

8 December 1997

Memorandum

To: File
I96060035

From: [REDACTED]
Investigative Attorney

Through: [REDACTED]
Special Agent-in-Charge

Subject: Closeout Memo

On 1 July 1996 the [REDACTED] forwarded to OIG an anonymous complaint containing allegations about Dr. [REDACTED] Executive Director of the [REDACTED] and former Director of NSF's [REDACTED] and Dr. [REDACTED] Deputy Assistant Director of the [REDACTED] and [REDACTED] successor as [REDACTED] Director. The complaint alleged that 1) [REDACTED] and [REDACTED] had manipulated the peer review process to unfairly favor or disfavor proposals, and pressured panelists (including the complainant) to cooperate; 2) [REDACTED] function was redundant in that its functions are already being performed by other NSF programs; and 3) [REDACTED] had embezzled funds from the [REDACTED] mortgage fund, and covered it up with [REDACTED] help.

The allegations were general in nature, and did not provide specific examples of the misconduct described above. As a result, we were unable to determine the validity of these complaints. We examined account records from the [REDACTED] three most recent awards: [REDACTED] [REDACTED] [REDACTED]. This review did not reveal any irregularities or suggest areas for further review.

During our review of [REDACTED] we identified a potential conflict of interests involving Dr. [REDACTED] who served in [REDACTED] from August [REDACTED] through August [REDACTED] under an intergovernmental Personnel Act (IPA) assignment from [REDACTED]. In addition to his NSF position, Dr. [REDACTED] served as [REDACTED] Secretary, and the [REDACTED] listed him and his NSF affiliation on its letterhead.

The [REDACTED] original proposal, which resulted in [REDACTED] was reviewed in November 1993 by a panel that included Dr. [REDACTED] (Dr. [REDACTED] was not affiliated with [REDACTED] at the time, so no COI issues exist there.) The award date was [REDACTED]. At that time, NSF indicated its intent to continue support in the amount of \$ [REDACTED] in FY 19 [REDACTED].

In August [redacted] Dr. [redacted] came to NSF under an IPA agreement with [redacted]. He served through August [redacted] as a program officer in NSF's [redacted] program. When he arrived at NSF, Dr. [redacted] was [redacted]. In a 16 August [redacted] e-mail to OGC, Dr. [redacted] indicated that the [redacted] Council [redacted].

In a 29 April 1996 letter to NSF, the PI requested a six month extension of the award, which had been scheduled to expire on [redacted] April [redacted]. Dr. [redacted] and his NSF title was listed on the [redacted] stationary, and Dr. [redacted] was copied on the letter. On the same day, the PI sent an e-mail to Dr. [redacted] and to Dr. [redacted] (NSF's other [redacted] program officer) stating that [redacted].

about how the matter should be processed administratively (i.e. Dr. [redacted] should 1) inquire about whether the [redacted] had been automatically issued; 2) if not, ask that it be issued; and 3) sign his approval on the PI's formal request for the [redacted] and time extension and forward the jacket to DGA). In the e-mail, Dr. [redacted] pointed out that [redacted]. The next day [redacted], Dr. [redacted] e-mailed the PI and Dr. [redacted] that "[redacted]."

Applicable Law

Under 18 U.S.C. § 208(a), a federal employee cannot participate "personally and substantially" in a matter in which an organization he serves as an officer has a financial interest. Although Dr. [redacted] participated personally, i.e. directly, and was an officer (Secretary) of the [redacted] at the time, his participation was not "substantial" under § 208. This interpretation is consistent with OGE's interpretation of § 208, which is set forth in 5 C.F.R. § 2640.103(a)(2). This regulation states that "[t]o participate 'substantially' means that the employee's involvement is of significance to the matter. . . . [I]t requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue."

In this case, NSF's original award letter of [redacted] included a statement of its intent to provide the [redacted] CGI in FY [redacted]. Dr. [redacted] recommendations pertained not to the substantive issue of whether to issue to the CGI, but rather the administrative procedure for carrying out NSF's original commitment.

However, federal ethics regulations required Dr. [redacted]. Another federal regulation states that "in all . . . cases where the employee's participation would violate 18 U.S.C. § 208(a), an employee shall disqualify himself from participation in the matter"²

¹ 5 C.F.R. § 2635.101(b)(14).

² 5 C.F.R. § 2635.402(a). See also 5 C.F.R. § 2640.103(c).

Under NSF's Conflict-of-Interests Rules and Standards of Conduct regulations,³ a federal employee is "automatically disqualified]" from handling proposals from an institution with which he holds an office.⁴ The regulations instruct that in such cases, "You must not participate in handling [the proposal] *under any circumstances*" (emphasis in original).⁵

We spoke to ██████████ NSF's Designated Agency Ethics Official, who said that Dr. ██████████ had often sought his counsel on conflict issues. Mr. ██████████ said that Dr. ██████████ should not have participated in this award in this manner, and provided OIG with copies of recusal memoranda from Dr. ██████████ identifying his conflict on ██████████ matters.

In a ██████████ memorandum, Mr. ██████████ advised Dr. ██████████ that he "must not participate in any NSF matters (including proposals and other award-related matters) involving" the ██████████. The memorandum also advised Dr. ██████████ that "you should not allow the ██████████ to list your NSF affiliation on letterhead or the like." Dr. ██████████ participation and the use of his NSF affiliation on the ██████████ letterhead violated the advice provided to him by Mr. ██████████.

On ██████████ December ██████████ I interviewed Dr. ██████████ by telephone. He said that when the CGI came to NSF in April ██████████, his only participation was to explain to Dr. ██████████ the process for the CGI. Dr. ██████████ said that he had never engaged in substantive discussions about whether to grant the CGI. He said that he did not think that anyone at NSF had had such discussions, because the CGI decision had already been made by the original review panel. He also said that he had not sought COI guidance from OGC or from ██████████ because he was not involved in substantive discussions. Regarding the use of his NSF affiliation on ██████████'s letterhead, he said that it had been listed that way because that was where he received his official mail while at NSF.

Conclusion

Because Dr. ██████████ participation created only the appearance of a conflict of interests rather than an actual conflict, and because his name and NSF affiliation were listed on the ██████████ letterhead, we would normally recommend corrective action to address these issues. However, Dr. ██████████ is no longer associated with NSF, and no longer appears on the ██████████'s letterhead, since he is no longer Secretary. For these reasons, corrective action is unnecessary.

In addition, the allegations regarding Drs. ██████████ and ██████████ are not specific enough to identify specific incidents of misconduct, and a review of the ██████████ grants' financial documents did not indicate any misconduct or areas for further review. For these reasons, this case is closed as to Drs. ██████████ and ██████████.

³ 45 C.F.R. §§ 680-684.

⁴ 45 C.F.R. § 681.21(b).

⁵ 45 C.F.R. § 681.22(a).