



United States
Office of Government Ethics
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Washington, DC 20005-3917

November 23, 2005

Mary L. Walker
Designated Agency Ethics Official
Department of the Air Force
1740 Air Force Pentagon
Washington, DC 20330-1740

Dear Ms. Walker:

The Office of Government Ethics (OGE) has completed its review of the ethics programs at Headquarters, Air Combat Command (HQ ACC) and 1st Fighter Wing (1FW) located at Langley Air Force Base. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted in September 2005. The following is a summary of our findings and conclusions.

HIGHLIGHTS

Based on the results of our review, we conclude that the ethics programs of both HQ ACC and 1FW are effectively administered by knowledgeable ethics counselors and support staff. All ethics officials we encountered are earnestly dedicated to providing ethics-related services to their respective activities' personnel. The public and confidential financial disclosure systems are generally well managed with the exception of problems with the new entrant confidential report system at both HQ ACC and 1FW. We have made a recommendation with respect to the new entrant confidential report issue.

Through efforts on the part of the ethics officials at HQ ACC and 1FW, the new entrant confidential report system has recently been somewhat improved by the implementation of new trial processes to ensure that new entrant confidential filers are identified and notified of the filing requirement in a timely manner. However, HQ ACC and 1FW officials are concerned that work may be needed on a department-wide level to completely fix the new entrant confidential report system. The ethics training and advice and counseling programs are effectively administered. Ethics training materials are well-organized and comprehensive, and the advice and counseling provided by ethics officials

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is consistent, accurate, and timely. Systems and procedures are in place to ensure that ethics violations do not occur. Finally, effective procedures are in place to accept payments of travel and related expenses from non-Federal sources.

PROGRAM STRUCTURE

The ethics program for HQ ACC is managed within the HQ ACC Office of the Staff Judge Advocate's (SJA) Civil Law Division. Most of the day-to-day program administration is handled by the Chief of the Ethics Branch for HQ ACC, an attorney from the Civil Law Division. However, the Commercial Law Division, which is primarily responsible for both public and confidential financial disclosure as well as post-Government employment issues, plays a large role.

The HQ ACC SJA, Deputy SJA, Personnel Office, and various other support staff are also actively involved in the functioning of the ethics program. Additionally, all of the attorneys on the HQ ACC staff have been delegated the authority to render ethics opinions.

The ethics program for 1FW is managed within the 1FW Office of the SJA's Civil Law Division. The majority of the day-to-day program administration is handled by the ethics counselor, an attorney from the Civil Law Division. However, both the 1FW SJA and Deputy SJA are actively involved in the functioning of the ethics program.

The ethics counselor is responsible for rendering ethics opinions on complex ethics issues. For some ethics issues, such as typical off-duty employment requests, other Civil Law attorneys have been delegated the authority to render ethics opinions.

RECENT CHANGES TO THE JOINT ETHICS REGULATION

Recently, three changes to the Joint Ethics Regulation (JER) were made to help preclude violations of the post-employment restrictions.¹ These changes are summarized below:

--*Annual Certification*: New subsection 8-400 now requires DoD employees who file a public financial disclosure report to certify annually that they are aware of the disqualification and employment restrictions of 18 U.S.C. §§ 207 and 208 and 41 U.S.C. § 423 (b) and (c), and that they have not violated those restrictions.

¹ On October 25, 2004, the Deputy Secretary of Defense signed a directive that established additional procedures to help ensure that Department of Defense (DoD) personnel are aware of and comply with statutes and regulations applicable to their transition from Federal service to private employment.

--Annual Ethics Training: New paragraph 11-301(d) now requires DoD components to include training on relevant Federal and DoD disqualification and employment restrictions during annual ethics trainings. Although current regulations at 5 C.F.R. § 2638.704(c) already require inclusion of the conflict of interest statutes, the JER requirement envisions including an enhanced discussion of the restrictions.

--Guidance for all Departing DoD Personnel: New subsection 9-502 requires DoD components to provide guidance on relevant Federal and DoD post-Government service employment restrictions, as part of out-processing procedures, to all DoD personnel who are leaving Federal service.

During our review we found HQ ACC and 1FW to be complying with each of the three new requirements.

