

U.S. Department of Justice

Office of the Inspector General

July 21, 2016

Ms. Laura Gunderson
lgunderson@orgeonian.com

Subject: Freedom of Information/Privacy Act Request [16-OIG-212]

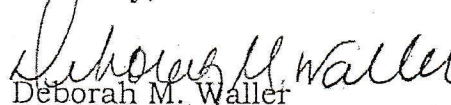
Dear Ms. Gunderson:

This responds to your Freedom of Information Act request to the Office of the Inspector General (OIG). Specifically, your request seeks "the full investigative report of the former U.S. Attorney that was the subject of the investigation by the Office of the Inspector General in this linked and attached June 7, 2016, release." The responsive report has been reviewed. It has been determined that certain portions of such report be excised pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(6) and (7)(C). Consequently, please find enclosed that information which can be released pursuant to your request.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 60 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,


Deborah M. Waller
Government Information Specialist
Office of the General Counsel

REPORT OF INVESTIGATION

SUBJECT Sally Amanda Marshall [REDACTED] United States Attorney District of Oregon Portland, Oregon		CASE NUMBER 2015-004872	
OFFICE CONDUCTING INVESTIGATION San Francisco Area Office		DOJ COMPONENT Executive Office for U.S. Attorneys	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office SFAO		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED	
<input checked="" type="checkbox"/> AIGINV		PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/> Component EOUSA		Date of Previous Report:	
<input type="checkbox"/> USA			
<input type="checkbox"/> Other			

SYNOPSIS

The Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for U.S. Attorneys (EOUSA) alleging that District of Oregon U.S. Attorney Sally Amanda Marshall had an unspecified romantic relationship with her subordinate, Assistant U.S. Attorney [REDACTED]. Marshall was also alleged to have sent [REDACTED] inappropriate and harassing text and e-mail communications in February and March 2015. Moreover, upon being informed by the EOUSA Director and Associate Deputy Attorney General David Margolis, Office of the Deputy Attorney General (ODAG), of the referral of these allegations to the OIG, Marshall responded [REDACTED].

[REDACTED]

Evidence gathered by the OIG during its investigation showed that Marshall had been engaged in an intimate personal relationship with [REDACTED] a subordinate, for more than one year. In view of all the circumstances described in this report, such conduct, and the multiple harassing communications Marshall sent to [REDACTED] after

DATE May 26, 2016	SIGNATURE [REDACTED]
PREPARED BY SPECIAL AGENT [REDACTED]	
DATE May 26, 2016	SIGNATURE <i>Mike Burt</i>
APPROVED BY SPECIAL AGENT IN CHARGE ANGEL D. GUNN	

their intimate relationship ended, violated laws and regulations against sexual harassment. E.g., 29 C.F.R. §1604.11, §703 of Title VII of the Civil Rights Act of 1964, U.S. Attorney's Manual 3-5.103, Policy Statement on Sexual Harassment, and the *Standards of Ethical Conduct for Employees of the Executive Branch*. In addition, the OIG concluded that:

- On March 4, 2015, Marshall lied to Margolis when she denied having had a sexual relationship with [REDACTED]
- On March 4, 2015, Marshall lacked candor [REDACTED]
- On March 4, 2015, Marshall contacted [REDACTED] after Margolis instructed her not to do so;
- On March 5, 2015, Marshall attempted to influence or impede the OIG investigation by sending a Facebook message to [REDACTED] stating the OIG was investigating him and advising him to get an attorney and not speak with the OIG.

The U.S. Attorney's Offices were recused from considering the prosecutive merit of the case, as was the Department of Justice, Criminal Division, Public Integrity Section. Consequently, the Department of Justice Criminal Division, Organized Crime and Gang Section (OCGS) reviewed the matter and declined any prosecution.

Marshall resigned as the U.S. Attorney on May 15, 2015.

All criminal and administrative actions within the OIG's jurisdiction are complete. We are providing this report to EOUSA for its information and to the Department of Justice Office of Professional Responsibility for determination of whether Marshall's conduct warrants referral to the Oregon State Bar.

DETAILS OF INVESTIGATION

Predication

The Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for U.S. Attorneys (EOUSA) alleging that District of Oregon U.S. Attorney Sally Amanda Marshall had an unspecified romantic relationship with her subordinate, Assistant U.S. Attorney [REDACTED]. Marshall was also alleged to have sent [REDACTED] inappropriate and harassing text and e-mail communications in February and March 2015. Moreover, upon being informed by the EOUSA Director and Associate Deputy Attorney General David Margolis, Office of the Deputy Attorney General (ODAG), of the referral of these allegations to the OIG, Marshall responded [REDACTED].

