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**NATIONAL SECURITY AGENCY/CENTRAL SECURITY
SERVICE**



INSPECTOR GENERAL

REPORT OF INVESTIGATION

24 January 2014

IV-13-0067

Misuse of Government Resources

**WARNING: THIS REPORT MAY CONTAIN GRAPHIC IMAGES
AND/OR LANGUAGE**

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Approved for Release by NSA on 09-28-2018, FOIA Case # 79204 (litigation)

Release: 2018-10

NSA: 05013

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(U) OFFICE OF THE INSPECTOR GENERAL

(U) Chartered by the NSA Director and by statute, the Office of the Inspector General conducts audits, investigations, inspections, and special studies. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA operations, provide intelligence oversight, protect against fraud, waste, and mismanagement of resources by the Agency and its affiliates, and ensure that NSA activities comply with the law. The OIG also serves as an ombudsman, assisting NSA/CSS employees, civilian and military.

(U) AUDITS

(U) The audit function provides independent assessments of programs and organizations. Performance audits evaluate the effectiveness and efficiency of entities and programs and their internal controls. Financial audits determine the accuracy of the Agency's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

(U) INVESTIGATIONS

(U) The OIG administers a system for receiving complaints (including anonymous tips) about fraud, waste, and mismanagement. Investigations may be undertaken in response to those complaints, at the request of management, as the result of irregularities that surface during inspections and audits, or at the initiative of the Inspector General.

(U) INTELLIGENCE OVERSIGHT

(U) Intelligence oversight is designed to insure that Agency intelligence functions comply with federal law, executive orders, and DoD and NSA policies. The IO mission is grounded in Executive Order 12333, which establishes broad principles under which IC components must accomplish their missions.

(U) FIELD INSPECTIONS

(U) Inspections are organizational reviews that assess the effectiveness and efficiency of Agency components. The Field Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

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I. (U) SUMMARY

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(U//~~FOUO~~) On 17 February 2013 the Inspector General (IG) received a referral from the NSA/CSS Information Systems Incident Response Team (NISIRT) identifying potential computer misuse by a NSA/CSS contractor, [redacted]. On 22 May 2013 the IG initiated an investigation of [redacted] use of NSA/CSS Information System (IS).

(U//~~FOUO~~) The preponderance of the evidence collected during the investigation substantiates that [redacted] misused his unclassified NSA/CSS IS. [redacted] used Government resources to conduct non-contract related activity and create adult oriented emails, in violation of NSA/CSS Policies 6-4 and 6-6.

(U//~~FOUO~~) [redacted] was working for [redacted] at the time of detected misuse. He worked for [redacted] and left [redacted] in the Spring of 2013.

(U//~~FOUO~~) A summary memorandum will be provided to the Maryland Procurement Office (BA3) and the Office of the General Counsel (D25) for review and any action deemed appropriate. Information copies of the summary memorandum will be sent to NSA/CSS Senior Acquisition Executive; Contractor Clearances, ADS&CI; and Special Actions, ADS&CI.

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II. (U) BACKGROUND

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(U) Introduction

(U//~~FOUO~~) [redacted] was a contractor affiliate with [redacted] assigned to [redacted] working under the [redacted] contract number [redacted] at the time of detected misuse.

(U//~~FOUO~~) [redacted] subsequently worked for [redacted] from [redacted] until [redacted] assigned to [redacted] under the [redacted] contract number [redacted]. He left [redacted] in the Spring of 2013.

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(U//~~FOUO~~) The NISIRT reviewed [redacted] unclassified U.S. Government account from 25 January to 11 February 2013. The NISIRT detected possible misuse on the unclassified account on 28, 29, 30, 31 January 2013 and 5, 7, 8, 11 February 2013. The NISIRT provided their activity report to the Office of the Inspector General on 17 February 2013.

(U) Applicable Authorities

(U//~~FOUO~~) NSA/CSS Policy 6-4, "CONTRACTOR USE OF NSA/CSS INFORMATION SYSTEMS," revised 7 June 2007.

(U//~~FOUO~~) NSA/CSS Policy 6-6, "USE OF UNCLASSIFIED INFORMATION SYSTEMS SUCH AS THE INTERNET," revised 20 June 2012.

(U) See Appendix A for the full text of the applicable authorities.

III. (U) FINDINGS

(U//~~FOUO~~) Did [redacted] a former contract employee, misuse his NSA/CSS IS in violation of NSA/CSS Policies 6-4 and 6-6?

(U//~~FOUO~~) **CONCLUSION: Substantiated.** The preponderance of the evidence supports the conclusion that [redacted] misused his unclassified NSA/CSS IS. [redacted] used Government resources to conduct non-contract related activity and create adult oriented emails, in violation of NSA/CSS Policies 6-4 and 6-6.

(U) Documentary Evidence

(U) NISIRT Report

[redacted] (b) (6)

(U//~~FOUO~~) The NISIRT provided the OIG with an analysis of [redacted] activities on the unclassified NSA/CSS IS. [redacted] was observed [redacted] [redacted] Other activity observed included [redacted] typing emails about furlough concerns; looking up his friends in the court systems of [redacted] and documenting his findings; conducting personal financial business and talking about computer problems. The full NISIRT report can be found at Appendix B.

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(U) Testimonial Evidence

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(U) [redacted] former [redacted] contract employee

(U//~~FOUO~~) On 13 September 2013, [redacted] was interviewed by telephone and provided the following sworn testimony:

(U//~~FOUO~~) [redacted] stated that he understood NSA/CSS Policy 6-4 and had asked for and received verbal permission to access the unclassified IS for personal use from [redacted] Chief of the [redacted] office and [redacted] in April 2007. In Fall 2007, he asked for and received approval again by the new COR, [redacted] (witnessed by [redacted]) In all cases the permission was granted as long as the personal use did not interfere with his contract work. His activities did not interfere with his work as evidenced by the fact he received glowing reviews from his supervisors.

