

## Introduction

This investigation was initiated as a result of the following item (quoted in its entirety, and also included as Attachment 1) in a column by Al Kamen entitled "In the Loop," which appeared on the Federal Page of *The Washington Post* on September 1, 1993:

Clinton administration officials, going through the files of Bush administration holdovers at the State Department, recently requested the personnel files of 160 political appointees from the department's archives in Maryland.

Each appointee has two files: one a standard résumé file; the other an "action" or "working" file, which has information about the official's activities, complaints or supportive comments and the like.

Guess whose working file was empty? That of very controversial longtime Bush employee Jennifer Fitzgerald, who was George Bush's executive assistant when he was vice president and became deputy chief of protocol at the State Department when Bush became president.

Unlike those of virtually every other ranking official, Fitzgerald's file was just an empty folder with her name on it.

All this left the Clintonites scratching their heads.

Meanwhile, there was a more hefty file on another famous Bush appointee, former New Hampshire real estate agent Elizabeth Tamposi, who headed the consular section and led a late-night foray to the passport archives in search of dirt on then-candidate Bill Clinton and his mother, Virginia Kelley. The searches turned up nothing but trouble for Bush, hurting him at the end of his reelection campaign.

Sources say Tamposi's file recorded concerns from very senior State Department types that she was not ready for an assistant secretaryship. Fortunately for Clinton, no one listened.

Because the appointee files mentioned in Kamen's news item were contained in a system of records of the State Department protected by provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, willful disclosure of their contents by Department employees appears to have violated § (i)(1) of the Act, which carries criminal penalties. Inasmuch as reasonable grounds existed to believe that there had been a violation of federal criminal law, the results of this investigation were referred to the Criminal Division of the U.S. Department of Justice pursuant to 28 U.S.C. § 535(b) and § 4(d) of the Inspector General Act of 1978, 5 U.S.C. Appendix 3, on November 8, 1993.

On November 9, 1993, the Inspector General briefed the Secretary of State on OIG's investigative findings, and informed him of the Privacy Act-related potential criminal referral to the Department of Justice. On November 10, 1993, Secretary Christopher ordered that Department employees Joseph E. Tarver and Mark R. Schulhof be dismissed from their Schedule C positions. In a letter dated January 28, 1994, the Justice Department declined criminal prosecution in the matter.

OIG submits this Administrative Report to the Secretary, to the Under Secretary for Management, and to the Director General so that the Department may take appropriate action to address any systemic management issues which may be raised by these findings, and to initiate whatever disciplinary actions are deemed appropriate.

#### Applicable Legal and Ethical Standards

In addition to the potential criminal penalties for releasing privacy-protected information cited above, § 552a(b) of the Privacy Act states that:

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. . . .

Subpart B of 22-C.F.R. § 10.735-201 sets forth general ethical responsibilities of Department employees. Specifically proscribed actions are set out in subsection (a). The applicable language reads as follows:

(a) An employee shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in, or create the appearance of:

(6) Affecting adversely the confidence of the public in the integrity of the Government.

Section 10.735-208, entitled "Misuse of information" states:

For the purpose of furthering a private interest, an employee shall not . . . directly or indirectly use, or allow the use of, official information obtained through or in connection with Government employment which has not been made available to the general public.

Section 10.735-215, entitled "General Conduct Prejudicial to the Government" states:

(a) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

#### The Investigative Findings

Between September 2, 1993, and November 8, 1993, the Office of Inspector General, Office of Investigations conducted 62 interviews of individuals believed to have information pertinent to the improper disclosure (Attachment 2). Interviews were conducted with Department personnel, White House personnel, and various other sources of information. Key witnesses were placed under oath, and were provided the standard non-custodial warnings and assurances disclosure for federal employees (Garrity Warnings) to ensure that they understood that their participation in the interview was entirely voluntary. 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 relevant records to the Federal Bureau of Investigation for fingerprint analysis.

As a result of this comprehensive review, Department Schedule C employees Joseph E. Tarver and Mark R. Schulhof were identified by OIG as subjects of the criminal investigation. The evidence developed reflects that Mr. Tarver, Director of the White House Liaison Office, was the sole Department employee responsible for directing the retrieval of the files relevant to this inquiry, and that Mr. Tarver and Mr. 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 developed which indicated that White House personnel directed or knew in advance of the records retrieval, that they knew of the contents of the files before Kamen's disclosures, or that they were involved in the unauthorized dissemination of Department privacy-protected information.

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 employees other than Tarver and Schulhof had been involved in criminal misconduct. Therefore, the Inspector General submits this report of administrative findings to the Secretary, to the Under Secretary for Management, and to the Director General, so that they may take whatever management, administrative, and/or disciplinary action they deem appropriate based upon the facts presented.

