Ogilvie, Janice E

From: Siciliano, Mark David
Sent: Monday, August 02, 2010 5:57 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Written Summary, ECP Case EC10-039

[redacted]

Thank you very much for looking into this. I am glad to hear that the form is being modified to alleviate some of my former employees' concerns. However, I must advise you on the record that I dissent on some of your conclusions:

I agree that BEA had the authority to make "minor" changes to the DOE from and/or use a "form comparable in content." However, as I already explained to you in our meeting, I do not believe that BEA has the right to make major changes to the form, which is exactly what has happened. The **PURPOSE** of page 2 of the official DOE Form, which is in large bold font and surrounded by a square border for emphasis, is a "Report by Office Concerned" (as depicted below).

Minor changes could be, as you pointed out, replacing the SSN with the S-number of the individual that is required to sign the form. The **PURPOSE** of page 2 on the BEA modified form is "PART II - NOTIFICATION OF SECURITY INCIDENT" therefore, the entire PURPOSE of the form has been changed. That's not a minor change, John. Just to drive the point home as to how incredibly ridiculous this is-- Part I on the BEA modified form states "NOTIFICATION OF SECURITY INCIDENT" and Part II on the BEA Form also states "NOTIFICATION OF SECURITY INCIDENT" huh??

Again, as I discussed with you in our meeting, it's not as simple as the form being screwed up (it truly makes no sense). The fundamental problem still resides in the procedure in which inquiries are being conducted. In every organization that I have knowledge of, FBI, police, DoD, etc., there are 3 basic elements of an investigation/inquiry:

1. An initial report of the incident (Part I of the official DOE Form)

2. A fact finding/evidence gathering investigation/inquiry

3. Conclusions / report (Part II of the official DOE Form)

Frankly, there would be less fear of reprisal (chilling affect) if we simply asked for statements of those with potential knowledge instead of requiring them to sign the form taking responsibility for the incident which was exactly what was happening. Again, I believed then and believe now, that forcing an employee to sign a form as the "individual responsible for the incident" was wrong and as I documented, against the fundamental rights of due process, i.e. against the law. We don't even do that to detainees in Gitmo! It is what separates us from the barbarians. I would also point out that the cover letters didn't exist when I had to fill out my own form which was my punishment for speaking my mind and bringing up significant employee concerns. So much for maintaining a questioning attitude!

[continued below]

5639-3.pdf (SECURED) - Adobe Reader

DOE F 5639.3
(12-93)
(Formerly DOE F 5630.13)
All Other Editions Are Obsolete

PART II - REPORT BY OFFICE CONCERNED
To be completed by the Office in which incident occurred/originated and return within 15 days to the Cognizant Security Office of the individual receiving infraction.

1. Reason or cause for incident:

2. Name and title of person responsible for infraction:	3. Social Security Number:	4. Number of infractions incurred in the last 12 months:

As far as me being investigated for the security incident that occurred BEFORE I was an employee and [redacted] response to me:

[redacted] never provided me with a written summary of his conclusions. He told me "manager's get investigated from time to time for their role in events like these." His response to me was never adequate. The facts remain unchanged:

My employees were correct in bringing their concerns to my attention and I believe I am required by law to act on their concerns. As you stated and I quote "I wouldn't sign that form either."

I brought their concerns to my senior managers' (plaural) attention VERBALLY, one-on-one and in small meetings.

Senior management not only did nothing about it, they told me to accept the status quo. (That doesn't work for me)

I documented my employees' concerns in the form.

[redacted] wrongfully accused me of encouraging my employees to file HR complaints-- that NEVER happened.

[redacted] wrongfully accused me of "not taking security seriously" which is contrary to my performance. In fact, if the leadership in N&HS implemented my input in the Fall of 2008 and Feb of 2009 our infractions would have been **significantly reduced** (independently verified by DOE-ID). The guard in UB2 alone has prevented 60 prohibited items from entering the SCIF in this CY alone. Which begs the question-- are we really doing better?

[redacted] reported the above directly to [redacted] in the late March / early April time frame (before the re-organization was discussed).

