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Office Of The General Counsel

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Catherine A. McMullen
Chief, Disclosure Unit
United States Office of Special Counsel
1730 M. Street, N.W., Suite 218
Washington D.C. 20036-1505

Re: Office of Special Counsel File No. DI-12-0623

Dear Ms. McMullen:

On April 30, 2012, the Air Force delivered its Report of Investigation (ROI) for the above-referenced matter to your office. In his letter, the Secretary of the Air Force explained that a redacted version of the ROI was included for purposes of your public disclosure requirements.

The redactions made in this ROI were of the names of witnesses and other individuals specifically identified within the ROI, with the exception of the whistleblower¹ and the named subject. The redacted names were substituted with duty titles or position titles. The purpose of removing personally identifying information of the individuals/witnesses was to protect them and their families from an unwarranted invasion of personal privacy which could result in harm, embarrassment, inconvenience, or unfairness. The altered language does nothing to change the substance of the ROI. Because the alterations are immaterial to the meaning of the evidence, the law, the analysis and the conclusions, the attached redacted report for public release is substantively identical to the unredacted version.

Our request for these redactions is based on exemptions 6 and 7(C) of the Freedom of Information Act (FOIA). See 5 U.S.C. §552. Both exemptions protect from public release information that would amount to an unwarranted invasion of personal privacy. To determine whether the information falls under either exemption, the agency conducts a balancing test that weighs the privacy interests of the individual versus the public's interest in the disclosure. If the balancing test favors the public, the information must be released. If it favors the individual, however, the FOIA prohibits the release. The Air Force has conducted this balancing test with respect to the names of witnesses and other individuals named in the ROI. The witnesses and

¹ According to correspondence with your office, the whistleblower consented to the release of his name.

certain other named individuals have a reasonable expectation of privacy in the information presented in the ROI. Further, disclosure of their names or other identifying information would not benefit the general public in that the specific identity of the individuals need not be revealed in order for the reader of the redacted report to understand the relevant facts. That is, the redacted information does not in and of itself reveal anything regarding the operations or activities of the Air Force, or the performance of its statutory duties. In our view, the individuals' probable loss of privacy outweighs the public interest in knowing the names of the individuals or other personally identifiable information. Therefore, the names redacted are done because the FOIA, and by implication 10 U.S.C. § 1219(b), requires it.

Our request for these redactions is also based upon the Privacy Act which prohibits disclosing personal information to anyone other than the subject of the record without his or her written consent (unless such disclosure falls within one of the Privacy Act exceptions not applicable herein). *See* 5 U.S.C. §552a.

With regard to the copy of the ROI sent to the whistleblower, we understand that under OSC policy, the whistleblower received an unredacted version of the ROI and we express no objection.

For your convenience, the Air Force attached a witness/name legend to the redacted version. Thank you for your consideration of this request. If you have any questions regarding this request, please contact Deborah Gunn at 703-695-4435 or by email at deborah.gunn@pentagon.af.mil or you may contact Major Garrett Condon at 703-695-6552 or by email at garrett.condon@pentagon.af.mil.

Sincerely,



CHERI CANNON
Deputy General Counsel
(Fiscal, Ethics and Administrative Law)

REPORT OF INVESTIGATION
OSC File No. DI-12-0623

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INFORMATION INITIATING THE INVESTIGATION

By letter dated January 10, 2012 and signed by the Special Counsel, the Office of Special Counsel (OSC) referred to the Secretary of the Air Force for investigation a whistleblower disclosure case (OSC File No. DI-12-0623), alleging that Mr. John Paulson and other employees at the Department of the Air Force, 50th Civil Engineering Squadron (50 CES), Schriever Air Force Base (AFB), Colorado, failed to properly safeguard and dispose of information containing sensitive personally identifying information (PII). After review and based on the information disclosed by Mr. Keith Anderson,¹ OSC “concluded that there is a substantial likelihood that the information provided to OSC by Mr. Anderson discloses that PII was not properly safeguarded and disposed of” and referred the allegations to the Air Force for investigation. In its letter, OSC noted that “where specific violations of law, rule, or regulation are identified, these specific references are not intended to be exclusive.”

OSC SUMMARY OF DISCLOSURE INFORMATION

According to the OSC Referral Letter, Mr. Anderson provided the following information to OSC:

- (1) Mr. Anderson disclosed that on October 30, 2011, December 12, 2011, and December 18, 2011, he discovered numerous documents containing PII improperly disposed of as trash in or near the AFB’s Central Utility Plant, Building 600. Mr. Anderson found over 200 pages of sensitive information, including a General Services Administration credit card attached to a sheet of paper, documents labeled as “for official use only,” a security clearance application and other related security information. The documents also contained pin numbers, home addresses, personal telephone numbers, separation papers, notifications of personnel actions, employee appraisals, time and attendance records, leave and earning statements, overtime and leave request forms and other personnel documents. A large number of these documents contained names with corresponding Social Security numbers.
- (2) The documents located on October 30, 2011, were found in a communal trash receptacle located on the Chiller Bay floor. According to OSC, Mr. Anderson alleged that the employees who have access to this receptacle are [Plant Employee 1], [Plant Employee 2], [Plant Employee 3], [Plant Employee 4], John Paulson, [Plant Employee 5] and [Plant Employee 6]. [Plant Employee 7], a former employee, also had access to this receptacle.
- (3) The documents located on December 12, 2011, were found in a trash bag, on the second floor, next to Mr. Paulson’s office. According to OSC, there were two sets of documents found on December 18, 2011. The first set of documents was also found in a trash bag, on the second floor, next to Mr.

¹ Mr. Anderson, according to the OSC Referral Letter, has consented to the release of his name in conjunction with this Report of Investigation.

Paulson's office. The second set of documents was found in a trash bag next to the dumpster located on the north side of the Central Utility Plant.

- (4) According to OSC, pursuant to the Privacy Act of 1974 (Privacy Act), agencies are responsible for establishing appropriate safeguards to protect privacy information. *See* 5 U.S.C. § 552a (e)(10). "In accordance with the Privacy Act, Air Force Instruction (AFI) 33-332, *Air Force Privacy Program*, asserts that protecting privacy information is the responsibility of every employee, military member, and contractor who handles privacy records or PII contained in any record. *See* AFI 33-332 § 9.1." According to OSC, "Air Force Instruction 33-332, § 9.5, *Disposing of Records*, also states that records may be destroyed by any reasonable method that prevents loss, theft or compromise during and after destruction such as pulping, macerating, tearing, burning, shredding or any other method that completely destroys the media so that PII is both unreadable and beyond reconstruction." "Department of Defense (DoD), Privacy Program, 5400.11-R, states that DoD components shall establish appropriate safeguards to ensure that the records are protected from unauthorized access, alteration, or disclosure and that their confidentiality is preserved and protected. *See* DoD 5400.11-R § C1.4.1." According to OSC, "[i]t appears that Mr. Paulson and other employees failed to adhere to these requirements and other related provisions."