(U//~~FOUO~~) [redacted] denied violating NSA/CSS policies 6-4 or 6-6 "as he understood them." He admitted using his unclassified access for communications of a "personal nature" in his own (not Agency) personal email account. He thought his email were private and allowed based on

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his COR's approval. He could not recall how much time he spent on personal use. He claimed his use did not interfere with his duties. (b) (6)

(U//FOUO) Although [redacted] admitted to [redacted] he repeatedly claimed that "he did not think he had used poor judgment" and that "it is difficult to determine where the line is drawn." He thought it was OK to use his personal email account for this purpose, as long as he didn't use his agency email account. [redacted] were not affiliated with the Agency and he claimed he never involved coworkers in the conversations. Confronted with the evidence in the transcripts, [redacted] finally admitted his conduct was inappropriate and stated "it would not happen again." He admitted the communication [redacted] indicated a "lapse of good judgment." Despite this, he believed he otherwise exhibited good judgment in his use of the unclassified IS.

(U//FOUO) [redacted] identified [redacted] and [redacted] as friends and all but [redacted] as former NSA interns. He admitted entering their names into internet court record/legal databases to "see what they were up to" and "see if they were in the local area." When asked if this seemed inappropriate as it could be seen as using an NSA IS to "spy" on his "friends, he claimed his intention was not "to snoop or spy on them." He did not have their phone numbers and was attempting to contact them. He claimed he did not use the "high side" to find them (in Searchlight, Contacts etc) as that would be inappropriate.

(U//FOUO) When asked if [redacted] used the IS for other non-contract related activity, he said he could not recall any. When asked about using the computer to conduct personal financial activities, he admitted to conducting the personal business but again claimed his personal activities did not interfere with his official duties as "work was always done properly and correctly." When asked what he thought the CORs would think of his personal use of the IS, he claimed "he had no idea whether they would consider it to be inappropriate." He finally admitted that the email conversations "were a lapse of judgment" and "would not happen again" but thought "no one would have a problem" with the internet searches but if it "crossed the line, it would not happen again.

(U//FOUO) [redacted] Chief [redacted] (b) (3) - P.L. 86-36

(U//FOUO) On 22 October 2013, [redacted] was contacted via email and asked if he provided [redacted] an approval to conduct personal activities on the unclassified IS. He responded stating:

I do not recall any conversations with [redacted] on this subject with me. This seems like it would be a conversation that he might have with the COR or Program Manager. I would think it would depend on what "personal" use meant. Viewing a home page, checking the weather, entering his time sheet, etc. is something most people do. Doing things beyond that type of "personal" use, I can't see a government person approving.

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(U//~~FOUO~~) [redacted] Contracting Officer Representative (COR)

(U//~~FOUO~~) On 22 October 2013, [redacted] was contacted via email and asked if she provided [redacted] an approval to conduct personal activities on the unclassified IS. She responded stating:

As COR on the [redacted] contract, I do not recall any such conversation with [redacted]. [redacted] was the primary COR overseeing the work for the programs [redacted] supported and as stated, she is retired.

(U//~~FOUO~~) [redacted] Program Manager (PM)

(U//~~FOUO~~) On 22 October 2013, [redacted] was contacted via email and asked if she provided [redacted] an approval to conduct personal activities on the unclassified IS. She responded stating:

I don't recall approval nor do I recall denial of such a request.

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(U//~~FOUO~~) [redacted] Program Manager (PM)

(U//~~FOUO~~) On 22 October 2013, [redacted] was contacted via email and asked if she provided [redacted] an approval to conduct personal activities on the unclassified IS. On 23 October 2013, she responded stating:

[redacted] (b) (6)

I was the program manager for the [redacted] efforts that [redacted] supported from [redacted]. [redacted] I was never the COR for his contract and was not assigned to the office at the time in question. However, during the time period when [redacted] supported my program, I was aware that he occasionally used the unclassified system for personal use, and can verify that this use was not excessive and did not interfere with the performance of his duties.

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(U) Analysis and Conclusions

(U//~~FOUO~~) Contractor's use of Agency IS for personal use is extremely limited. [redacted] personal use of the IS was not authorized by contract, nor was it approved by the Chief of the organization, the COR or the PMs, and it clearly exceeded the brief, infrequent communications permitted by NSA/CSS Policy 6-4. We were able to identify one former PM that stated she knew [redacted] occasionally used the unclassified system for personal use. She did not say she approved that use; just that the activity was not excessive. The adult-oriented nature of [redacted] communications in his personal email account using his NSA/CSS IS reflects poorly on the Agency and constitutes an additional violation of NSA/CSS Policy 6-4.

(U//~~FOUO~~) In addition, [redacted] activities lacked good judgment and common sense when he typed inappropriate emails on unclassified ISs as required by the NSA/CSS Policy 6-6.

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(U) Forensic evidence and [redacted] own admission during the interview supports the conclusion that he misused his unclassified NSA/CSS IS.

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IV. (U) RESPONSE TO TENTATIVE CONCLUSION

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(U//~~FOUO~~) On 18 July 2013 the OIG attempted to set up an interview with [redacted] so that he could respond to the misuse of Government resources allegations. [redacted] left the Agency [redacted] therefore, he was not in NSA spaces for the OIG to conduct the interview. On 5 August 2013, the OIG requested [redacted] contact information from the [redacted] Contractor Security Lead. On 6 August 2013, the OIG received [redacted] contact information. [redacted] was provided the tentative conclusions via an unclassified email on 30 August 2013. [redacted] responded to the tentative conclusion stating that he did not believe that he violated NSA/CSS policies and agreed to be interviewed by telephone. The details of that interview can be found in the testimonial evidence portion of this report.