Investigative Process

The OIG's investigative efforts consisted of interviewing [REDACTED], Marshall, [REDACTED] Margolis, Executive Office for U.S. Attorneys (EOUSA) Director Monty Wilkinson, EOUSA Deputy Director for Legal Management Suzanne L. Bell, and [REDACTED], and [REDACTED]. The OIG also completed forensic examination and analysis of [REDACTED] government laptop computer, BlackBerry smartphone, and network e-mail files, and with his consent, reviewed information from [REDACTED] Facebook account. Further, the OIG reviewed policies and standards governing USAO employee conduct.

In addition, during this investigation, a designated OIG filter agent was assigned to review Marshall's USAO e-mails and other communication records, provided by EOUSA, to remove any potentially privileged information. The OIG case agent then reviewed Marshall's non-privileged records. These latter records, combined with the forensic examination results of [REDACTED] USAO devices, provided pertinent evidence detailed in this report. Because of the potential for encountering additional privileged information issues and the likelihood that any non-privileged records would be duplicative of materials obtained from other sources, in consultation with the OCGS prosecution team the OIG decided not to conduct forensic examinations of Marshall's USAO devices. The OIG is satisfied that all pertinent evidence has been collected and examined.

Relevant Laws, Regulations, and Policies

- Harassment on the basis of sex is a violation of §703 of Title VII of the Civil Rights Act, 29 C.F.R. §1604.11, and unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- It is the policy of the USAO and EOUSA to prohibit sexual harassment in their offices, U.S. Attorney's Manual 3-5.103, Policy Statement on Sexual Harassment.

- The *Standards of Ethical Conduct for Employees of the Executive Branch* states that public service is a public trust and each employee is to place laws and ethical standards above private gain, see 5 CFR § 2635.101(b)(1). The Standards also requires employees to take appropriate steps to avoid an appearance of loss of impartiality in the performance of their duties, see 5 CFR § 2635.101(b)(8).
- Under Rule 8.4 of the Oregon Rules of Professional Conduct for lawyers, it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law.
- Engaging in conduct that is prejudicial to the administration of justice also is professional misconduct in Oregon.

Marshall's Intimate Personal Relationship with a Subordinate

As reported to the OIG by EOUSA, Marshall and [REDACTED] had an intimate personal relationship. As the U.S. Attorney, Marshall was [REDACTED] supervisor. Because of Marshall's position as the head of the office, it is difficult to characterize any unacknowledged personal relationship with a subordinate as entirely consensual, and any such relationship potentially violates the public trust principles outlined in the *Standards of Ethical Conduct* that requires supervisors to maintain impartiality in personnel matters involving their subordinates and to take appropriate steps, such as recusal from all matters involving the subordinates, to avoid an appearance of loss of impartiality in the performance of their duties. Indeed, during his OIG interview, Associate Deputy Attorney General David Margolis, who has responsibility in the Office of the Deputy Attorney General for handling allegations of misconduct by U.S. Attorneys, stated that during orientation for new U.S. Attorneys, which Marshall completed, U.S. Attorney romances and affairs with subordinates are thoroughly discussed and Margolis said he emphasizes during the orientation that "a romantic relationship is a capital offense."

On March 4, 2015, EOUSA Director Monty Wilkinson informed Margolis that [REDACTED] had reported the apparent existence of an intimate personal relationship between Marshall and [REDACTED] as evidenced by a series of text messages and e-mails between Marshall and [REDACTED]

During OIG interviews, Marshall and [REDACTED] each acknowledged that they had been engaged in a sexual relationship. According to Marshall, the intimate personal relationship began in approximately July 2013. [REDACTED] described their relationship as professional until August 6, 2013, when they attended an event both described as a celebration of media coverage of a U.S. Attorney's Office matter. [REDACTED] and Marshall stated that after having drinks at the event, they went to a Portland nightclub, which led to the beginning of an intimate physical relationship. Marshall said that during the ensuing weeks, the relationship became more intense and sexual, continuing until September 2014.