CONDUCT OF THE INVESTIGATION

The OSC Referral Letter was forwarded for investigation, through the Air Force Inspector General (SAF/IG), to the Inspector General of Headquarters Air Force Space Command (AFSPC/IG). On January 26, 2012, AFSPC/IG appointed an investigating officer (IO) to conduct an investigation into the whistleblower disclosures contained in the OSC Referral Letter. In the course of the investigation, the IO conducted an initial complaint analysis interview with Mr. Anderson on January 26, 2012 and thereafter interviewed 13 witnesses including Mr. Anderson.² The additional interviews were conducted between January 31, 2012 and February 15, 2012. The IO also collected and examined other relevant documentation, including all documents found by Mr. Anderson. Pertinent legal authorities, including applicable Department of Defense (DoD) and Air Force regulations, were researched and reviewed.

The standard of proof used in determining the finding for each allegation was the preponderance of the evidence, *i.e.* was it more likely than not that the alleged violation occurred.

Pursuant to 5 U.S.C. § 1213(c), an agency is afforded 60 days to complete the required report of investigation. The Air Force has been granted an extension for its response to the OSC Referral Letter, which is due on April 30, 2012.

² A complete list of the witnesses interviewed is set forth in the Appendix of this Report.

LEGAL FRAMEWORK

Applicable laws, rules and regulations as set forth below include Federal statutes, as well as Department of Defense (DoD) and Air Force rules and regulations.

Federal Law

The Privacy Act of 1974, as amended (the Privacy Act) is a federal statute that applies to all federal agencies. 5 U.S.C. § 552a. The Privacy Act was enacted “to provide certain safeguards for an individual against an invasion of personal privacy.” *See* 5 U.S.C § 552a (Congressional Findings and Statement of Purpose in Section 2 of Pub. L. 93-579(b)). The Privacy Act provides these protections generally by setting conditions on when records in a system of records³ can be disclosed, requiring an accounting when certain disclosures are made, providing an individual access to their own records, setting other specific agency records keeping requirements, mandating that agencies establish their own rules on records keeping, and providing civil remedies and criminal penalties for certain violations. *See id.*

The Privacy Act states that, with certain specific exceptions, “[n]o 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.” *See* 5 U.S.C § 552a(b). The exceptions to this requirement include, among other things, when the individual to whom the records pertains requests or consents to the release, when employees at the agency need the records in the performance of their duties, when release is required by the Freedom of Information Act⁴ or other law, and for established routine uses.⁵

The Privacy Act outlines specific procedural safeguards for protecting records containing PII, requiring each agency that maintains a system of records to:

establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

5 U.S.C. § 552a(e)(10). Further, the Privacy Act specifically states that an agency that maintains a system of records must:

³ The Privacy Act applies to records held in a “system of records,” which is defined as “a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.” *See* 5 U.S.C. § 552a(a)(5). Generally, the protections are extended to documents that are derived from a system of records. *See, e.g., Orekova v. Mooney*, 330 F.3d 1 (1st Cir. 2003).

⁴ 5 U.S.C. § 552.

⁵ “Routine use” means, “with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.” *See* 5 U.S.C. § 552a(a)(7).

establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance.

5 U.S.C. § 552a(e)(9).

In addition, the statute addresses the issue of remedies for violations of the Privacy Act. Civil remedies and criminal penalties only apply to willful or intentional conduct, rather than inadvertent, negligent or even grossly negligent conduct. *See* 5 U.S.C § 552a (Congressional Findings and Statement of Purpose in Section 2 of Pub. L. 93-579(b)(7); Andrews v. Veterans Admin. of U.S., 838 F.2d 418 (C.A. 10, 1988); United States v. Trabert, 978 F. Supp. 1368 (D. Colo., 1997)).

DoD and Air Force Regulations

Protection of Personal Information

DoD Directive 5400.11, *DoD Privacy Program*, dated May 8, 2007 and incorporating Change 1, dated September 1, 2011, is the principal DoD regulation implementing the Privacy Act. This regulation, at paragraph 4, states as DoD policy that “DoD personnel, to include contractors, have an affirmative responsibility to protect an individual’s privacy when collecting, maintaining, using, or disseminating personal information about an individual.”

In Enclosure 3 of DoD Directive 5400.11, at paragraph E3.1.1, all DoD personnel are required to “[t]ake such actions, as considered appropriate, to ensure that any personal information contained in a system of records, of which they have access to and are using to conduct official business, shall be protected so that the security and confidentiality of the information shall be preserved.” At paragraph E3.1.2, all DoD personnel are required to “[n]ot disclose any personal information contained in any system of records, except as authorized by [DoD 5400.11-R], or other applicable laws or regulations. Personnel willfully making such disclosure when knowing that disclosure is prohibited are subject to possible criminal penalties and/or administrative sanctions.”

DoD 5400.11-R, *Department of Defense Privacy Program*, May 14, 2007 is a publication issued under the authority of DoD Directive 5400.11 and provides more specific guidance on the Privacy Act to all organizational entities of DoD. Paragraph C1.4.1 of that regulation states:

DoD Components shall establish appropriate administrative, technical and physical safeguards to ensure that the records in each system of records are protected from unauthorized access, alteration, or disclosure and that their confidentiality is preserved and protected. Records shall be protected against reasonably anticipated threats or hazards that could result in substantial harm,

embarrassment, inconvenience, or unfairness to any individual about whom information is kept.

Regarding the minimum standards required to protect PII, DoD 5400.11-R, states “[t]reat all unclassified records that contain personal information that normally would be withheld from the public under Freedom of Information Exemption Numbers 6 and 7⁶ . . . as ‘For Official Use Only (FOUO),’ and safeguard them accordingly . . . even if they are not actually marked ‘FOUO.’” DoD 5400.11-R, at paragraph C1.4.2.2 (internal citations omitted). DoD 5400.11-R further states “[p]ersonal information that does not meet the criteria discussed in paragraph C1.4.2.2 of this Chapter shall be accorded protection commensurate with the nature and type of information involved.” DoD 5400.11-R at paragraph C1.4.2.3.

Air Force Instruction (AFI) 33-332, *Air Force Privacy Program*, 16 May 2011, is the Air Force regulation that provides guidance on collecting, safeguarding, maintaining, using, accessing, amending, and disseminating PII. Under that regulation, employees in the Air Force must safeguard records in any system of records, as well as PII contained in other Air Force records. See AFI 33-332 at paragraphs 1.1.4.3 and 1.1.9.11. “Protecting privacy information is the responsibility of every federal employee, military member, and contractor who handles privacy records or PII contained in any record.” *Id.* at paragraph 9.1.

Under AFI 33-332, PII that is required to be protected includes marital status, dependent information, home of record, home address and phone number, date of birth, race/ethnic origin, and social security number. See *id.* at paragraphs 6.1.3. Further, in “all cases,” the guideline in deciding whether information should be released or not is a balancing test between whether the subject has a reasonable expectation of privacy in the information and whether there is a public interest in disclosing the information. See *id.* at paragraph 6.3.