(U//~~FOUO~~) [redacted] was provided the tentative conclusions again on 23 October 2013. [redacted] response may be found in Appendix C.

(U//~~FOUO~~) Based on [redacted] response to the tentative conclusions, the IG reviewed 3 claims made in his response:

1. "Personal use was approved by my COR" – NSA/CSS Policy 6-4 allows a CO to approve computer use for tasks outside the contract. Despite [redacted] claim that his CORs authorized his personal use, based on the testimony, the IG determined that he did not have permission from the CO or COR. We concluded that [redacted] activity was in violation of NSA/CSS Policy 6-4.
2. "I exercised good judgment & common sense" – an ordinary, reasonable, prudent person would disagree. The examples listed in the NISIRT report of the nature of his communications shows that [redacted] using the NSA IS cannot be considered to be "using good judgment and common sense."
3. "Misconduct mitigated by the fact the individual no longer works at the Agency" – During his period of employment, [redacted] is held to the applicable rules and regulations, the fact he no longer works here does not relieve him of his responsibilities during his employment.

(U//~~FOUO~~) As a result of the additional work completed, the IG determined the conclusion of this investigation remain unchanged.

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V. (U) CONCLUSION

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted] misused his unclassified NSA/CSS IS [redacted] used the Government resources to conduct non-contract related activity and create adult oriented emails, in violation of NSA/CSS Policies 6-4 and 6-6.

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VI. (U) DISTRIBUTION OF RESULTS

(U//~~FOUO~~) A summary memorandum will be provided to the Maryland Procurement Office (BA3) and the Office of the General Counsel (D25) for review and any action deemed appropriate. Information copies of the summary memorandum will be sent to NSA/CSS Senior Acquisition Executive; Contractor Clearances, ADS&CI; and Special Actions, ADS&CI.

[Redacted Signature]

Senior Investigator

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Concurred by:

[Redacted Signature]

Deputy Assistant Inspector General
For Investigations

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Appendix A

(U) Applicable Authorities

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(U//~~FOUO~~) NSA/CSS Policy 6-4, "CONTRACTOR USE OF NSA/CSS INFORMATION SYSTEMS," revised 7 June 2007:

1. (U) Contractors shall use NSA/CSS ISs only to perform tasks that are authorized by contract, approved by the Contracting Officer, or permitted by this policy.

4. (U) Contractors shall not make personal use of NSA/CSS ISs except for brief, infrequent communications to take care of unavoidable personal matters (e.g., contacting a spouse, dependent, or individual responsible for a dependent's care; scheduling a physician's appointment or car maintenance; etc.). This limited exception to the personal use prohibition applies only when:
 - a. (U) The communication could not have reasonably been made at another time (e.g., the physician is only available during working hours);
 - b. (U) The communication does not adversely affect the Agency mission or reflect poorly on the Agency;
 - c. (U) The communication does not result in other than minimal expense to the Government (e.g., the call is local, toll-free, or charged to a personal telephone calling card);
 - d. (U) Time spent using the NSA/CSS IS for personal use is not billed to the contract; and
 - e. (U) The personal communication is of a non-commercial nature. This exception does not permit the use of NSA/CSS ISs in conjunction with a contractor employee's personal business activity.

10. (U) Contractor management may request that an exception be made to a provision of this policy unless:
 - a. (U) The exception requested requires NSA/CSS to establish new contractor connectivity with, or access to, NSA/CSS ISs, the installation or modification of hardware or software, or support from the NSA/CSS Information Technology Support Center (ITSC).
 - b. (U) The exception requested would allow contractors to use NSA/CSS ISs for general business purposes (e.g., to send and receive corporate newsletters, to announce company events such as picnics and retirement ceremonies, to announce job opportunities, etc.).

11. (U) Requests for exception from this policy not ruled out by paragraph 10 above shall be submitted in writing to the NSA/CSS Contracting Officer or Contracting Officer's Representative, by contractor management. Requests made by individual contractor employees directly will not be considered.

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13. (U) Before determining that an exception is in the best interest of NSA/CSS, NSA/CSS personnel responsible for exception decisions will consider whether the proposed exception would:

- a. (U) Be legal.
- b. (U) Affect the Agency's mission negatively.
- c. (U) Have a significant impact on Agency IT resources, including network bandwidth or data storage.
- d. (U) Reflect poorly on the Agency.
- e. (U) Involve more than minimal cost to the Agency.
- f. (U) Violate operational security (OPSEC) principles.

....

(U//~~FOUO~~) NSA/CSS Policy 6-6, "USE OF UNCLASSIFIED INFORMATION SYSTEMS SUCH AS THE INTERNET," revised 20 June 2012:

25. (U) All Users shall:

...

- n. (U) Use good judgment and common sense when accessing and/or communicating on unclassified ISs;

....