[redacted] and [redacted] didn't like my comments and I was subsequently investigated for this incident which put me in a state of apprehension, intimidation, duress, and had a negative impact on my career and health.

I was investigated for the incident and required by [redacted] to fill out the form 30 days ***after the official investigation was closed.***

This was my punishment for making the written comments in the form.

According to BEA's position, [redacted] did nothing wrong.

I contend it was abuse of authority (or does BEA think it's OK to use investigations to keep employees in check?)

[redacted] was the actual manager at the time of the incident, yet he was never "asked" what his role was in this.

[redacted] do you realize how wrong this is? Seriously, is it really "OK" for BEA to conduct inquiries on employees just because they don't like their point of view? Wouldn't it have been better to sit down with me way back then and discuss these issues? POL 111 is such a great tool; it's unfortunate that we do not actually follow it. You would think a manager like [redacted] would pick up the phone or meet with me directly if he had such an issue with my comments (which were actually my employees' comments). Furthermore, you would think the ALD of N&HS who I had a direct reporting relationship with in my RM role would take 5 minutes to discuss this with me (in March of 2009) directly instead of making disparaging comments about me to his directors. Frankly I think it's sad and embarrassing that I had to take this to DOE-ID in order to achieve results and I applaud Ms. Ogilvie for her unbiased and diligent efforts to affect needed change.

Again, I want to thank you for looking into this concern. Even though we don't agree on the finer points, at least we do agree that some changes needed to be made. There's nothing wrong with having different perspectives and I truly appreciate you taking the time to compile a summary. I wish that was done previously with reference to [redacted] investigation of me.

BREAK

LMT:

In keeping with POL 111 (open and honest communications). This may be my fight, but it is not my problem. This information is provided to you to deal with as you see fit. I want the same thing you want-- a world class laboratory.

Best Regards,

Mark

cc: As required

Idaho National Laboratory

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ToMark D Siciliano/SICIMD/CC01/INEEL/US@INEL
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SubjectWritten Summary, ECP Case EC10-039

08/02/2010 12:11 PM

THE FOLLOWING MESSAGE CONTAINS INFORMATION THAT IS OFFICIAL USE ONLY

Mark,

On April 29, you raised the following concerns with [redacted] for Audits. Your issues were transferred to the Employee Concerns Program for investigation and resolution.

I believe that modifying an official government form and implementing it, especially when it requires employees to sign it and admit guilt even when they are not the responsible person is an illegal act and an abuse of authority. I believe an investigation is warranted and I would like to know:

1. Why is BEA not using the official form that they are supposed to be using?
2. Do they have the authority to modify an official government form and use it?
3. Who specifically is responsible for modifying the form and what is the corrective action (if warranted)?
4. Why wasn't this discovered months ago when BEA supposedly did their own internal investigation?
5. What purpose did it serve to use a modified DOE form and use procedures that forced personnel who were investigated for security incidents to sign it as "individual responsible for incident" before investigations were complete?
6. This issue was raised a year ago and to this date, nothing has been done except an apparent validation of the status quo. Who is the responsible BEA manager for this and what is their position?

There has been significant impact to me personally and professionally as a result of this event, not to mention the other employees who also have been negatively impacted. I have personally been investigated (harassment/intimidation) for bringing up employee concerns about this specific issue, despite the fact that I was not an employee at the time of the security incident. To this date, there has been no accountability that I am aware of for this action and I still have no answer as to why [redacted] investigated me, but did not investigate the actual manager at the time [redacted]. I believe events like this have led to a collapse in a healthy reporting security and employee concern culture. As always, I will give BEA first opportunity to fix this before pursuing other avenues. I look forward to your feedback.

Your harassment/intimidation concern is the subject of an ongoing Part 708 complaint, so we cannot pursue that portion of your concern at this time – it will be resolved through the Part 708 investigation and adjudication process. We have investigated the security incident inquiry process and, specifically, the use or misuse of the form you cite in your first paragraph. Our answers to your specific six questions are provided below along with an overall conclusion.