Disposal of Records Containing Personal Information

DoD 5400.11-R also provides guidance on the proper disposal of records under paragraph C1.4.3. It states:

Dispose of records containing personal data so as to prevent inadvertent compromise. Disposal methods are those approved by the Component or the National Institute of Standards and Technology. For paper records, disposal methods, such as tearing, burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation are acceptable. For electronic records and media, disposal methods, such as overwriting, degaussing, disintegration, pulverization, burning, melting, incineration, shredding or sanding are acceptable.

⁶ Personal privacy interests are protected by Exemptions 6 and 7 of FOIA. Exemption 7 is limited to information compiled for law enforcement purposes.

DoD 5400.11-R at paragraph C1.4.3.1. Further, “[d]isposal methods are considered adequate if the personal data is rendered unrecognizable or beyond reconstruction.” DoD 5400.11-R at paragraph C1.4.3.2.

Paragraph C1.5 of DoD 5400.11-R sets forth procedures for when personal information is lost, stolen, or compromised. “Lost, stolen, or compromised information” is defined as “[a]ctual or possible loss of control, unauthorized disclosure, or unauthorized access of personal information where persons other than authorized users gain access or potential access to such information for an other than authorized purposes [sic] where one or more individuals will be adversely affected. Such incidents also are known as breaches.” DoD 5400.11-R at paragraph DL1.10.

Employees in the Air Force are required to “dispose of [records in a system of records] according to disposition instructions.” AFI 33-332 at paragraph 1.1.4.3. Further instructions state:

Destroy [records containing PII] by any reasonable method that prevents loss, theft or compromise during and after destruction such as pulping, macerating, tearing, burning, shredding or otherwise completely destroying the media so that PII is both not readable and is beyond reconstruction. The shreds or particles cannot be read. The shreds or particles cannot be reconstructed.

AFI 33-332 at paragraph 9.5.1.

Training Requirements

Chapter 7 of DoD 5400.11-R implements the Privacy Act’s training requirements. It establishes three general levels of training for personnel who are involved in any way with the design, development, operation, or maintenance of privacy protected systems of records – orientation, specialized training, and management. See DoD 5400.11-R at paragraph C7.3.2. The objective of this training is “to establish a culture of sensitivity to, and knowledge about, privacy issues involving individuals throughout [DoD].” DoD 5400.11-R at paragraph C7.3.1.

Under AFI 33-332, individuals whose jobs require routine work with and/or access to any records containing PII are responsible for completing specialized Privacy Act training annually. See AFI 33-332 at paragraphs 1.1.9.10 and 11.1.

SUMMARY OF EVIDENCE

Background

Mr. Keith Anderson⁷ disclosed that on four instances he discovered documents containing PII in the trash. He disclosed that those instances occurred on October 30, 2011, on

⁷ Mr. Anderson (WG-11) is a Utilities System Operator in 50 CES.

December 12, 2011, and twice on December 18, 2011. Mr. Anderson works in the Central Utilities Plant, which is part of the 50th Civil Engineering Squadron (50 CES) on Schriever Air Force Base (AFB), Colorado. During the relevant timeframe, his direct supervisor was Mr. John Paulson.⁸ Mr. Paulson worked directly for [Deputy Chief of Operations]⁹ (his civilian supervisor) and also reported directly to [Technical Sergeant (TSgt) 1].¹⁰ [Deputy Chief of Operations] works for [Major (Maj) 1].¹¹ [TSgt 1] was temporarily filling in for [Master Sergeant (MSgt) 1],¹² who was deployed during the relevant timeframe. The commander of 50 CES is [Lieutenant Colonel (Lt Col) 1],¹³ and his deputy is [Deputy Base Civil Engineer].¹⁴

The Central Utilities Plant (also referred to as the “Plant”) is located on Schriever AFB across the street from the building occupied by 50 CES leadership. The Plant is also located in the close proximity of a building that houses members of the 50th Security Forces Squadron (50 SFS).

Discovery of Documents

Mr. Anderson testified that he discovered documents containing PII apparently discarded in the trash on four instances on three different dates. According to Mr. Anderson, he found 1) the first set of documents on the evening of October 30, 2011, in a trash receptacle on the first floor of the Central Utilities Plant; 2) the second set of documents on the evening of December 12, 2011, in a trash bag on the second floor of the Central Utilities Plant; 3) the third set of documents early in the morning on December 18, 2011, in a trash receptacle on the second floor of the Central Utilities Plant, and 4) the fourth set later that same morning in a trash bag next to a dumpster outside the Central Utilities Plant.¹⁵

⁸ During the relevant timeframe, Mr. Paulson was the Heating, Ventilation and Air Conditioning (HVAC) Supervisor. At the time he also fulfilled the duties of the Power Production Supervisor and the Plant Supervisor in 50 CES. He officially retired from federal service on December 31, 2011. However, because he took leave at the end of his employment, his last day on the job was approximately December 15, 2011. Although no longer a federal employee, Mr. Paulson agreed to cooperate with the investigation and came to Schriever AFB for his interview with the IO.

⁹ [Deputy Chief of Operations] (GS-14) is the Deputy Chief of the Operations Flight within 50 CES. He has been in that position since August 2001, and in that position he works directly for the Operations Flight Commander.

¹⁰ [TSgt 1] is with the 50 CES as the non-commissioned officer in charge of the power plant. He has been in that position since January 1, 2012. Prior to that move and during the timeframe relevant to the allegations, [TSgt 1] worked in the Operations Flight in the 50 CES headquarters building. In that position, he served as a supervisor over Mr. Paulson. He has been in the Air Force in civil engineering for 16 years and has been at Schriever AFB for almost five years.

¹¹ [Maj 1] is the Operations Flight Commander for 50 CES. He has been in that position since approximately the summer of 2011.

¹² [MSgt 1] is the Facility System Section Chief. He has been in that position since January 3, 2012. He was deployed from May through December 2011. In the position he occupied prior to leaving on that deployment, [MSgt 1] supervised Mr. Paulson. He has been assigned to Schriever AFB since June 2006.

¹³ [Lt Col 1] has been the 50 CES Commander since July 30, 2010.

¹⁴ [Deputy Base Civil Engineer] (GS-13) is the Deputy Base Civil Engineer and has been in that position for approximately seven years.

¹⁵ Mr. Anderson described the trash bags found in the Plant as regular black trash bags “33, 35, 40 gallons, industrial strength.” The trash bags found outside the dumpster were clear trash bags.

Mr. Anderson testified that these documents totaled approximately 200 pages and consisted of a General Service Administration credit card (valid through November 2011) with a sticky note attached containing a personal identification number (PIN), documents labeled "for official use only," a security clearance application and other related security information, separation papers, notifications of personnel actions, employee appraisals, time and attendance records, leave and earnings statements, overtime and leave request forms, and other personnel related documents containing PIN numbers, home addresses, personal telephone numbers, addresses, social security numbers with corresponding names, and other PII information. In reviewing the documents provided by Mr. Anderson, the IO found these descriptions accurate.