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Appendix B

(U) NISIRT Report

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The NISIRT report

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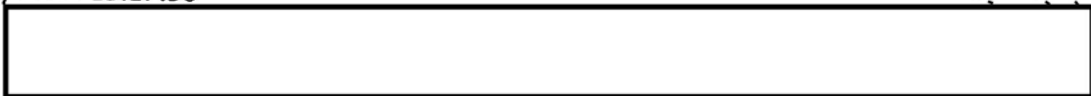
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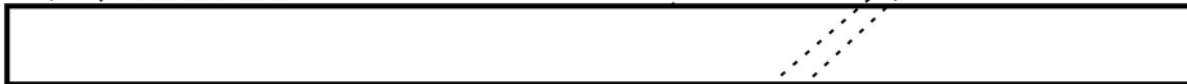


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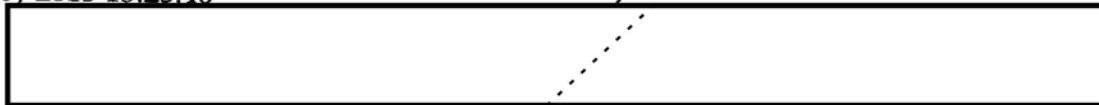
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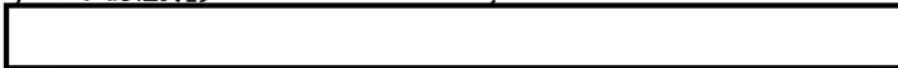
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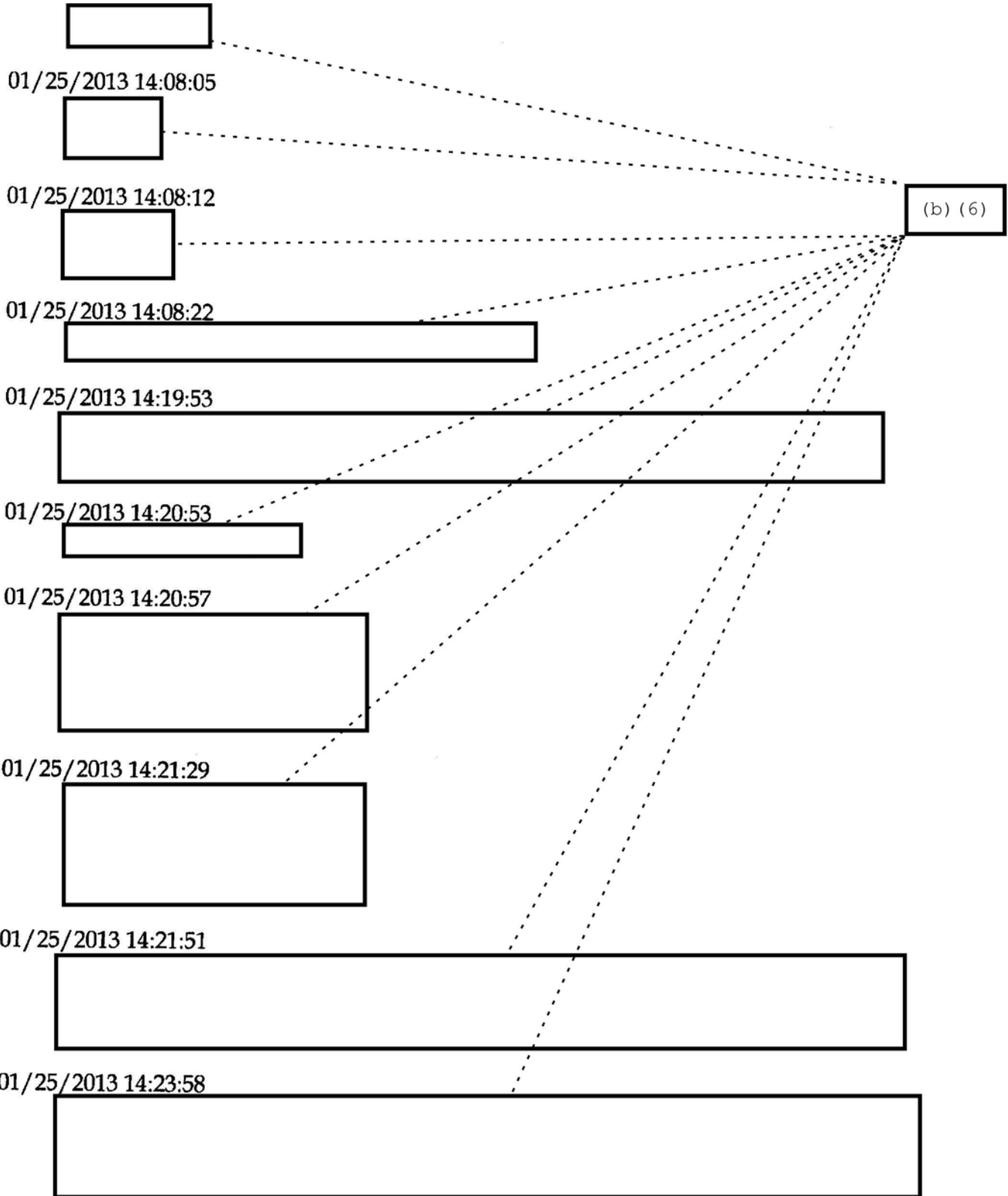
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IV-13-0067

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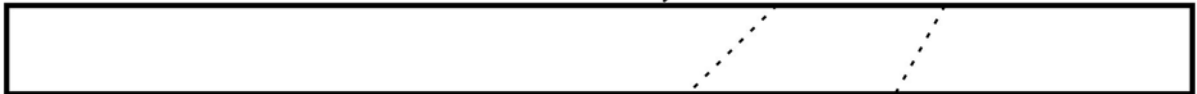