FINANCIAL DISCLOSURE

Overall, we found the HQ ACC and 1FW public and confidential financial disclosure systems to be reasonably effective in preventing potential conflicts of interest and to generally accord with the statutory and regulatory requirements. Although the timely filing of new entrant confidential financial disclosure reports has remained a challenge since we last addressed this issue in our July 1998 report, we commend the steps the respective ethics and personnel officials have taken prior to and throughout our review in seeking remedies to elicit full compliance. During our discussions, relevant HQ ACC and 1FW personnel demonstrated a high level of cooperation and motivation towards achieving a solution to the new entrant issue. Our review focused solely on the programs at HQ ACC and 1FW, and not on the Department of the Air Force as a whole; however, our discussions with HQ ACC and 1FW officials highlighted a concern that due to the integrated nature of the Air Force, an institution-wide remedy may be needed in order to achieve a fully effective ethics program.

Confidential Financial Disclosure System- New Entrant System

During our evaluation of the overall sample of confidential financial disclosure reports, we examined 12 new entrant reports from HQ ACC and 6 from 1FW for filing year 2004. Our review of the sample suggests that significant deficiencies relating to timeliness must be addressed in order for your ethics program to be fully effective. Only 1 of the 12 new entrant reports from HQ ACC was filed timely, and none of those from 1FW were filed timely. In most cases it appears that new entrant filers were not identified until the annual filing cycle, some more than 10 months after they entered covered positions.

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All of the HQ ACC new entrant reports were reviewed and certified in a timely manner once received by ethics officials. However, although the 1FW new entrant reports were reviewed in a timely manner once received by ethics officials, in many instances there was a protracted process for certification. The 1FW ethics counselor indicated that delayed certification was due in large part to a backlog of reports created by other mission requirements. He stated that in order to correct the problem his office has revised its procedures governing collection and review of confidential financial disclosure reports.

Ethics officials at HQ ACC and 1FW were aware of the new entrant identification problem prior to our review, and had already implemented trial processes to improve the system. We also spoke with both ethics and personnel officials who have worked together to try to solve the new entrant identification problem. All involved parties expressed frustration at the apparent systemic breakdown that they feel is preventing them from achieving a solution.

Timely new entrant identification is an important facet of an effective ethics program. Late filing diminishes an agency's ability to provide timely and specific conflict of interest advice, which is the fundamental purpose of an ethics program. Additionally, ethics program deficiencies may erode public confidence in Government processes, undermine respect for the ethics program on the part of the employees, and cause embarrassment to the filer. Finally, failure to comply with financial disclosure requirements detracts from the achievements of your program. Therefore, we strongly encourage ethics and personnel officials to continue to monitor this system, and modify it as necessary, to ensure that improvements are made.

There are likely many ways of achieving a more effective new entrant system that would lead to the timely identification of new entrant filers. Currently, personnel officials we met with have alerted all Air Force personnel directors to the specific responsibilities they have with respect to identification of new entrant confidential filers. Additionally, ethics and personnel officials at HQ ACC and 1FW are exploring alternate avenues to fix the problem systemically, such as the plausibility of developing an automated database designed for use Air Force-wide, to flag positions that are likely to require OGE Form 450 submission. They envision that with such a system in place, all personnel offices would be able to monitor turnover of personnel assigned to those positions, automate notices indicating the requirement to file, and generate lists for ethics offices to ensure timely identification and notification of new entrant confidential filers. An automated system for tracking new employees would likely lead to significant improvements in the effectiveness of the new entrant confidential report system. We have made a recommendation with respect to this issue at the conclusion of our report.

Confidential Financial Disclosure System-
Annual System

To evaluate the effectiveness of the HQ ACC and 1FW confidential financial disclosure systems for annual filers in 2004, we examined a sample of 51 of the approximately 228 confidential reports that were required to be filed at HQ ACC, and a sample of 25 of the approximately 100 confidential reports that were required to be filed at 1FW. With the exception of the new entrant reports previously discussed in this report, all of the HQ ACC confidential reports we examined were filed, reviewed, and certified in a timely manner. The 1FW confidential reports we examined were reviewed in a timely manner, but as with the 1FW new entrant reports previously addressed in this report, there were many instances of protracted periods for certification. As we indicated above, ethics officials at 1FW indicated that they are working to address this problem.