To investigate the issues that you raised related to the security forms, we compared the current version being used by Security to the official form obtained from DOE. This was done to determine the extent of the changes. We then interviewed BEA and DOE staff to determine the history behind the changes and whether those making the changes had the authority to do so. We also reviewed the nature of the changes to determine what impact, positive or negative, the changes would make to the process, and we reviewed pertinent sections of the DOE guidance documentation that governs security investigations (DOE N 471.3). In addition, we discussed the legality of modifying DOE forms with our Legal department.

In general, we identified that the DOE documentation governing security investigations does not require the contractor to use the official DOE form, but rather allows use of a form "comparable in content." Also, per our discussion with DOE and BEA security personnel, when BEA's investigators perform inquiries into security incidents, they do so under the direction of the DOE and as an arm of DOE Security. We talked to the DOE Security office and identified that the DOE provides continuous surveillance of BEA's performance of security incident inquiries. DOE further indicated that the work being done by the Security Investigators meets their expectation and that the process they use is approved and supported by the DOE.

Based on the DOE Notice and our discussions with DOE personnel, the changes to the form are clearly acceptable. We agree, however, that the wording of the current form may cause some people to interpret that filling out the form is requiring them to admit guilt. We also can see how confusion might exist over whether the form is the official DOE form or a contractor form "comparable in content." We have addressed these issues and our suggestions below.

Specifically in response to your questions 1 through 6 above, we provide the following:

Question 1 – Why is BEA not using the official form that they are supposed to be using?

BEA is using a revised version of the form because of perceived shortcomings in the official DOE version. You have already raised part of these shortcomings with the DOE Employee Concerns Program Manager – that the form requires people to sign as the "person responsible for…" Based on our review of Part II of the form, we identified three substantive deviations between the official DOE form and the revision being used by BEA Security. The changes that were made to the BEA version are improvements to the form and tend to reduce its harshness. These changes should help alleviate some of the objections to the DOE form and Security's inquiry process in general. The changes include:

Part II, Block 2, the word "infraction" has been changed to "incident" to indicate that the person filling out the form is not being charged with an infraction until the inquiry is completed and only if it is determined that there is an infraction. This is consistent with the cover letter that is distributed with the form that in part reads:

> Please be advised that this form is your opportunity to explain your version of the incident. It also provides you the opportunity to explain your roles and responsibilities as it (sic) relates to this incident. Please feel free to explain what actions you took or alternatively did not take that may or may not have contributed to this incident. Though the form requires your signature, it does **not** constitute an automatic infraction at this point in time, and no distribution other than to you is made until your response is received and a determination of whether an infraction is charged is made.

Part II, Block 5, in the signature block, the word "infraction" has also been changed to "incident" for the reason described in #1 above.
Part II, Block 3, the use of the Social Security number (SSN) has been discontinued. The revised form asks for the employee's ID number. This is a positive change because it prevents an employee's SSN from being distributed to people who don't have a need to know. It also eliminates the need for classifying the forms as containing personally identifiable information (PII).

Question 2 – Do they have the authority to modify an official government form and use it?

The DOE document governing the performance of security inquiries, DOE N 471.3 *Reporting Incidents of Security Concern*, specifically allows contractor personnel to use forms with content that are similar to, but not the same as, the official DOE form. (See Attachment 1, *Contractor Requirement Document*, Section 2.e(3)(e)) The Notice reads as follows:

> …a copy of any DOE F 5639.3, *Report of Security Incident/Infraction*, **or a form comparable in content**, issued as a result of the inquiry, must also be submitted once it is completed. (bold type face added)

Based on this, it appears that the contractor has the option of deviating from the official DOE form. However, to alleviate confusion, we are suggesting to Security that they consider renaming, if possible, the revised form using a BEA name and numbering convention rather than continuing to call the form a DOE F 5639.3.

Question 3 – Who specifically is responsible for modifying the form and what is the corrective action (if warranted)?