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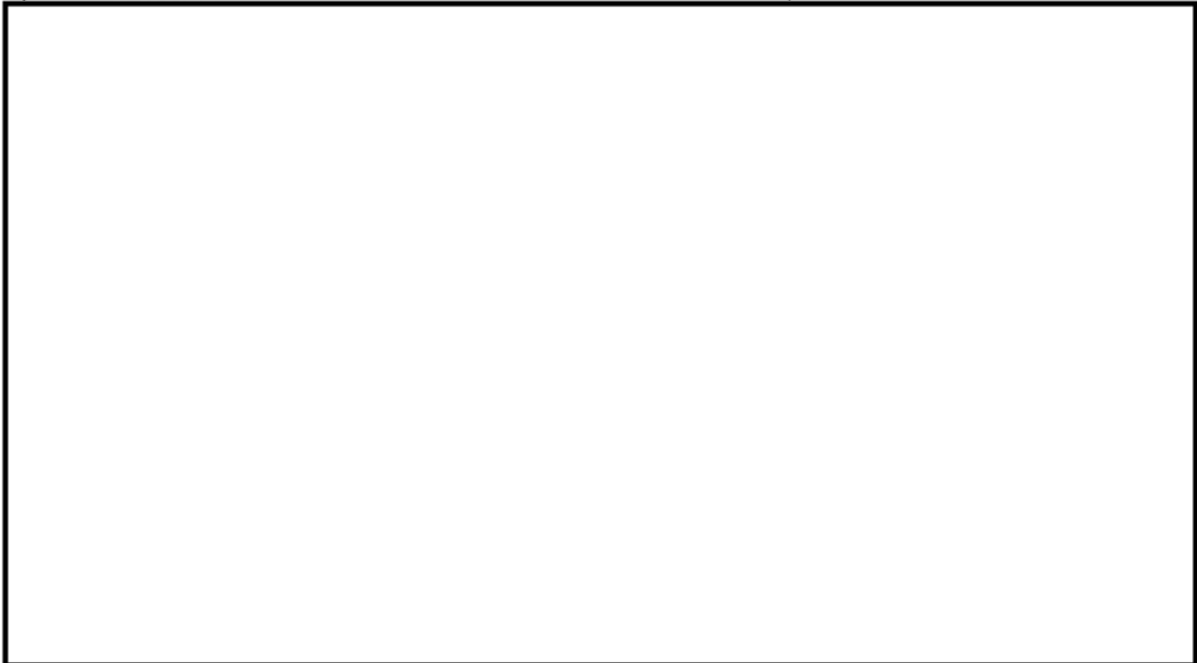
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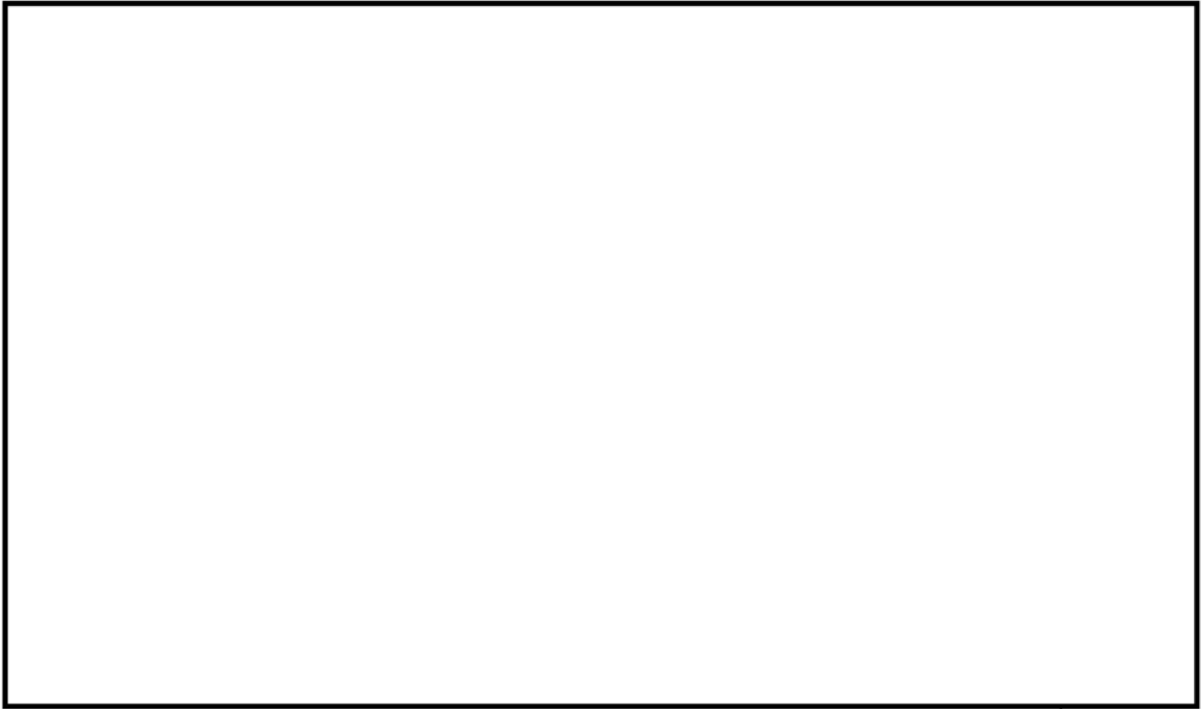
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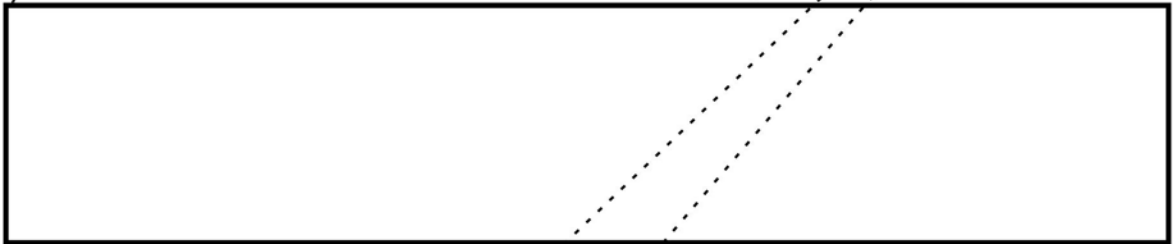


