COMMANDER DIRECTED
REPORT OF INVESTIGATION
PREPARED BY
INVESTIGATING OFFICER
CONCERNING
VIOLATION OF PRIVACY ACT
21 JUNE 2013
FRAMED ALLEGATION for INVESTIGATION

Statement Regarding Breach of Privacy:  

April 23, 2013

On or about January 28, 2013 I was given permission to view the letters of clemency regarding LtCol James Willkerson. I was allowed to view these letters because my name was mentioned multiple times throughout. Many letters mentioning me made comments with the purpose of attacking my character and making me seem less credible to the Convening Authority who was to review the case.

I did not have long to review these letters. There were over 70. This is when I noticed letter. In her letter, dated December 10, 2012, she references my employee record in an attempt to use information against my character. It is not a vague reference, it is quite clear:

"In addition, the accuser admitted to illegal drug use which contradicts her responses on her current employment paperwork which demonstrates her untruthfulness, but was not presented during the trial."

I made note of this and commented on it in my letter of rebuttal to Lt Gen Franklin dated January 29, 2013. I did not then nor have I since heard any response from him in this matter.

Not only is this defamatory and irrelevant to the case to the point my employee records were never brought up in trial, It shows that somehow accessed my employee paperwork, a clear violation of my privacy rights and skewed information in her own biased way to purposefully malign me. She also had access to defense interviews prior to FOIA.

Given that and Lt Gen Franklin know each other, her accusation carries more weight and could have impacted his opinion regarding my credibility as a witness if not directly, then passively, whom I do not know and have not even met, appears to have no issue with ethical or legal concerns when it comes to being heard. Her letter is now accessible to the public via FOIA. Therefore, I would like this investigated and if found valid, prosecuted to the fullest extent.

Most Respectfully,

Deployment Health Assessment Clinic
31 ANOS/SGPM, Aviano AB, Italy
DSN:
Tab B: Authority and Scope. Commanders have the inherent authority to conduct a CDI to investigate matters under their command, unless preempted by higher authority. Pursuant to this authority, Lieutenant General Noel T. Jones, Commander, United States Air Forces in Europe (USAFE), appointed on 28 May 2013 to conduct the investigation into all aspects of the facts and circumstances concerning an alleged violation of the Privacy Act, specifically the improper release of information from a civilian employee's personnel records. The CDI was conducted from 28 May 2013 to 14 June 2013 at Ramstein Air Base, Germany and Aviano Air Base, Italy.

The IO investigated the following allegation:

Tab C: Background

The complainant, [redacted], made a complaint to the Aviano Privacy Office (Tab G-1) on or about April 23, 2013 that included the allegation of a privacy violation listed in Tab B. Due to concerns about the ability to conduct an impartial investigation due to the small community at Aviano Air Base, the 31st Fighter Wing referred the case to the USAFE Privacy Office (Tab G-2) in accordance with AFI 33-332, paragraph 1.1.6.5.

The allegation involved one subject—an employee of the 31st Operations Group at Aviano Air Base, Italy (Tab G-1). On or about 10 December 2012, [redacted] submitted a clemency letter to the court martial convening authority of U.S. v. Lt Col James Wilkerson in which [redacted] states “In addition, the accuser admitted to illegal drug use which contradicts her responses on her current employment paperwork which demonstrates her untruthfulness, but was not presented during the trial.” (Tab G-3, paragraph 3.a.)

The complainant noted regarding that statement “Not only is this defamatory and irrelevant to the case to the point my employee records were never brought up in trial, it shows that somehow the accuser has accessed my employee paperwork, a clear violation of my privacy rights and skewed information in her own biased way to purposely malign me.” (Tab G-1)

Based on the nature of the information discussed in the clemency letter, the investigator used personal knowledge and discussions with Information Protection personnel, medical personnel, and contracting personnel to determine the likely sources of the personal information would have been contract application information or clearance paperwork. The complaint’s SF85P, Questionnaire for Public Trust Positions, was provided by the Wing Information Protection Office (31 FW/IP) to the Staff Judge Advocate (31 FW/JA) on 22 May 2012 (Tab G-4). Additionally, the employee contract paperwork was provided by 31st Contracting Squadron (31 CONS) to 31 FW/JA on or about 17 October 2012 (Tab G-5). The statement of the complainant also indicated that these records would be the only that would contain the disclosed information (Tab F-1, paragraph 2).

The SF85P was provided to 31 FW/JA, but it was not included in materials given to the defense in the discovery request of 21 September 2012 (Tab G-3, page 4). [redacted] received the SF85 for 31 FW/JA (Tab G-4), and she did not forward the information outside the 31 FW/JA offices (Tab G-8). The employment records on file were under the control of 31 CONS. [redacted] from 31 CONS, confirmed one release of the record outside of the office was to the 31st Medical Operations Squadron in 2011—this release was redacted for the purpose of selection for the contract. The only other release was to 31 FW/JA on or about 17 October 2012, pursuant to their request (Tab F-3), and with the complainant’s consent (Tab F-1). As noted in the report, 31 FW/JA, indicated that he provided the discovery materials to only the defense team which contained the employment records (Tabs F-2, G-5). [redacted], a member of the defense team, also indicated that there was a single copy of the employment records, and this was held by the defense team lead (Tab G-7). [redacted] indicated to the best of his knowledge, [redacted] never viewed the employment records of the complainant (Tab G-9).