October 30, 2011

Mr. Anderson testified that on October 30, 2011, he found documents at the bottom of a communal trash receptacle located on the first floor of the Central Utilities Plant. The documents were in "a blue folder similar to the one[s] that are used for [documents] . . . within the Air Force." Mr. Anderson stated that the documents found on this day included a "national security background check with Mr. Paulson's personal information, his [Mr. Paulson's] wife's personal information . . . timesheets with -- the vast majority of the -- the largest stack of [documents] on that date were Mr. Paulson's timesheets, a shift-change form, his leave forms . . . [and documents of] other plant employees, previous employees." He testified that he continued to check the trash container for additional documents, but did not find any.

Mr. Anderson stated that based on the nature of the documents, it was his opinion that they came from Mr. Paulson's office. Mr. Anderson further stated "what I believe is Mr. Paulson was in the process . . . he's going to retire so he probably threw them out just because he was in a hurry . . . maybe just the easy way out. I don't know."

Mr. Anderson said that multiple employees had access to the area where the trash receptacle was located, but when asked if there was a likelihood that the PII he found had been compromised, he stated "[n]o. The compromise is actually throwing it in the trash. That's where the compromise is."

Mr. Anderson testified that after he found the documents at issue, he did not report his findings to anyone in the Air Force nor did he have any reason to believe that anyone else had been aware that PII had been discarded. Mr. Anderson also stated that while he did not tell anyone at Schriever AFB about this issue at the time, he did report the incident to OSC and sent OSC copies of the documents¹⁶ within about 10 days of his discovery.

Mr. Anderson testified that prior to October 30, 2011, he had not witnessed any incidents similar to this.

¹⁶ Mr. Anderson testified that he kept copies of most of the documents he sent to OSC. For the documents he kept, he testified that he secured them in his locker.

December 12, 2011

Mr. Anderson testified that after finding the documents on October 30, 2011, he became curious about whether other documents might be handled in the same manner. He stated that as part of his general pre-shift walk-around, where he was responsible for generally checking the equipment in the Plant, he would also check for documents being discarded in the various trash receptacles located in the Plant. Mr. Anderson testified that on December 12, 2011, he found documents in a closed trash bag on the second floor of the Central Utilities Plant. He stated that the trash bag contained a mix of refuse, food particles, and documents, and that the documents were "spewed throughout" in the bag mixed with the other garbage.

Mr. Anderson testified that the bag was located in close proximity of Mr. Paulson's office. As described by several witnesses, at the top of the stairwell on the second floor is a set of double doors that opens into an area of four offices. At the time in question, Mr. Paulson occupied one of those offices and the other three were vacant (although Mr. Paulson testified that [TSgt 1] "was in the process of moving in when I was moving out, when I was leaving" in late December 2011).

Mr. Anderson stated that it was his opinion, based on the nature of the documents that they came from Mr. Paulson's office. Mr. Anderson attributed these documents to Mr. Paulson because "he was going to retire." Describing what was actually on the documents, Mr. Anderson testified that the PII on these documents was mostly Mr. Paulson's. He stated that the documents had information indicating they belonged to Mr. Paulson because "there was the application for Visa with a signature on it and the date of 30 -- 30 December as retirement date. There were -- quite a few of the documents have his personal [PII] and some of his personal, now, a mortgage application or information on mortgage about -- with him and his wife on the thing, so that's what made me tend to believe that it was his."

Mr. Anderson also testified that, as a supervisor, Mr. Paulson would have had documents containing PII on his employees, such as timesheets. His explanation was that the supervisor has access to PII "because a supervisor keeps copies of performance appraisals" of employees and signs the employees' timesheets. Among these documents was Mr. Paulson's recently expired GSA Fleet Smart Pay 2 (credit) card.

Mr. Anderson testified that after he found the documents at issue, he did not report his findings to anyone in the Air Force nor did he have any reason to believe that anyone else had been aware that PII had been discarded. He indicated that he took the documents and locked them up to safeguard them.¹⁷ He also stated that within "a matter of days" he reported this incident to OSC and sent the documents to OSC prior to December 18, 2011. Further, he noted that he did not think anyone was aware of the incident. When asked whether he believed there was any likelihood of a compromise of these documents, he stated, "no, because I believe I safeguarded them."

¹⁷ As with the documents he found on October 30, 2011, Mr. Anderson stated that he kept copies of most of these documents in his locker.

December 18, 2011 – First Incident

Mr. Anderson testified that on December 12, 2011, his wife received a phone call from the bank that issued his credit card notifying him that “somebody in Spain had charged up \$1,000 on [his] credit card that morning.”¹⁸ He did not report this incident to anyone in the military, and he did not know if it was a result of the incidents at Schriever AFB. However, he testified that because his identity was compromised, protecting himself became one of his concerns.

Mr. Anderson testified that on December 18, 2011, he found additional documents in another closed trash bag on the second floor of the Central Utilities Plant, located in the same general location near Mr. Paulson’s office as the bag he found on December 12, 2011.

In this set of documents, Mr. Anderson testified, were “a number of timesheets, corrected timesheets with other employees’ information on them . . . it was the majority of employees who were working in the plant, I believe, at the time.” Mr. Anderson stated that he was prompted to open the closed trash bag to discover this second set of documents because of “[c]uriosity. After the October 30th discovery of documents, after the December 12th discovery of documents. Also I was curious to see if any more of my information was going out in the trash.”

December 18, 2011 – Second Incident

Mr. Anderson testified that later in the day on December 18, 2011, he discovered additional documents containing PII on the ground at the foot of a dumpster in two clear plastic bags. This dumpster was located outside in an area between the Central Utilities Plant and a building occupied by 50 SFS. Mr. Anderson testified that people in both buildings would likely use that dumpster.

Mr. Anderson stated that he did not have to open the bags to know what was inside because it was clear plastic and he could see documents with PII in them. He stated that he “picked them up and looked at them [and said], ‘Whoa, this has some personal identified [sic] information’” that prompted him to open the bags. He testified that one of the documents he found was an entry authorization list (EAL)¹⁹ containing what he described as “600 names.” He stated he also discovered Air Force forms that had weapon qualification information on security forces members.

Mr. Anderson stated that, based on the nature of the documents, he believed these documents came from 50 SFS. He said there was no indication that any of these documents might have originated from any office in 50 CES.

As with the other instances, Mr. Anderson did not tell anybody about this incident other than OSC. He at first stated he sent copies of the documents to OSC within a matter of “several

¹⁸ Mr. Anderson testified that because of insurance, he was not held responsible for the charges.

¹⁹ The EAL was also referred to as the “entry access list” by witnesses.

days,” but then corrected himself and said that he sent OSC the documents²⁰ in the last week of January. Further, he stated that he did not know whether there was any likelihood of a compromise of the information found near the dumpster.