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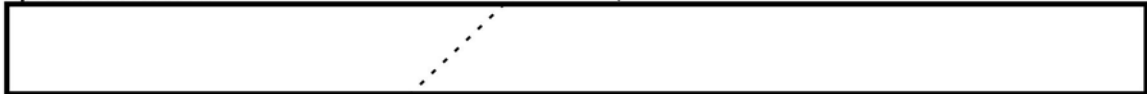
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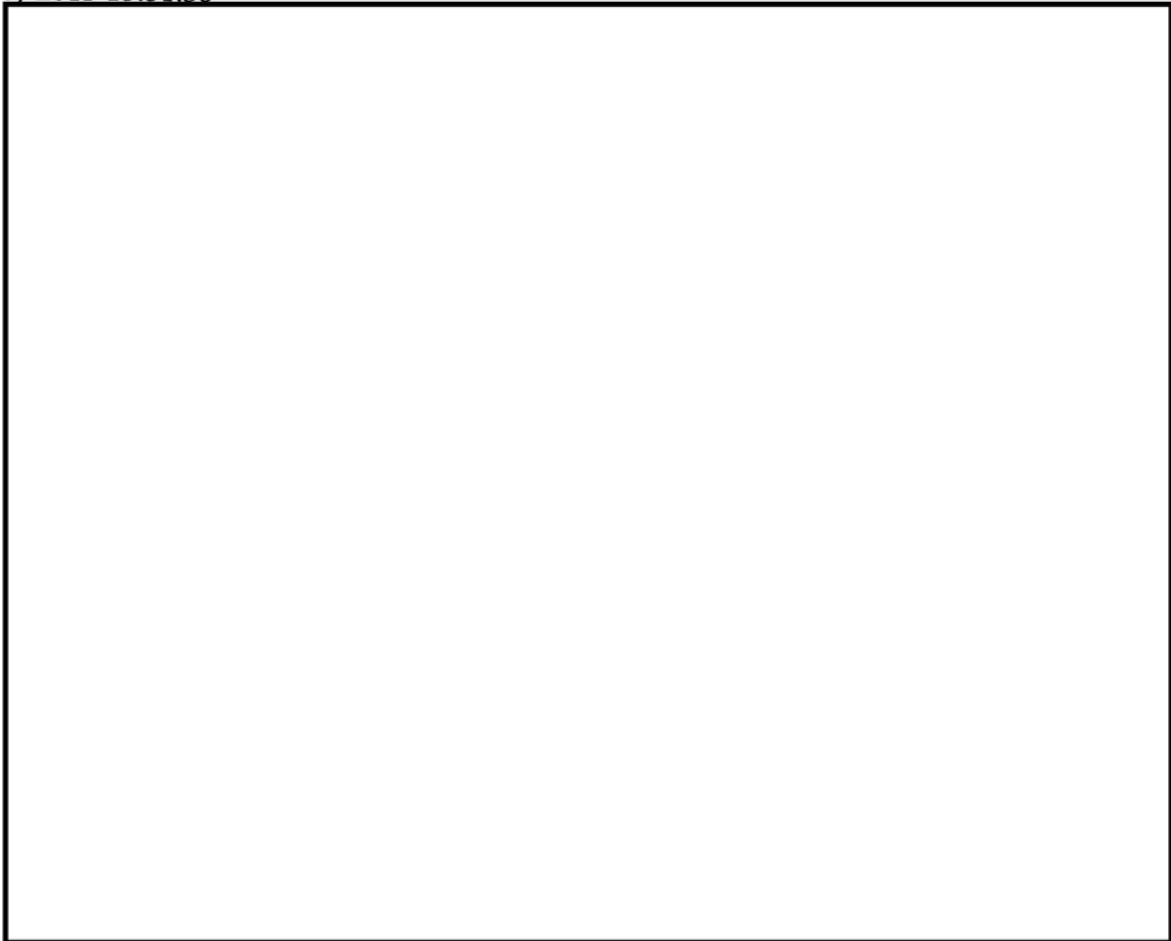


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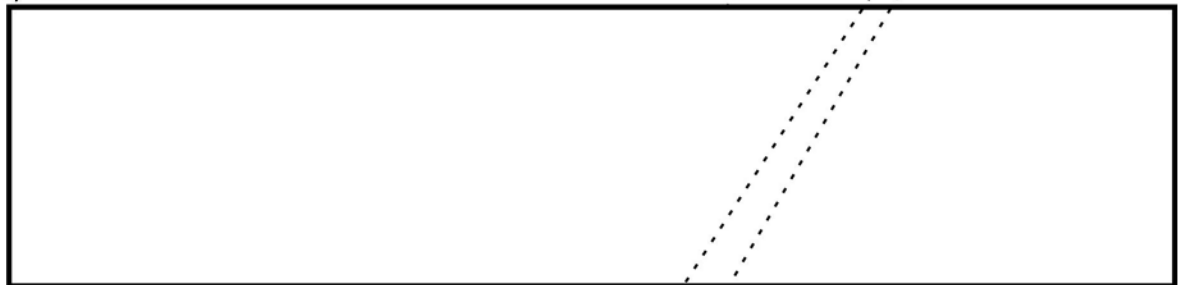


