarver was asked why he failed to disclose this second Kamen conversation during his first interview with OIG, Tarver stated that it simply did not come to mind at the time.

The OIG findings identified Joseph E. Tarver and Mark R. Schulhof as primary subjects of the investigation. The evidence developed reflects that White House Liaison Office Director Tarver, was the sole Department employee responsible for directing the retrieval of the files relevant to this inquiry, and that Tarver and Schulhof were the sole Department employees responsible for the unauthorized dissemination of privacy-protected information from these files outside of the Department. No evidence was found or developed which indicated that anyone else in the Department (outside of the WHLO) or anyone in the White House directed or knew in advance of the records retrieval, knew of the contents of the files before Kamen's disclosures, or were involved in the unauthorized dissemination of Department privacy-protected information. Although Al Kamen was contacted by OIG investigators to determine if he would be willing to be interviewed concerning his knowledge of this situation, Kamen referred OIG to legal counsel who raised First Amendment and other legal issues and declined to approve any interview of Kamen.

On November 8, 1993, a prosecutive summary of potential Privacy Act violations was referred to the Public Integrity Section of the U.S. Department of Justice for Criminal Division review. On November 10, 1993, the day after receiving a detailed oral briefing from the Inspector General, Secretary of State Warren Christopher directed that Schulhof and Tarver be dismissed from their positions with the Department. In a letter dated January 28, 1994, the Justice Department declined criminal prosecution in the matter.

The OIG investigation disclosed that Department employees other than Messrs. Tarver and Schulhof may be responsible for acts of omission or commission in the conduct of their official duties. However, the investigation found no evidence to suggest that these other employees had been involved in criminal misconduct. Therefore, the Inspector General submits this report of administrative findings to the Secretary and to the Director General, and recommends that they take whatever management, administrative, and/or disciplinary action they deem appropriate based upon the facts presented.