Nature and Source of Documents

50 CES Documents

When shown the documents containing Mr. Paulson’s name and asked about the nature of them, [Deputy Base Civil Engineer] testified that they were “personal documents” that would have come from Mr. Paulson’s own “personal file.” He explained that he “wouldn’t believe any of the documents that are in that file would [be documents] a supervisor would [sic] have a reason to maintain in a file.”

When shown the documents containing names and PII of those other than Mr. Paulson, [Deputy Base Civil Engineer] noted that many of the names appearing on the documents were of employees that “have been retired or removed well past -- well before the date that -- that you’re questioning.” He indicated that some of the documents would have been maintained by supervisors who have since retired and that those previous supervisors would have used the same office that Mr. Paulson used during the relevant timeframe. However, [Deputy Base Civil Engineer] also testified that some of the documents would have been maintained by Mr. Paulson.

Regarding what he believed happened, [TSgt 1] testified that “the only thing I can say is there’s a possibility that from my understanding, there was a lot of stuff, like you say, that got thrown out. In that timeframe, Mr. Paulson was on his way out so he was probably cleaning out his office and didn’t pay close attention to what he was doing . . . so probably he had, on accident, thrown some stuff out.”

When discussing Mr. Paulson’s departure upon his retirement, [Lt Col 1] testified that “I believe he [Mr. Paulson] himself cleared out his office prior to him leaving . . . Yeah, I believe that Mr. Paulson cleared out his own office prior to leaving his position as the HVAC supervisor at the plant. Nobody cleared it out for him.”

[MSgt 1] was shown documents found by Mr. Anderson in the Central Utilities Plant on October 30, December 12, and December 18, 2011. [MSgt 1] testified that Mr. Paulson was the person who would have maintained those documents. When asked if anyone else would have been responsible for maintaining those documents, he answered “no.” [MSgt 1] also testified that while he previously supervised Mr. Paulson, and in so doing maintained a personnel file on him, all those records would have been returned to Mr. Paulson when he deployed.²¹ Further, regarding the timesheets that Mr. Anderson found, [MSgt 1] opined that a supervisor would not

²⁰ Mr. Anderson stated that he kept copies (which he made) of most of the documents he sent to OSC. However, during his testimony he could not give an accurate accounting of which documents he made copies of and which he did not. For the documents he kept, he testified that he secured them in his locker and planned to “shred them when this matter comes to an end.” He also testified that OSC had been “made [aware] of everything.”

²¹ [MSgt 1] was not present when Mr. Paulson left and did not personally return Mr. Paulson’s personnel records to him. He stated, however, that to the “best of my knowledge” those would have been returned to Mr. Paulson.

likely keep those particular documents and some of the timesheets found were approved by supervisors who had long since left Schriever AFB. [Maj 1] similarly testified that Mr. Paulson would likely have had copies of the documents found by Mr. Anderson inside the Central Utilities Plant.²²

When Mr. Paulson was shown the documents discovered by Mr. Anderson, Mr. Paulson identified many of them as being his own personal documents, including a jury summons, salary information, timesheets, voluntary retirement incentive forms, and other documents containing his own PII. He testified that “I did have a whole bunch of stuff in a locker and I can’t remember if I cleared that locker out.” He followed that by saying “[t]hat’s all stuff that had been keeping and I’ll bet I left it in that one locker, so that would have been my . . . my own neglect.” He admitted it was a possibility that these documents could have been thrown out in the trash. He also clarified that this locker was in his office in the Central Utilities Plant, and that these were documents kept personally by him and were not the types of documents his supervisors would have kept on him. Mr. Paulson also identified the other documents relevant to the 50 CES as being those that he would have kept on his employees in his role as supervisor.

Mr. Paulson also testified that these documents “were probably under that mess in -- in the office there” when he departed. Mr. Paulson further implied the breach may have happened under [TSgt 1]’s watch, stating that when he left for retirement “I gave the key to [TSgt 1] and left the door open. Now, how he secured it and maintained it, I don’t know.”

Mr. Paulson testified that “[a]s far as I can remember, I -- I put everything away and cleaned everything out. There were some papers on different technical information, stuff like that, but that’s -- that’s the only thing I left.” He stated he gave personnel folders and keys to [TSgt 1] and that he did not remember leaving “for official use only” or “Privacy Act” documents unlocked after he left. He reiterated that he “thought I had pretty much cleaned every[thing] out to where . . . there wouldn’t be anything left out” and “anything that needed that scrutiny, I think I gave it to [TSgt 1].”

50 SFS Documents

[Deputy Base Civil Engineer] testified that the EAL would not have come from anywhere within 50 CES. [MSgt 1] was shown the documents discovered by the dumpster (outside the Plant) by Mr. Anderson on December 18, 2011, and he testified that to his knowledge, 50 CES would not be responsible for maintaining an EAL. As previously stated, Mr. Anderson also did not believe the documents he found by the dumpster came from 50 CES, but rather 50 SFS.

[Security Manager],²³ who works as the Security Manager in the 4th Space Operations Squadron (4 SOPS), testified that she is responsible for creating EALs on Schriever AFB. On a

²² [Maj 1] also testified about the severe manning shortages suffered by 50 CES at the relevant timeframe. He explained that in the Central Utilities Plant, there are three supervisory positions on the books, “an HVAC supervisor, a Power [Production] supervisor and a plant supervisor.” However, because of the civilian hiring freeze and active duty members getting deployed, people got “moved up into positions that had their hands full.” He stated Mr. Paulson, who was the HVAC Supervisor, was moved up to also do the duties of the Power Production Supervisor and the Plant Supervisor.

²³ [Security Manager] (GS-11) is the 4 SOPS Security Manager on Schriever AFB.

military installation, there are often areas with restricted access (such as a section of a building, an entire building, or an area covering multiple buildings) that the general base population may not enter without special permission. She explained that when special permission is needed to allow a person access to a specific restricted area (often referred to as a module or “mod”), a request is sent to [Security Manager]. She stated that when she receives a request, she works to confirm that access to a “mod” is necessary and takes other steps of verification including checking for an appropriate security clearance. [Security Manager] testified that after a person is cleared to enter a “mod,” she then puts that person’s information into a master EAL. She stated that, about once a month, she prints out EALs for each specific “mod” that is derivative of the master EAL. [Security Manager] testified that she files the master EAL at a central location and disseminates the “mod”-specific EALs to each respective “mod.”

[Lt Col 3]²⁴ testified about EALs in general, stating “[t]he process is is [sic] someone will need to have access to an area that is under my purview, if you will, of -- of who’s allowed in and out. That -- the security manager will, for instance, I’m looking at the EAL right now. The first person has a last name, a first name and middle initial, a company, the last six of their social, their clearance and when the visitor request expires and what they need access to and if they’re allowed to escort or not escort.” He stated that the visitor would have to submit paperwork to [Security Manager] to get added to an EAL, and [Security Manager] would then be responsible for checking the security clearance of the visitor and complete additional paperwork to update the EAL. He testified that the “mod”-specific EALs ultimately are sent to the respective “mods” where they can be printed out by the host unit, authenticated, and posted.