[REDACTED] described his affair with Marshall as difficult and awkward since [REDACTED] said he believed Marshall thought they would become a couple and would eventually marry. He stated to the OIG that when he told Marshall that was not his intention, she became angry. Marshall acknowledged to the OIG her misplaced belief that she and [REDACTED] had a future together [REDACTED]

Marshall told the OIG that during the affair, [REDACTED] sought a promotion, but she said he told her she should promote another attorney if there were one who was better qualified. Marshall said she felt her relationship with [REDACTED] put her in a difficult position because [REDACTED] would sue her if she did not promote him and other applicants might sue her if she did promote him. Marshall stated she participated in [REDACTED] interview for the promotion, but abstained from the selection, instead deferring to the [REDACTED], who ultimately selected [REDACTED]

OIG's Conclusion

The OIG concluded that former U.S. Attorney Marshall engaged in misconduct in violation of the *Standards of Ethical Conduct* by having an unacknowledged intimate personal relationship with [REDACTED] that impacted her ability to be impartial in matters involving [REDACTED] who was a subordinate and was promoted during the course of the affair. Although Marshall recused herself from the selection decision after participating in the interview process, Marshall's testimony to the OIG, as described above, in connection with the conflict in her decision making and her concerns about being sued after [REDACTED] applied for a promotion within the office demonstrated precisely the issues raised when a supervisor engages in an unacknowledged relationship with a subordinate and the manner in which it can expose the Department to sexual harassment allegations.

Marshall's Sexual Harassment of [REDACTED] in the Workplace

The *Standards of Ethical Conduct for Employees of the Executive Branch* requires employees to avoid actions creating the appearance they are violating the law or ethical standards applicable to them. As described in 29 C.F.R. §1604.11, sexual harassment violates §703 of Title VII of the Civil Rights Act of 1964. Further, the U.S. Attorney's Manual 3-5.103, Policy Statement on Sexual Harassment, prohibits sexual harassment in USAO offices. This policy prohibits sexual conduct that "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

[REDACTED] told the OIG that, as a result of his relationship with Marshall, multiple instances of sexual harassment occurred, each of which had a negative impact on his work. [REDACTED] cited several incidents in the office to support his maintaining Marshall harassed him. For example, [REDACTED] reported that Marshall made inappropriate comments to him during management meetings, threatened to disclose their affair to [REDACTED], and sent hateful and harassing e-mails and text messages to his work e-mail and phone and to his private Facebook account. The OIG's review of [REDACTED] text messages and work e-mail account corroborated that Marshall sent numerous inappropriate and harassing e-mails and texts to [REDACTED]. [REDACTED] also reported that sometime after November 2014, Marshall came to his home late at night [REDACTED]. [REDACTED] stated that Marshall's presence was very unsettling [REDACTED]. Additionally, [REDACTED] observed Marshall drive by his home multiple times. [REDACTED] and [REDACTED] informed the OIG that they observed Marshall driving past [REDACTED] residence at night [REDACTED] and [REDACTED] also witnessed Marshall stopping at the [REDACTED] home one night with wine and they observed

that [REDACTED] was agitated by Marshall's presence. [REDACTED] also recalled an incident at a concert in August 2014 concert in Portland, Oregon, where Marshall verbally berated him and his date, then sent several harassing text messages to [REDACTED]

[REDACTED] informed the OIG that in January or February 2015, he reported Marshall's harassment of him resulting from his terminating their affair to [REDACTED] because he wanted Marshall's inappropriate verbal communications and text and e-mail messages to stop. According to [REDACTED] Marshall's communications were interfering with his ability to function at work. [REDACTED] stated that [REDACTED] response was to attempt to mediate their conflict, but Marshall continued to send the harassing messages. [REDACTED] told the OIG that he eventually informed [REDACTED] that he had been involved in an intimate relationship with Marshall, and that since he ended it, Marshall had been harassing him. He said he reported this information to [REDACTED] because he was concerned that [REDACTED] had been unable to stop Marshall's harassment of him.

Marshall's Communications During the 2014 OCDETF Conference

[REDACTED] told the OIG that he and Marshall attended the Organized Crime Drug Enforcement Task Forces (OCDETF) conference in San Francisco in September 2014. He said they had drinks together and some limited physical intimacy. (Marshall told the OIG that she and [REDACTED] had sexual relations while at the conference.) [REDACTED] stated that when he later ignored Marshall during the conference, she sent him several inappropriate text messages, [REDACTED]

Marshall said that [REDACTED] ignoring her was [REDACTED]. She said she drank heavily and having misplaced her room key, remained out all night. She said she did not remember having sent messages to [REDACTED] that night, but discovered the next day that she had texted and e-mailed [REDACTED] several times. [REDACTED]

The OIG's review of e-mails Marshall sent [REDACTED] on September 24, 2014 corroborated [REDACTED] account, [REDACTED]. In an e-mail [REDACTED] sent to Marshall, [REDACTED] stated that "I can't deal with this anymore." And he asked Marshall to "Please stop."