The subject [redacted] indicated she had never viewed or possessed employment records of any kind. [redacted] stated that the information in the clemency letter was heard in a conversation among the defense team in the Aviano Air Base courtroom. On either 29 or 30 October 2012, during a court recess, she heard a conversation among the defense team that included a discussion regarding the contradiction between the responses in a pretrial interview and
information in her employment records. She said this conversation was the sole source of the statement in the clemency letter (Tab F-4). Additionally, she elected to not discuss this conversation, citing attorney work privilege.

In her testimony, she did indicate concern about the information contained in her clemency letter before it was released, and she asserted that she requested that the defense team review her letter regarding this concern. She said that she was told by AFLOA/ADC, that the letter was fine (Tab F-4). Additionally, 31st Maintenance Group, recalled conversation with about these same concerns regarding the information in the clemency letters, although she couldn't positively recall if the discussion occurred when she reviewed the letter prior to submission, or at some other time (Tab F-5). Finally, e-mails indicate that she did submit her letter for review with the defense team, and was provided substantive input to the content of the letter (Tab G-6, pages 3 & 6). Additionally, the specific concern about the released information is included in an e-mail before the final letter is submitted (Tab G-6, pages 7-8).
Tab D: Finding, Analysis and Conclusions.


UNSUBSTANTIATED

Facts.

On or about 10 December 2012, submitted a clemency letter to the court martial convening authority of U.S. v. Lt Col James Wilkerson in which states “In addition, the accuser admitted to illegal drug use which contradicts her responses on her current employment paperwork which demonstrates her untruthfulness, but was not presented during the trial.” (Tab G-3, paragraph 3.a.)

There were two records that might have contained the information that was released, the SF85P and the employment contract folder held by 31 CONS (Tabs F-1, F-2, F-3). Although both were provided to trial participants, the custody of the information affirmed by 31 FW JA (Tabs F-2, G-5, G-8), coupled with her voluntary testimony that the information was heard in a conversation (Tab F-4), I find that she did indeed obtain the information from the conversation, without access to any of the records.

I did express some concern about improperly releasing information, and shared this concern with the prosecution and the defense team (Tabs F-4, F-5, G-6).

Applicable Rules.

The Investigator used Air Force Instructions and 5 US Code to determine elements for review in this investigation. Specific references are:

AFI 33-332, Air Force Privacy Program
1.1.5. Penalties for Violation. An individual may file a civil law suit against the Air Force for failing to comply with the Privacy Act. In addition to specific remedial actions, civil remedies include payment of damages, court costs, and attorney fees in some cases. Any official or individual may also be found guilty of a misdemeanor and fined not more than $5,000 if they willfully:

1.1.5.2. Disclose Privacy Act information from a system of records, knowing that dissemination is prohibited, to anyone not entitled to receive the information

5 U.S.C. Section 522a Paragraph (i) (1) Criminal Penalties.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

Based on these rules, the elements reviewed were:

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Was the subject an officer or employee of an agency, who by virtue of employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by rules or regulations established?

Did the subject know that disclosure of the specific material was prohibited?

Did the subject willfully disclose the material in any manner to any person or agency not entitled to receive it?

Analysis.

Based on the forthright manner of her testimony, which she gave voluntarily in a noncustodial interview of nearly an hour, coupled with corroborating information from her e-mails with the defense team, the Investigator found her testimony believable (Tabs F-4, F-5, G-6).

For the first element, was the subject an officer or employee of an agency, who by virtue of employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by rules or regulations established?

As stated above, I find that the subject did not have access to the complainant’s records, and obtained the information in the letter from a conversation. Also, based on the information control provided by 31 FW/JA and the defense (Tabs F-2, G-5, G-7, G-8), it is not likely her access to the information came from another source. This element is not met.

Did the subject know that disclosure of the specific material was prohibited?

Based on her concerns about the information before it was released, and her request for advice about the release (Tabs F-4, F-5, G-6), the subject did not believe the release was prohibited. This element is not met.

Did the subject willfully disclose the material in any manner to any person or agency not entitled to receive it?

Based on the clemency letter (Tab G-3), the subject did willfully disclose the personal information. This element is met, but mitigated but her attempts to ascertain the legality of the release (Tab F-4s, G-6).

Conclusion. The preponderance of the evidence does not show that on or about 10 December 2012, a federal civilian employee in the 31st Operations Group, Aviano Air Base, Italy, improperly released information from the civilian personnel records of a civilian employee also employed at Aviano Air Base, in violation of the Privacy Act of 1974 (Pub.L. 93–579, 88 Stat. 1896, enacted December 31, 1974, 5 U.S.C. § 552a). I conclude this allegation is UNSUBSTANTIATED.

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Tab E: Recommendations.

Per the request of the appointing commander, any recommendations will be submitted under separate document.

(b)(3) 10 USC §130b.(b)(6)

Investigating Officer
MEMORANDUM FOR USAFE-AFAFRICA/CC

FROM: HQ USAFE-AFAFRICA/SE

SUBJECT: Recommendation from Commander Directed Investigation

1. Despite my UNSUBSTANTIATED finding for the specific allegation against the specific 31st Operations Group employee, the evidence does indicate that personal information about the complainant was improperly released.

2. I recommend that this investigation be provided in its entirety to the Office of Professional Responsibility of The Judge Advocate General of the Air Force (AF/JA/PR) for any action that AF/JA/PR may deem appropriate.

3. If there are questions regarding my recommendation, I can be contacted at DSN (833) 789-2534 or (833) 789-2534 for (214) 856-5760.

USAF Investigating Officer