



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR THE SECRETARY

FROM: *Greg Friedman*
Gregory H. Friedman
Inspector General

SUBJECT: Special Review of Profiling Concerns at the Department of Energy (I01HQ003)

In November 2000, the former Secretary of Energy requested that the Office of Inspector General review the extent to which "profiling" of Federal and contractor employees has occurred in the Department of Energy (Department) security process. Specifically, we were asked to review whether, based on employees' national origin, the Department unfairly treated employees during the security clearance renewal process, and in actions taken as a result of security violations. In short, information reviewed by the Office of Inspector General did not support concerns regarding unfair treatment based on national origin in the security processes reviewed.

Scope and Methodology

Our review focused on Headquarters, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, and Sandia National Laboratories. We worked with representatives from a number of Department organizations to identify instances in which individuals alleged that unfair treatment occurred based on national origin in the security clearance renewal process and in actions taken as a result of security violations. These included: The Office of the National Ombudsman; Office of Economic Impact and Diversity; Office of Hearings and Appeals; Office of Security Affairs; and the Operations Offices in Albuquerque, Oakland, and Oak Ridge. We also worked with security personnel to review security-related data.

To put the scope of our review in context, at any given time, there are a number of Department personnel, both Federal and contractor, pursuing grievances and other concerns with respect to alleged discrimination, bias, or disparate treatment based on race, age, gender, religion, and other factors in the employment arena. An examination of these matters was not part of our review. Consequently, we are not in a position to comment on the general climate in the Department with respect to these concerns.

Concerns regarding "profiling" in the Department of Energy were heightened in the aftermath of the espionage investigation and arrest of a former nuclear weapons scientist at the Los Alamos National Laboratory. We did not address whether the former Los Alamos scientist was himself a victim of unfair treatment. This matter has been part of a review by the Department of Justice and, thus, it was not included in the scope of our review.



Findings

Our review identified four cases involving possible unfair treatment. None of the cases was the subject of a formal complaint of discrimination. Nevertheless, we examined the general circumstances of these cases, and found that they did not support concerns regarding unfair treatment based on national origin in the security processes reviewed.

Our review disclosed that the Department's security program does not systematically record, track or maintain information concerning individuals' national origin in a centralized database. The "Questionnaire for National Security Positions," which must be completed by each employee for a Department of Energy security clearance, does request information concerning an individual's country of birth and citizenship. Similar information is also requested for certain members of the individual's family. We were informed that the questions are included in order to determine whether the individual's or relatives' potential affiliations with other countries warrant further customary and appropriate review and analysis. Security officials asserted that to systematically record national origin and similar information, other than as described above, could be perceived as engaging in the very "profiling" sought to be avoided.

In January 2000, the Office of the National Ombudsman was established as a component of the Office of Economic Impact and Diversity to provide an opportunity for employees to confer with a neutral designee to discuss concerns, recommendations, and complaints they perceived were interfering with work, productivity, or morale. The National Ombudsman summarized for the Office of Inspector General the concerns expressed to him about the security process. He developed the information through one-on-one encounters, surveys, and "town hall meetings." These concerns included:

- Alleged insensitive remarks and offensive attitudes;
- The appearance of double standards;
- Questionable and ambiguous policies and rules;
- Possible abuse of authority; and,
- Potential disparate treatment.

The National Ombudsman stated his belief that there are "...strong and continuing allegations about bias and profiling..." However, the Ombudsman declined to identify the individuals who had expressed concerns, citing his commitment to maintaining the confidentiality of those with whom he spoke. Additionally, he indicated that he did not generally maintain records of his encounters, and could not provide statistical data, which may have identified improper patterns of unfair treatment. He stated that he recognizes the need for the Office of the National Ombudsman to have a system in place to capture important information brought to the office. He expects that such a system will be developed.

The National Ombudsman further advised that when themes or trends are identified by his office with respect to discrimination and disparate treatment, a memorandum may be sent to appropriate Department managers. The National Ombudsman advised that no such memoranda had been sent relative to the issues within the scope of the Office of Inspector General review.

Our review was one of a number of initiatives underway to address serious public and employee concerns about unfair treatment. The Department, for example, initiated several steps designed to combat and eliminate the possibility of discrimination of any kind. This included the formation of the Task Force Against Racial Profiling. The Task Force recommended, in part, that a team be established to promptly address security practices which may involve questions or issues of racial “profiling.” The Task Force’s Implementation Team Report of January 2001 states that a Security Issues Resolution Team has been established to address such safeguards and security matters. The Office of Economic Impact and Diversity has informed us that the Security Issues Resolution Team had not received or processed any allegations.