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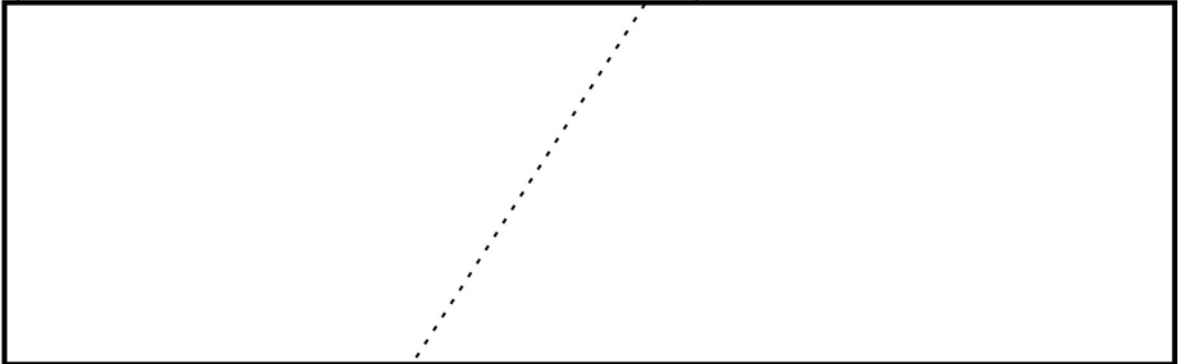


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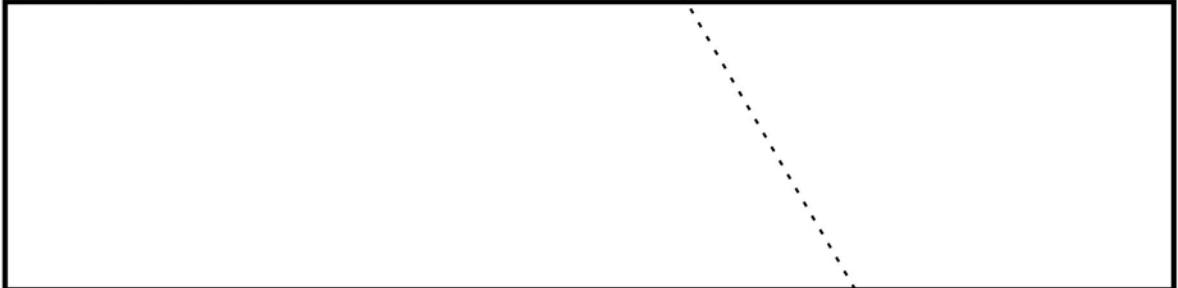
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IV-13-0067

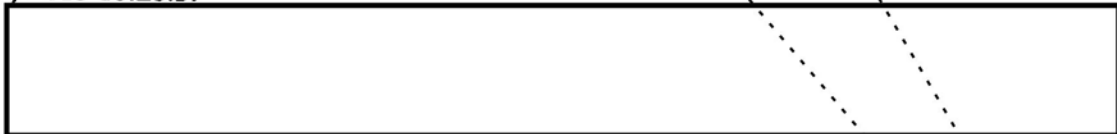
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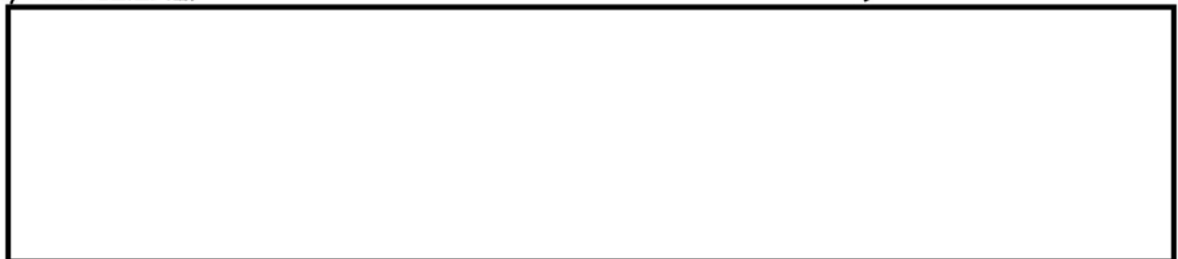
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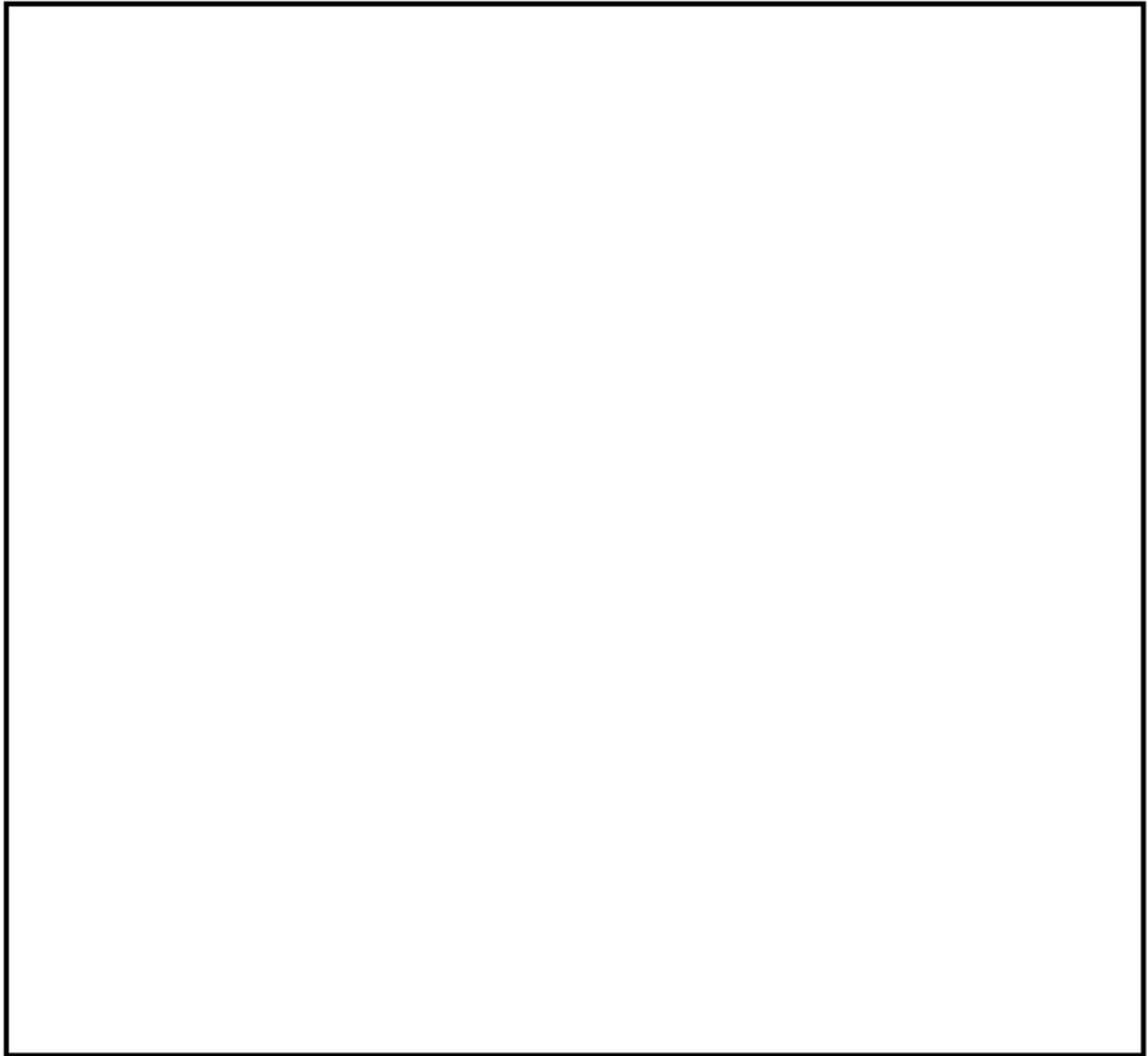