#### Issues to be Resolved in this Report

This investigation attempted to resolve the following issues: how did the present White House Liaison Office staff obtain Bush administration White House Liaison Office records; what was the purpose for the retrieval and subsequent review of those records; were federal records disposal regulations violated when some of the records were destroyed; what types of records were contained in the Bush administration White House Liaison Office; was this records system established in accordance with the provisions of the Privacy Act; who had access to these records after their retrieval from the storage facility; did Department employees release any information from these files to unauthorized recipients; who was responsible for disclosing to *The Washington Post* information from the files of former Deputy Chief of Protocol, Jennifer Fitzgerald, and former Assistant Secretary for Consular Affairs, Elizabeth Tamposi; and whether Department officials properly handled this situation upon learning that an unauthorized release of information might have occurred. To the extent possible, we have answered these questions.

#### The Department's White House Liaison Office

##### A. Office Function

The White House Liaison Office, located in the Main State Department building and reporting directly to the Under Secretary for Management, serves

as an intermediary between the White House and the Department in the processing of Department political appointments. The office maintains files under the following categories: Schedule C political appointees by individual name, Senior Executive Service political appointees by individual name (SES), Presidential appointees requiring Senate confirmation by individual name (PAS), Ambassadors by individual name and by country, Presidential Boards and Delegations, Presidential Commissions, and Congressional inquiries. Pursuant to the provisions of the Privacy Act of 1974, the records maintained by the White House Liaison Office are recorded in the Privacy Act Issuances, 1991 Comp., Volume 2, p. 503 (State - 47), Published by the Office of the Federal Register, National Archives and Records Administration as a Department system of records and listed under Section 47 of the notice entitled, Senior Personnel Appointments Records (Attachment 3).

#### B. Types of Files Maintained

It is important to distinguish at the outset the working files maintained by the White House Liaison Office from the Official Personnel Files (OPF) of Department employees maintained by the Bureau of Personnel under the authority of the Director General. The Bureau of Personnel's system of records is vastly larger and more complex than that of the White House Liaison Office. The Department's Bureau of Personnel maintains an OPF on all civil service and foreign service employees as well as on all political appointees. All official personnel actions regarding individual employees are placed in the OPFs and assignments, awards, and promotions are based upon records contained in those files.

While there is evidence that White House Liaison Office employees attempted to gain access to files maintained by the Bureau of Personnel (see interview of Theresa Manly, Director of the Office of Civil Service Personnel Management in Attachment 4), there is no evidence that the security of the Department's OPFs was actually breached. Files maintained by the White House Liaison Office (WHLO records) frequently contain copies of documents contained in the OPFs, such as Standard Government Application forms (SF-171), letters of recommendation, internal memoranda addressing suitability, etc., but they would be considered merely working files used by the White House Liaison Office to aid in its placement of the Department's political appointees. Irrespective of the size, complexity, or reason for maintaining such files, however, unauthorized disclosure of information from either system of records (OPFs or WHLO Records) would violate provisions of the Privacy Act.

The White House Liaison Office under the Bush administration maintained two types of files concerning political appointees: the first was the White House Liaison Office working file (WHLO working file) which contained

résumés or standard government application forms (SF-171), notes of interviews, letters of recommendation, the sensitive questionnaire for background investigations, and White House clearance forms; the second was the White House Liaison Office tracking file (WHLO tracking file) which contained clearance memoranda from the Director General, clearance memoranda from the respective executive office, clearance memoranda from the White House Liaison Office, an Office of Personnel Management exemption form and often résumés or SF-171s. The working files contained the information necessary to hire the applicant. The tracking files were created after selection to ensure that the selectee's paperwork was not misplaced as it was processed by various offices at the Department and the White House.

### C. Retrieval of Bush Administration WHLO Records

In July 1993, Bush WHLO records were retrieved and reviewed by employees of the Department's White House Liaison Office. At that time, the White House Liaison Office 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. (Reviews of their OPFs are provided in Attachment 5.) At Tarver's direction, Bond had contacted the Department's Office of Information Services and requested the retrieval of retired WHLO records. Twelve boxes of retired WHLO records were retrieved from storage on July 13, 1993, just four days prior to the date approved for their destruction. These records had been retired by the Bush administration staff in January 1993. A destruction schedule had been approved by the National Archives and Records Administration on July 17, 1993, authorizing destruction of the WHLO records after that date.

The White House Liaison Office's retrieval of Bush administration WHLO records did not, standing alone, violate Department policy. Indeed, Department records administrators confirm that it is common practice for new supervisors of an office to request the records of their predecessors in order to better understand their new functions and responsibilities. Despite the various and sometimes conflicting reasons that were advanced by White House Liaison staff for the retrieval of Bush administration WHLO records (e.g., to purportedly comply with a six-month-old subpoena from Independent Counsel di Geneva), the fact is there were legitimate reasons for that office to request and review the records. For example, employees of that office related that it was one of their primary functions to determine which Bush administration political appointees still remained in the Department after the election of President Clinton. To do this, they claimed that it was necessary to review political placement files of the previous administration. It is curious, however, that the files were not requested until well into the placement