All annual reports we examined had been reviewed thoroughly, as evidenced by extensive reviewer notes and e-mail communications between reviewers and filers. Additionally, we examined a sample of the accompanying cautionary memoranda attached to the reports and found them very useful in alerting filers to potential conflicts.

Public Financial Disclosure System

To evaluate the effectiveness of the HQ ACC and 1FW public financial disclosure systems we examined a sample of 17 of the approximately 20 public reports required to be filed by HQ ACC employees in 2005. All of the reports were filed, reviewed, and certified in a timely manner. We also reviewed the only public report required to be filed by a 1FW employee in 2005. That report had been filed, reviewed, and certified in a timely manner.

All of the reports we examined had been reviewed thoroughly, as evidenced by reviewer notes, e-mails, and appropriate cautionary memoranda. Additionally, we found that each public filer completed the annual certification required by subsection 8-400 of the JER.

EDUCATION AND TRAINING

We found that the education and training programs of both HQ ACC and 1FW exceed the requirements found at 5 C.F.R. part 2638, as confidential filers must certify to having completed annual ethics training and are provided verbal training annually. Additionally, we were impressed by the wealth of ethics-related information and resources disseminated by the ethics staff at regular intervals. Our review of the written plans for ethics training for HQ ACC and 1FW found the respective plans to be thorough and detailed.

Initial Ethics Orientation Program

Initial ethics orientation is provided to all new employees of both HQ ACC and 1FW by 1FW ethics officials on an as-needed basis. Our review of the materials provided found that this training meets all of the relevant requirements for initial ethics orientation. According to ethics officials at HQ ACC and 1FW, all new employees received the required initial ethics orientation in 2004.

Annual Ethics Training Program

Verbal annual ethics training for the public filers is conducted in the spring of each year to coincide with the filing of the SF 278. A PowerPoint presentation is provided to each filer by e-mail and in hard copy. Annual ethics training in 2004 covered contractor relations, conflicts of interest, gifts, fundraising, and post-Government employment. We reviewed the materials and found that all relevant requirements were met.

In order to meet the availability of a qualified instructor requirement found at 5 C.F.R. § 2638.704(d), public filers were given contact information for an ethics counselor and informed that they would be available to answer any questions.

Verbal annual ethics training for the confidential filers is conducted in the fall of each year to coincide with the filing of the OGE Form 450. Each filer is e-mailed a PowerPoint presentation, and is instructed to reply to the e-mail upon completion of the training for certification. Contact information for ethics officials is provided in case of questions. We reviewed the materials and found that all relevant requirements are being met.

According to ethics officials at HQ ACC and 1FW, all covered employees received annual ethics training in 2004.

Best Practice

We took special notice of the presence of a large amount of informal ethics opinions, bullet background papers², and guidance disseminated on a regular basis to all employees by the HQ ACC SJA, a Brigadier General, and by other high-ranking members of the ethics community at HQ ACC and 1FW. The information presented

² Bullet background papers (BBP) are brief informational summaries of ethics rules and their implications developed by officials at HQ ACC. They are composed of purpose, discussion, and summary sections that outline ethics rules in plain language and discuss possible consequences for not adhering to them. BBPs are tailored specifically for the audience at Langley Air Force Base, and address current issues personnel may be facing, including seasonal gift cards, working with contractors, and retirement gifts for superiors.

includes but is not limited to discussions of topical issues, cautionary tales of common pitfalls to avoid, and review of relevant newspaper articles.

The active and visible participation of highly respected officers in the ethics program illustrates an enthusiasm for continuing to foster an ethical culture at HQ ACC and 1FW, and highlights for all employees the importance placed on following the applicable rules and regulations. The Office of Government Ethics considers this approach to be a best practice.

ADVICE AND COUNSELING SERVICES

We reviewed a sample of the advice and counseling for HQ ACC, which consisted mainly of e-mail correspondence. The advice and counseling covered a broad range of subjects such as: use of Government property, travel and other gifts from outside sources, widely attended gatherings, fundraising, and Hatch Act restrictions.

We also reviewed a sample of the advice and counseling for 1FW, which was in the form of formal written memoranda and e-mail correspondence. The advice and counseling covered a broad range of subjects including: gifts between employees, gifts of travel accepted pursuant to 31 U.S.C. § 1353, outside activities, and post-Government employment.