The EAL document at issue relates to a “mod” located in a 50 SFS building, which is physically situated next to the Central Utilities Plant. [Security Manager] testified that she gives one single copy of this 50 SFS “mod” EAL to her point of contact in the security forces squadron. She stated that she believed 50 SFS personnel then authenticate the EAL and make one copy. She stated that she believed they posted one copy of the EAL at a “cop station” outside this “mod” and the other copy at the Base Defense Operations Center (BDOC). [Senior Master Sergeant (SMSgt 1)]²⁵ confirmed her testimony by explaining that 50 SFS keeps one copy of the EAL at the BDOC and another copy of the EAL at the entry control point for the “mod.” [SMSgt 1] testified that these two posts – the BDOC and the entry control point – are continuously manned “24/7.”

[MSgt 2]²⁶ testified that after [Security Manager] ensures the appropriate clearance or authority to get into a “mod,” that this information on the EAL would be authenticated by someone (at the grade of E-5 or higher) at 50 SFS. He reviewed the EAL at issue and confirmed that it was authenticated by 50 SFS.

[Security Manager] stated that she is not involved in the 50 SFS’s internal authentication process of the EAL, and she does not get a copy back from them once they authenticate it. She also explained that she does not give a copy of the 50 SFS “mod” EAL to anyone other than 50 SFS. After being shown a copy of the EAL that Mr. Anderson found near the dumpster,

²⁴ [Lt Col 3] is the Commander of 4 SOPS.

²⁵ [SMSgt 1] is the Superintendent of the Operations and Training Division of 50 SFS.

²⁶ [MSgt 2] is the Chief of Plans and Programs in 50 SFS.

[Security Manager] explained that the EAL had the 50 SFS authentication markings on it, which indicates that this copy must have come from 50 SFS and not from her office or any other office. [Security Manager] did not know the 50 SFS process for disposing of old EALs.

[Lt Col 2]²⁷ testified that an EAL typically gets sent to the “relevant posts” having need of a particular EAL. He explained that “[s]everal people” have access to the hard copies of an EAL, and that the BDOC in particular has “some traffic” coming in and out to include people that are not 50 SFS personnel.

Mr. Anderson also found an Air Force Form 522 (“USAF Ground Weapons Training Data”) with PII (including name and social security number) on one particular Air Force member, assigned to 50 SFS. The investigation revealed no evidence as to who was responsible for discarding this document.

Security

Mr. Anderson testified that Mr. Paulson would always lock his office door when unoccupied and never left it open. [TSgt 1] also testified that Mr. Paulson always kept his office door locked when he was not there. Further, [TSgt 1] testified that, as of January 1, 2012, he occupies one of the offices on the second floor of the Plant, in close proximity to Mr. Paulson’s old office. He stated he has moved all personnel files into his new office or he has returned them to the human resources office. Further, [TSgt 1] stated that Mr. Paulson’s old office has stayed locked since he retired and that [TSgt 1] always keeps his own office locked if he leaves.

Mr. Paulson testified that he kept his office locked “most of the time” when he was gone. He further explained that after [MSgt 1] deployed, he also began locking the main double door access to the suite of four offices located at the top of the stairwell. Mr. Paulson stated that he was the only one with a key to either of these doors. He also testified that he had drawers and cabinets in his office which could be locked by key.

Mr. Anderson and [TSgt 1] testified that Mr. Paulson had a functioning shredder in his office. Mr. Anderson also noted that there were shredders on the first floor as well as across the street where the headquarters offices of 50 CES were located. Mr. Anderson stated that the employees in the Central Utilities Plant dispose of their own trash. He stated there are no contractors that empty or carry out the trash bags.

[Lt Col 2] testified that “Schriever . . . is a 100 percent shred base. We know we shred everything.” When asked what is done with the EAL once it is no longer needed, [MSgt 2] explained that “[t]hey would turn it in, they should shred it. Usually -- we don’t really have too many that go to a point where they’re not needed, they get replaced, and when my guys replace it . . . they will bring the old ones back up to Pass and ID and we have a shredder up there.” [SMSgt 1] also testified that there is a shredder at the BDOC but not at the entry control point. He stated that when it comes time to replace the EAL at the entry control point, 50 SFS personnel would have to bring it to the BDOC for shredding.

²⁷ [Lt Col 2] has been the Commander of 50 SFS since approximately June 2011.

Training

Mr. Anderson testified that he knew PII training is administered in 50 CES. He stated that everyone gets information assurance training annually, and that everyone gets a warning on their computer to take the training when it comes due. [TSgt 1] also testified that everyone receives annual training on PII and that it is prompted "by the computer." He further stated that a lieutenant in 50 CES has also done "training on and off with different issues and [PII] has been brought up as some of his training classes has been . . . information act and all that stuff." [Deputy Base Civil Engineer] stated that he believed there was online Privacy Act and information assurance training, and that there may have been additional training conducted after a 2009 incident where social security numbers were emailed out. [MSgt 1] also testified that there are several forms of training given on how to manage PII, including training during briefings and on-line training. [Lt Col 2] testified that he believed there was an annual training program on how to handle PII.

The IO confirmed with the Schriever AFB Base Records Manager that Privacy Act training for all individuals assigned to Schriever AFB does take place via computer-based training. The IO was able to determine, through the training program, what percentage of individuals in each squadron were current in the training. Approximately 9% of individuals assigned to 50 CES and to 50 SFS were not current on their annual Privacy Act training as of March 8, 2012. The training program also showed that Mr. Paulson had not taken the Privacy Act training since January 28, 2009.

Reporting

During his discussion of incidents prior to October 2011, Mr. Anderson highlighted an incident in 2009 when social security information was accidentally sent via email. The incident was dealt with immediately at the time and Mr. Anderson said that his supervisor, Mr. Paulson, was "directed to make sure every plant employee deleted the E-mail."²⁸ He suggested that the 2009 email incident is a reason why he does not trust his organization to dispose of PII and is a reason why he did not report the current issue to his superiors. He said, "it's one good reason that I kind of lost confidence in the system because of the response and what had happened, what transpired at the time." [Deputy Base Civil Engineer] also testified about this incident, stating that in 2009 social security numbers were sent out over email by a master sergeant who has since moved from Schriever AFB. He stated the incident was immediately addressed and that the emails were "pulled back."

[TSgt 1] also made mention of a previous PII breach on Schriever, which he believed was discovered during an inspection in May 2010.²⁹ However, he stated that it was not an incident

²⁸ Mr. Anderson provided the IO with the email traffic at issue in the 2009 incident. It indicates that PII was emailed out unnecessarily, and that Mr. Anderson quickly reported the issue to the supervisory chain. According to the email traffic, the supervisor chain took immediate steps to ensure the emails were deleted by the recipients.