Additionally, we were informed that the Office of Economic Impact and Diversity and its subordinate offices will focus on and launch several initiatives during Fiscal Year 2001 and beyond relating to unfair treatment. According to the Office of Economic Impact and Diversity’s most recent annual report, the office plans, in part, to “conduct the year 2001 Department-wide electronic survey to measure the workplace climate;” “develop and implement action plans to address racial profiling in the workplace;” and “extend the review and reporting of employee concerns at DOE to include the activities of contractor employees.” Furthermore, the Office of the National Ombudsman has identified a goal to analyze “trends and patterns of employment, *security clearances*, and accountability actions [emphasis added]” and participate in the “review of Department-wide policies, processes, and procedures.”

General Accounting Office Reviews

The U.S. General Accounting Office (GAO) recently initiated a review of personnel actions at Department weapons labs over the past decade to determine if there has been differential treatment in the handling of cases involving minorities. The current review follows a December 1994 GAO report on suspensions of security clearances for minority contractor employees at the Department’s Albuquerque, Oak Ridge, and Savannah River Operations Offices.

GAO reported that the number of security clearances suspended for any particular group was relatively small. Nevertheless, GAO found that the clearances of certain racial or ethnic groups at the reviewed offices were suspended more often than would be statistically expected. GAO further reported that the Department did not monitor suspensions of security clearances for “minority groups” and was not aware of the statistical disparities. GAO noted that disparities in the number of clearances, in and of themselves, did not necessarily mean that the Department is or is not discriminating against racial or ethnic groups.

GAO recommended that the Department (1) investigate the reasons for the disparities identified by GAO in the number of security clearances suspended for contractor employees and take action to correct any problems the investigation identifies, and (2) require that data on the racial and ethnic background of contractor employees whose clearances are suspended at all locations be compiled, monitored, and reviewed to identify any statistical disparities, and investigate and take appropriate corrective action if such disparities occur.

We learned that the Department disputed the methodology used by GAO in its statistical analysis and took the position that regulations prohibit requiring employees to provide information on race, ethnicity, or gender for use in granting or suspending clearances. Nevertheless, in response to the GAO report, the Department indicated that the Office of Safeguards and Security would

provide listings of individuals whose clearances are revoked through Fiscal Year 1996 to the Office of Economic Impact and Diversity, which would attempt to collect information on employees' race and ethnicity on a voluntary basis. Documentation made available to the Office of Inspector General indicates that a list was generated by the Office of Safeguards and Security for Fiscal Year 1995. We could not confirm, however, that the Office of Economic Impact and Diversity took follow-up action on the Fiscal Year 1995 list or that a list was generated or analyzed for Fiscal Year 1996.

Conclusion

Information reviewed by the Office of Inspector General did not support concerns regarding unfair treatment based on national origin in the security processes examined. Despite our efforts to obtain all relevant information, there is no assurance that the four cases cited above were the only instances at the Department of Energy in which a Federal or contractor employee believes he or she has been the victim of "profiling." Indeed, the National Ombudsman observed, based on his own interviews, that allegations of "profiling" emerged frequently and among many groups. However, factors beyond our control, such as the Ombudsman's understandable commitment to affording confidentiality to those with whom he spoke, may have resulted in an underreporting to the Office of Inspector General of the total number of employees who believe they have been the victims of "profiling" in areas that were a part of our review.

Recommendations

Based on our assessment, we recommend that the Department, including the National Nuclear Security Administration:

- (i) Examine its actions in response to the 1994 GAO report to ensure that all appropriate steps have been taken to implement the recommendations;
- (ii) Determine if there are, in fact, statutory restrictions or other rules limiting the collection of data on national origin, race or ethnicity for Federal and contractor employees in relation to security processes;
- (iii) Determine whether to implement a process for identifying statistical disparities in security processes; and,
- (iv) Facilitate innovative initiatives by the Office of Economic Impact and Diversity, including the Office of the National Ombudsman and the Security Issues Resolution Team, to identify, address, and resolve cases or concerns about "profiling."

Over and above the fundamental question of fairness to all individuals, disparate treatment—both real and perceived—can have a detrimental effect on morale within the Department's workforce. Consequently, management at both the Federal and contractor levels must ensure that the Department's zero tolerance policy for such treatment is executed in a way that promotes confidence in the basic fairness of the security process.

cc: Administrator, National Nuclear Security Administration