The people responsible for modifying the form and creating the version currently in use were former contractor employees (BEA or Bechtel), and the modifications were done before the current BEA security staff was in place. The former employee who made the modifications to blocks 2, 3, and 5 discussed in the answer to your first question now works for the DOE, and he is currently the person who oversees the BEA Security investigation organization. When I discussed the use of the revised form with him, he indicated that he supports using the form as it currently exists, and he had previously indicated in writing to Security that he is supportive of the revisions to the form.

Question 4 – Why wasn't this discovered months ago when BEA supposedly did their own internal investigation?

Your fourth question implies "why didn't Internal Audit previously catch the change in the form?" When Internal Audit did its review, it was looking at the issues you raised in your 708 complaint, and the differences in the forms were not brought up by you until after its review was completed. The forms being used were determined by Internal Audit to be the standard form in use by the BEA security investigators, and they were consistent between each of the employees sampled. Even if someone had noted that there were a few minor changes between the official DOE form and the one being used by BEA Security, because the changes were positive and to the benefit of the employee being interviewed, as noted above, there is little likelihood that anyone would have called attention to it absent a law that prohibits modification of official government forms.

Question 5 – What purpose did it serve to use a modified DOE form and use procedures that forced personnel who were investigated for security incidents to sign it as "individual responsible for incident" before investigations were complete?

As discussed above under the answer to Question 1, why the official version of the form is not being used, the original form implies that the person being required to sign the form is admitting to responsibility for an *infraction*, which is much stronger language than being responsible for an *incident*. An incident merely reflects that something adverse has occurred while an infraction implies culpability and the need for disciplinary action. Also, as stated above, the instructions in the cover letter were meant to clarify that filling out the form is a fact-finding endeavor, and no infraction is implied until the inquiry is complete and a final determination has been made. In the case of your staff, an incident had occurred. As a result of the inquiry into the incident, it was determined that there had not been an infraction, and no disciplinary actions were taken.

However, we also understand your contention that the current format of both the official DOE form and the comparable version being used by BEA might be perceived by those filling out the forms as assigning blame and responsibility even though they are merely witnesses providing information. We are suggesting to Security that they further modify their instructions and Section II of the form, Blocks 2 and 5, to indicate that the person might be signing only as a witness and not someone necessarily responsible for causing the incident.

Question 6 – This issue was raised a year ago and to this date, nothing has been done except an apparent validation of the status quo. Who is the responsible BEA manager for this and what is their position?

Relative to taking corrective actions, there are several managers who share responsibility. Evaluation and implementation of recommendations generally belongs to the business unit management. We understand from Jan Ogilvie, DOE Employee Concerns Program Manager, that many of your security recommendations have now been implemented. As a result of your reporting the foreign travel incident, corrective actions in the foreign travel authorization process were identified and have been implemented. As discussed above, we are suggesting some changes in the security incident inquiry process that hopefully would further alleviate concerns about the fairness and objectivity of the process. Other corrective actions deemed appropriate are being taken by management.

Conclusion

We found no laws or regulations prohibiting revision of the form, which rules out any question of the changes to the form being illegal or a crime. Absent a law against an action, there can be no substantiation of illegality. To the contrary, the regulations allow for the contractor to use a form that deviates from the official DOE form. Based on this, we are unable to substantiate that using the modified form is an illegal act. Our review of the inquiry process, the forms, and the cover letter instructions supports management's assertion that the changes to the form improve the process, so we cannot substantiate that the use of the forms is an abuse of authority. However, as identified above, we have suggested some opportunities for Security to further improve the forms and its inquiry process.

Relative to your statement that you "still have no answer as to why [redacted] investigated me, but did not investigate the actual manager at the time [redacted]," I spoke with [redacted] who stated that you were informed that [redacted], Director of Security and Emergency Services, had been the one to initiate the investigation and that he had done so because he was concerned about the attitude towards security and the message to your staff portrayed by the management responses on the security incident reporting forms submitted by your staff. This, coupled with the high number of security incidents in National and Homeland Security, were his reasons for having you complete the form. I confirmed [redacted] assertion by reviewing the record of the discussion maintained in the files and also by speaking with [redacted] who was present at the debriefing that Internal Audit had with you at the end of its review. I found all three sources to be consistent.

Please feel free to contact me if you need further information.

[redacted]