²⁹ The IO retrieved the report of the May 2010 inspection. According to the report, five documents with PII had been found in dumpsters on base and there was an occasion where social security numbers were left out on a roster during a deployment processing line.

that occurred in the Plant, and he did not believe it occurred within 50 CES. He testified that as a result of that incident, “the squadron had ordered all new shredders.”

[Lt Col 1] testified that since October 2011, no one had reported any incident nor indicated concern about the safeguarding or destruction of PII. He further answered that nobody else had voiced concerns over PII or Privacy Act documents being found in the Plant areas where Mr. Anderson found PII documents in the trash. No one in the current leadership in 50 CES or 50 SFS stated they had heard of any potential PII breach related to the documents discovered by Mr. Anderson until the investigation by the IO began. Mr. Paulson similarly testified that he was not aware of any breach being reported. As previously mentioned, Mr. Anderson testified that he did not report any of the breaches within the Air Force, but did take his concerns directly to OSC.³⁰

Other Matters

The IO did a follow-up meeting with [TSgt 1] at his new office in the Central Utilities Plant. [TSgt 1] told the IO that he discovered other documents containing PII in one of the other vacant offices on the second floor of the Plant. Based on the nature of the documents and the office that they came from, both [TSgt 1] and the IO concluded the documents belonged to a previous plant supervisor, [Previous Plant Supervisor], who left the Plant approximately two years ago and is no longer employed by the Air Force. The documents contained the PII of both [Previous Plant Supervisor] as well as other employees at the Plant. [TSgt 1] stated that the office in which he found these documents had been kept unlocked, and so decided to move them all into his office. [TSgt 1] stated he did not believe these documents were Mr. Paulson’s documents. He also confirmed that Mr. Paulson provided [TSgt 1] with “any left over documents” upon Mr. Paulson’s departure in December 2011.

In reviewing the documents provided by Mr. Anderson, the IO found that in addition to Mr. Paulson’s own documents and documents with PII on subordinates held by Mr. Paulson, there were also older documents that apparently belonged to [Previous Plant Supervisor]. They included personal documents with [Previous Plant Supervisor]’s PII, as well as documents with PII of [Previous Plant Supervisor]’s subordinates.

³⁰According to correspondence obtained by the IO, Mr. Anderson sent the documents he found to [OSC Employee 1] at OSC along with short notes. For the October 30, 2011 documents, he wrote a note to [OSC Employee 1] that “these documents were discovered in the trash, in the utility [plant]. It seems that John Paulson failed to safeguard this PII info[rmation] IAW AFI 33-332.” He included page 13 of AFI 33-332, with paragraph 2.2.4 marked for attention. In a note with the December 12, 2011 batch, he wrote “found in a trash bag located by John Paulson’s office.” In a note with the December 18, 2011 batch found by the dumpster he wrote “perhaps you would like to review the other 28 [pages] (all 30 pages of this report). Let me know. Sincerely Mr. A. (Found in the trash by the dumpster is Dec[ember] [20]11). EAL listing from 4 SOPS.” There was apparently no note from Mr. Anderson attached to the other batch of documents found on December 18, 2011.

ANALYSIS

Document Disposition

The evidence clearly showed that the documents found by Mr. Anderson in all four instances were discarded in the same manner as regular trash. While not all the bags were physically inside a trash receptacle or dumpster at the time of discovery, it is plain from the evidence that all the bags had at least entered the garbage disposal process and it would be unreasonable to believe that any Air Force official would have retrieved these documents for proper disposal at or after the time Mr. Anderson found them.

Regarding the 50 CES documents in the first three sets of documents found by Mr. Anderson in garbage bags in the Central Utilities Plant, the preponderance of the evidence established that the documents were discarded by Mr. Paulson. While he denied responsibility and seemed to suggest [TSgt 1] may be responsible, the evidence does not support this. [TSgt 1] testified that as of the beginning of January 2012, he officially transferred to his current position. Mr. Paulson testified that he was on terminal leave starting in mid-December and officially retired as of December 31, 2011. He also stated [TSgt 1] was moving into his office at the same time Mr. Paulson was moving out, in mid- to late December. [TSgt 1]'s testimony is not clear as to when he moved into his office at the Plant. However, based on this evidence, it is clear that the first and second sets of documents were found by Mr. Anderson before [TSgt 1] moved into the building. As for the third set, those documents were thrown away in the same manner as the first two. Further, two sets of documents were found in bags next to Mr. Paulson's office and all the documents from all the sets found inside the Plant were unanimously identified as documents held by Mr. Paulson. Many of the documents were also clearly personal to Mr. Paulson, as presumably he would have been the only person to have a copy of such documents. Several witnesses also discussed how Mr. Paulson was cleaning out his office in preparation for retirement, which would explain how the documents got in the trash. Finally, [TSgt 1] showed the IO additional documents containing PII he found in the offices on the second floor of the Plant, which indicates that he was engaged in protecting these types of documents rather than simply throwing them into the trash.

The majority of documents at issue from the 50 CES contained only Mr. Paulson's PII from his own personal files. His decision to dispose of his own personal documents by throwing them in the trash, while perhaps imprudent, was not a violation of law, rule or regulation. However, Mr. Paulson also discarded many other documents containing his employees' PII in the regular trash. Mr. Paulson's disposal of these documents was not by means of an appropriate or approved disposal method because he did not first render the personal data "unrecognizable or beyond reconstruction" as required by DoD 5400.11-R at paragraph C1.4.3.1 and AFI 33-332 at paragraph 9.5.1.

Many of the 50 CES documents containing employee PII were covered by the Privacy Act (in that they were derived from an Air Force system of records, retrievable by individual identifier). As such, this improper disposal was a violation of the Privacy Act (5 U.S.C § 552a(b)). The evidence adduced does not support a finding that Mr. Paulson engaged in intentional or willful conduct when he improperly discarded other individual's PII. He testified

that he cleaned out his office, that it was a mess, and that he thought he left these types of documents in the office for [TSgt 1]. His lack of intent is supported by the fact that a large number of the documents contained his own PII. Because of the serious personal consequences of such a breach for Mr. Paulson, this evidence indicates that Mr. Paulson acted negligently as opposed to willfully. Further, it does not appear that these records were disclosed to or retrieved by anyone beyond Mr. Anderson, who secured the records in his locker and thereafter forwarded them to OSC and ultimately, the Air Force for official purposes.

The 50 SFS documents containing PII found by Mr. Anderson in clear trash bags next to the dumpster were likewise improperly discarded because the personal data was not first rendered "unrecognizable or beyond reconstruction." This improper disposal was in violation of DoD 5400.11-R at paragraph C1.4.3.1 and AFI 33-332 at paragraph 9.5.1. The investigation was not able to determine who specifically was responsible for this violation and therefore could not determine whether it was willful or merely negligent. However, based on the evidence, it appears that the responsible party was a member of 50 SFS.