Marshall's Harassing Text Messages

Forensic examination of [REDACTED] USAO Blackberry revealed 251 text messages communications and emails between [REDACTED] and Marshall from December 10, 2013 through March 4, 2015. Examination of the communications between November 2014 and March 2015 provide numerous incidents of Marshall sending inappropriate messages to [REDACTED] that could reasonably be construed as harassing.

In addition, the messages show that on three separate occasions [REDACTED] asked Marshall to stop sending inappropriate non-work messages to him. When interviewed by the OIG, without the benefit of having reviewed the messages the OIG had gathered, Marshall insisted that [REDACTED] "never once told me, go away. Leave me alone. Don't ever contact me again. Never, never, never."

The Effect of Marshall's Actions on [REDACTED]

[REDACTED] told the OIG that, as a result of Marshall's actions, he had difficulty sleeping and eating, was distracted and unfocused at work, and was concerned about losing his job. [REDACTED] stated [REDACTED], but that Marshall had told him he would be fired due to their affair. [REDACTED] said that he feared about his job security because the U.S. Attorney was upset with him on a personal level.

Sexual Harassment Training

[REDACTED] told the OIG that USAO employees participate annually in training on sexual harassment and the importance of not creating a hostile work environment. The OIG confirmed that Marshall certified that she had completed the training for each of the years she served as U.S. Attorney, 2012 through 2014 (Marshall became U.S. Attorney in late 2011 and resigned in early 2015). [REDACTED] said that he believed Marshall's behavior created a hostile work environment.

OIG's Conclusion

The OIG concluded that Marshall sexually harassed [REDACTED] and created a hostile work environment in violation of 29 C.F.R. §1604.11, §703 of Title VII of the Civil Rights Act of 1964, and the U.S. Attorney's Manual 3-5.103, Policy Statement on Sexual Harassment. Further, the OIG concluded that Marshall violated the *Standards of Ethical Conduct for Employees of the Executive Branch*.

[REDACTED]

[REDACTED]

[REDACTED]



Marshall's False Statements to EOUSA and ODAG

Title 18, U.S.C. §1001, prohibits false statements concerning any matter within the jurisdiction of the executive branch of the Government. The *Standards of Ethical Conduct for Employees of the Executive Branch* require employees to avoid actions creating the appearance they are violating the law or ethical standard.

Evidence gathered during this investigation showed that Marshall made false statements to Margolis and Wilkinson when she was questioned by them about her relationship with [REDACTED]. Margolis told the OIG that he called Marshall on March 4, 2015 in response to receiving the allegation that Marshall was involved in an intimate personal relationship with a subordinate. He said that this call was witnessed by Wilkinson and EOUSA Deputy Director Suzanne Bell. In interviews with the OIG, Margolis, Wilkinson, and Bell remembered that, during the March 4, 2015 call, Marshall admitted to having had a romantic relationship with [REDACTED] but denied that the relationship involved sexual intercourse. Further, Margolis and Wilkinson recalled Marshall reported the romantic relationship ended around the time [REDACTED] was being considered for a promotion.

Evidence gathered during the OIG investigation contradicted statements by Marshall during the March 4 telephone call with Margolis. Specifically, Marshall and [REDACTED] both admitted to the OIG that their relationship included sexual intercourse on multiple occasions prior to her conversation with Margolis, and as described above, other evidence gathered during the investigation corroborated their intimate relationship. In addition, as previously described in this report, the evidence gathered showed that Marshall was actively engaged in the affair with [REDACTED] when [REDACTED] was promoted in October 2013 and that it continued for almost another year following [REDACTED] promotion.

OIG's Conclusion

The OIG concluded that Marshall made false statements to Margolis, Wilkinson, and Bell, which is a violation of 18 U.S.C §1001 and the *Standards of Ethical Conduct for Employees of the Executive Branch*.

Marshall Violated Margolis's Instruction to Have No Further Contact with [REDACTED]

Margolis told the OIG that during his March 4, 2015 call to Marshall, he directed her to not communicate in any way with [REDACTED] and not to do, "anything in terms of running the office." Margolis said he likely informed Marshall that the OIG would investigate her relationship with [REDACTED]. Wilkinson and Bell, who witnessed Margolis's call to Marshall, stated that Margolis told Marshall about the OIG investigation and that she should cease contact with [REDACTED]. Marshall confirmed to the OIG that Margolis instructed her to have no contact with [REDACTED]. However, the OIG determined that Marshall contacted [REDACTED] shortly after receiving Margolis's instruction.