We found that the advice and counseling provided was consistent, accurate, timely, and responsive to employees' needs. We are pleased to report that the ethics officials responsible for providing advice and counseling at HQ ACC and 1FW cooperate and coordinate with a variety of sources to ensure that a high quality of advice and counseling is provided. Additionally, we found that the advice and counseling consisted of a thorough analysis of the issues presented, a discussion of applicable laws and regulations, and a clear rationale for the answer to the question or request. We feel that the advice and counseling we examined strongly demonstrates that awareness of and adherence to applicable laws and regulations is expected at all levels of the command.

Best Practice

While we were pleased with the advice and counseling provided by both HQ ACC and 1FW, we were especially impressed with examples we viewed of a formal memoranda format utilized by 1FW when responding to ethics questions and requests. This format consists of four main sections: a fact section that includes a brief synopsis of the facts surrounding the question or request; a law section containing a summary of any relevant law, with citations included; an analysis section explaining the question or request and its relation to the law; and a recommendation section detailing the recommendation of the ethics official. The Office of Government Ethics considers this consistent and thorough approach to be a best practice because it promotes transparency and accountability.

ENFORCEMENT

HQ ACC and 1FW utilize the services of both their respective Offices of Inspector General (OIG) and the Air Force Office of Special Investigations (AFOSI), when appropriate. The respective OIGs are responsible for investigating allegations of waste, fraud, and abuse on the part of employees, whereas AFOSI is the agency primarily responsible for investigating criminal offenses allegedly committed by employees. Ethics officials are aware of the procedures prescribed in 5 C.F.R. § 2638.603 and Chapter 10 of the JER to ensure that OGE is concurrently notified in all appropriate circumstances. Based on our discussions with involved parties and a review of a written "Ethics Violation Enforcement Action Plan," we are satisfied that procedures are in place for the effective exchange of ethics-related information between ethics and OIG/AFOSI officials to resolve enforcement issues.

While there have been no referrals made to the Department of Justice for alleged violations of the criminal conflict of interest laws in the past year, administrative actions have been taken against employees for ethics-related violations. These violations include unauthorized Government travel card purchases, misuse of Government property, and larceny of military property. The actions resulting from these violations ranged from non-judicial punishments ("Article 15s") to court-martials. Based on our discussions with ethics officials, these actions appeared to be prompt and effective in accordance with 5 C.F.R. § 2638.203(b)(9).

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

We examined all six travel payments in excess of \$250 accepted by HQ ACC and the two travel payments in excess of \$250 accepted by 1FW during the period from April 1, 2004 through March 31, 2005. All of the payments appeared to be approved and accepted in accordance with 31 U.S.C. § 1353, as well as Chapter 4 of the JER.

RECOMMENDATION

In order to make your ethics programs fully effective, we recommend that you develop and implement a written proposal to ensure that: new entrant confidential filers are identified in a timely manner, new entrant confidential filers are made aware of their filing requirements, and appropriate records are maintained to effectively monitor turnover in positions likely to require filing.

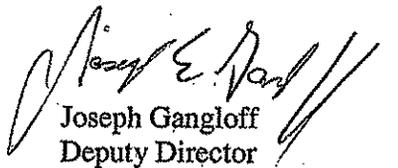
Please advise me within 60 days of the specific actions you have taken and plan to take on our recommendation. It would be particularly useful to have the proposal as soon as possible. The Office of Government Ethics is committed to assisting your agency in resolving this deficiency. If you believe that we can be of assistance, we invite you to

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contact your desk officer, Patricia Franklin, at (202) 482-9208, or Megan Granahan at (202) 482-9202. In any event, a follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act as implemented in subpart D of 5 C.F.R. part 2638, it is important that you take timely action. A copy of this report is being forwarded to the Air Force's Inspector General, Judge Advocate General, HQ ACC Staff Judge Advocate, 1FW Commander, and HQ ACC Director of Personnel.

In closing, I would like to thank you for your efforts on behalf of the ethics program. We look forward to working with your agency towards achieving full compliance with regulatory requirements.

Sincerely,



Joseph Gangloff
Deputy Director
Office of Agency Programs

Report Number 05- 023

cc: Patricia C. Zemple
Associate Director, Program Services Division

Patricia L. Franklin
Desk Officer