The Air Force Form 522 found by Mr. Anderson contains PII on a specific individual and is a record derived from an Air Force system of records. As such, the improper disposal of this record is a violation of the Privacy Act. The hard copy of the EAL found in the trash contains multiple names and other corresponding PII used for purposes of gaining access to an area on base. It is derived from a master computer list kept by 4 SOPS. As the hard copy of the EAL appears to be derived from a computer system where information is retrievable by individual identifier, it would also be considered a record protected under the Privacy Act. The improper disposal of the EAL was in violation of the Privacy Act.

Security

Personnel "have an affirmative responsibility to protect an individual's privacy when collecting, maintaining, using, or disseminating personal information about an individual." The evidence showed that, other than the improper disposal of documents with PII, private information was otherwise adequately protected by 50 CES and 50 SFS. Mr. Paulson testified that he would lock his office door and the double doors at the top of the stairs when he left the area. Mr. Anderson agreed that Mr. Paulson locked his door, and does not make any complaint about PII being generally insecure within 50 CES. Similarly, with the exception of the documents found by Mr. Anderson next to the dumpster, the evidence showed that 50 SFS also adequately secured private information.

Training

The evidence was clear that DoD and the Air Force have implemented proper training requirements and that 50 CES and 50 SFS personnel are generally compliant. However, the evidence also indicated that Mr. Paulson had not completed his PII training since January 28, 2009. Because his job required routine work with and/or access to records containing PII, he

was apparently required³¹ under AFI 33-332 at paragraphs 1.1.9.10 and 11.1 to complete specialized training annually. In addition, the IO found that about nine percent of employees in the 50 CES and the 50 SFS were not up to date on their training.³² Therefore, there was an apparent violation of those provisions by Mr. Paulson as well as those additional employees who are not up to date in their training.

ACTIONS TAKEN OR PLANNED AS A RESULT OF THE INVESTIGATION

As a result of this investigation, the 50th Space Wing (50 SW) Commander³³ has directed the following corrective actions:

First, he has directed that all individuals whose PII was potentially compromised be notified of the issue, in accordance with AFI 33-332, *Air Force Privacy Program*, at paragraph 9.3.

Second, an official from the Air Force Space Command³⁴ (AFSPC) privacy office will conduct a staff assistance visit (SAV) on April 20, 2012. A SAV is generally conducted by a higher headquarters as a means to measure the effectiveness of a unit's program and to assist unit leadership in accomplishing the mission.

Third, all 50 CES and 50 SFS personnel will receive targeted remedial Privacy Act compliance training. This will include re-accomplishing the annual computer-based training previously discussed. The commanders of 50 CES and 50 SFS will also conduct squadron commander's calls³⁵ to address the subject. The computer-based training has already commenced, with all personnel required to complete the training no later than May 7, 2012. The commander's calls will also happen no later than the same date.

Fourth, all personnel assigned to the entire 50 SW will also be required to re-accomplish the annual computer-based training no later than May 7, 2012. In addition, the 50 SW Commander will hold a base-wide commander's call prior to April 30, 2012, and will address the procedures for the proper handling of PII as well as the proper reporting of suspected mishandling of PII. Further, the base newspaper and the base on-line bulletin will publicize these procedures during the month of April 2012.

Fifth, the base records manager will conduct an audit of the records belonging to 50 CES as well as provide training to personnel on proper records management.

³¹ While it is apparent that Mr. Paulson was in violation of not completing his annual training, it is not clear from the evidence if there was any potential excuse for Mr. Paulson not completing the training or whether the record keeping of his training sessions was properly up to date.

³² It is not clear whether the nine percent rate was due to deployments, temporary duty, extended leave or other extenuating circumstances that may have excused the annual training requirement.

³³ The 50 SW Commander is the installation commander of Schriever AFB.

³⁴ AFSPC is the Major Command headquarters that oversees multiple military installations including Schriever AFB.

³⁵ A commander's call is generally unit-wide meetings of all assigned personnel where the commander can address the entire unit on one or more topics.

Finally, 50 SW personnel will check on the status and location of working shredders.

Because Mr. Paulson has retired, no disciplinary action will be taken against him. Further, training in lieu of disciplinary action will be required for those who were not up to date in their PII computer training.

CONCLUSION

Upon review of the evidence and testimony adduced during the investigation, and based upon a preponderance of the evidence, there were several findings of violations of law, rule, or regulations. Specifically, the violations are as follows:

- 5 U.S.C § 552a(b) by Mr. Paulson for disclosing records which are contained in a system of records;
- 5 U.S.C § 552a(b) by one or more members of 50 SFS for disclosing records which are contained in a system of records;
- DoD 5400.11-R at paragraph C1.4.3.1 and AFI 33-332 at paragraph 9.5.1 by Mr. Paulson for failing to render personal data “unrecognizable or beyond reconstruction” prior to discarding employee PII; and
- DoD 5400.11-R at paragraph C1.4.3.1 and AFI 33-332 at paragraph 9.5.1 by one or more members of 50 SFS for failing to render personal data “unrecognizable or beyond reconstruction” prior to discarding PII.

Based upon a preponderance of the evidence, there were additional findings of apparent technical violations of law, rule, or regulations. These apparent violation are as follows:

- AFI 33-332 at paragraphs 1.1.9.10 and 11.1 by Mr. Paulson and others for failing to complete specialized training annually.

The investigation did not reveal a criminal violation. Therefore, referral to the Attorney General, pursuant to 5 U.S.C. §§ 1213(c) and (d) is not appropriate. This Report is submitted in satisfaction of my responsibilities under 5 U.S.C. §§ 1213(c) and (d).

APPENDIX

WITNESSES INTERVIEWED (Alphabetical Order)

Keith Anderson (Complainant)
[Deputy Chief of Operations]
[Security Manager]
[Lt Col 2]
[SMSgt 1]
[MSgt 1]
[TSgt 1]
[Deputy Base Civil Engineer]
John Paulson
[MSgt 2]
[Maj 1]
[Lt Col 3]
[Lt Col 1]

ABBREVIATIONS USED

AFB – Air Force Base
AFI – Air Force Instruction
AFSPC – Air Force Space Command
AFSPC/IG – Inspector General of Headquarters Air Force Space Command
CES – Civil Engineering Squadron
DoD – Department of Defense
EAL – Entry Authorization List
HVAC – Heating, Ventilation and Air Conditioning
IG – Inspector General
IO – Investigating Officer
Lt Col – Lieutenant Colonel
Maj – Major
Mod – Module
MSgt – Master Sergeant
OSC – Office of Special Counsel
PII – Personally Identifying Information
POC – Point of Contact
SAF/IG – Air Force Inspector General
SFS – Security Forces Squadron
SMSgt – Senior Master Sergeant
SOPS – Space Operations Squadron
SW – Space Wing
TSgt – Technical Sergeant