The OIG learned from [REDACTED] that within a day or two after Margolis's instruction to Marshall, Marshall telephoned him, reporting that Main Justice officials told her to resign or face termination. Further, an OIG review of information provided by [REDACTED] from his Facebook account showed that on March 4, 2015, later on the same day as the call with Margolis, Marshall sent a message to [REDACTED] at 8:30 p.m., acknowledging she was violating the direction she received not to contact him, but stating she was doing so because they were "at risk" and she wanted to meet and work with him "to minimize the damage to both of us." Marshall further violated Margolis's instruction the next day, March 5, when she sent [REDACTED] a message that represented an attempt to obstruct the OIG investigation, as we describe below.

OIG's Conclusion

The OIG concluded that there was clear evidence that Marshall violated Margolis's instruction that she have no further contact with [REDACTED]

Marshall Attempted to Influence and Obstruct OIG Investigation

During a follow-up OIG call with Marshall at approximately 7:00 p.m. on March 5, 2015, Marshall asked the OIG if [REDACTED]

During the investigation, the OIG determined from the evidence that, following the OIG's second telephone contact with Marshall on March 5, 2015, [REDACTED] Marshall sent a Facebook message to [REDACTED] stating that the OIG was more interested in investigating him than her, advised him not to speak with the OIG, and told him to get a lawyer.

Specifically, information from [REDACTED] Facebook account (he provided account access to the OIG) showed the following message from Marshall on March 5, 2015 at 7:18 p.m.:

Talked to the guy from OIG/ [sic] seems far more interested in investigating you than me. Don't talk to him. Get a lawyer. I denied everything. Said I was angry, sick, scared, had a neurologist [sic] and psychological disorder, etc... I don't want this. I wish you wouldn't have told [REDACTED] [sic]. I knew this would would [sic]. You must have known it too. If you want to talk, call me tomorrow. I will do anything you want to help you. And I hope you will do the same for me. I am so sorry.

During her OIG interview months later in August 2015, Marshall said that the prospect of the OIG interviewing [REDACTED]

[REDACTED] She further stated that when the OIG made no assurances to her that [REDACTED], Marshall said she impulsively sent [REDACTED] the Facebook message hoping to prevent [REDACTED] from blaming her or concluding that she had encouraged the OIG to conduct an investigation. Marshall asserted to the OIG that she wanted [REDACTED] to believe she was protecting and

[REDACTED]

[REDACTED] informed the OIG that during a call with Marshall on March 5, 2015, Marshall stated that her messages to [REDACTED] were intended to reassure him that she had not mentioned [REDACTED] to the OIG and that she was not telling him to lie.

[REDACTED] told the OIG that it was stressful that his boss, the U.S. Attorney who was the subject of his complaint, instructed him not to speak with the OIG about a matter he reported. According to [REDACTED] Marshall's instruction made him concerned that he was in trouble. [REDACTED] stated that he interpreted Marshall's message as urging him to not cooperate.

OIG's Conclusion

The OIG concluded that Marshall attempted to obstruct, influence, or impede the OIG investigation of her when she sent him the Facebook message on March 5, 2015, in violation of 18 U.S.C. §1512(c)(2). That provision prohibits the obstruction, influencing, or impeding of any official proceeding, or any attempt to do so. Marshall knew from her March 4 telephone communication with Margolis that she was the subject of an OIG investigation. [REDACTED]

[REDACTED] However, in her message to [REDACTED] she attempted to characterize [REDACTED] as the OIG's primary investigative subject, advised him not to talk to the OIG, and told him to obtain an attorney. [REDACTED]

[REDACTED] The self-evident purpose of Marshall's message was to prevent [REDACTED] from pursuing his complaint against her by declining to cooperate with the OIG's investigation, presumably with the hope of saving her job.

While the OIG viewed Marshall's [REDACTED] and her attempt to obstruct the OIG investigation as being motivated to protect herself and her position, the OIG also concluded that such actions could reasonably be construed as retaliatory actions by Marshall against [REDACTED] for reporting her misconduct.

The U.S. Attorney's Offices were recused from considering the prosecutive merit of the case, as was the Department of Justice, Criminal Division, Public Integrity Section. Consequently, the Criminal Division's Organized Crime and Gang Section reviewed the OIG findings and declined prosecution.