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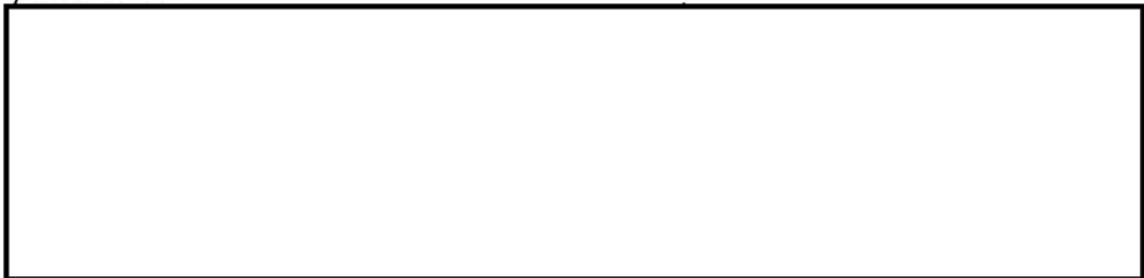


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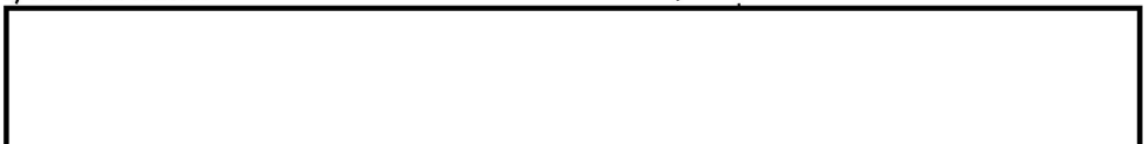
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(b) (6)

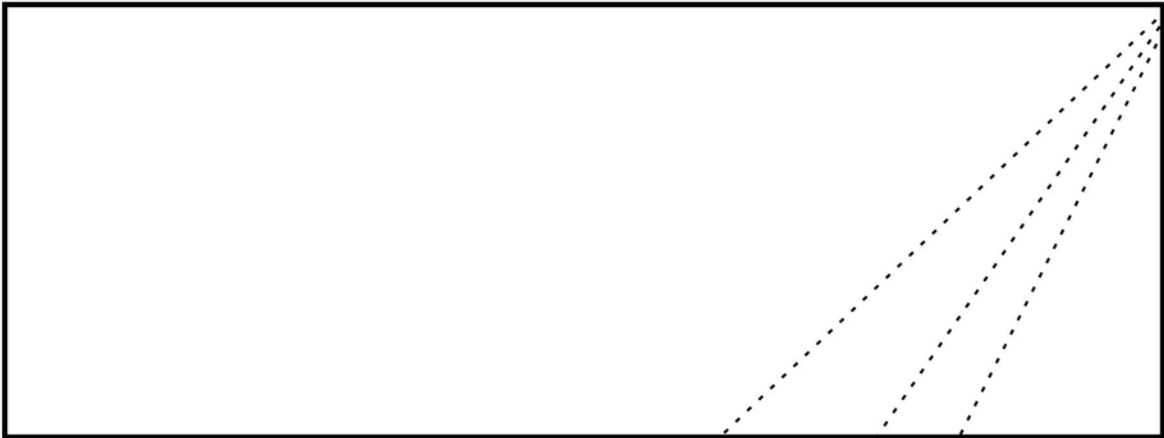
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IV-13-0067



02/11/2013 13:38:40

(b) (6)



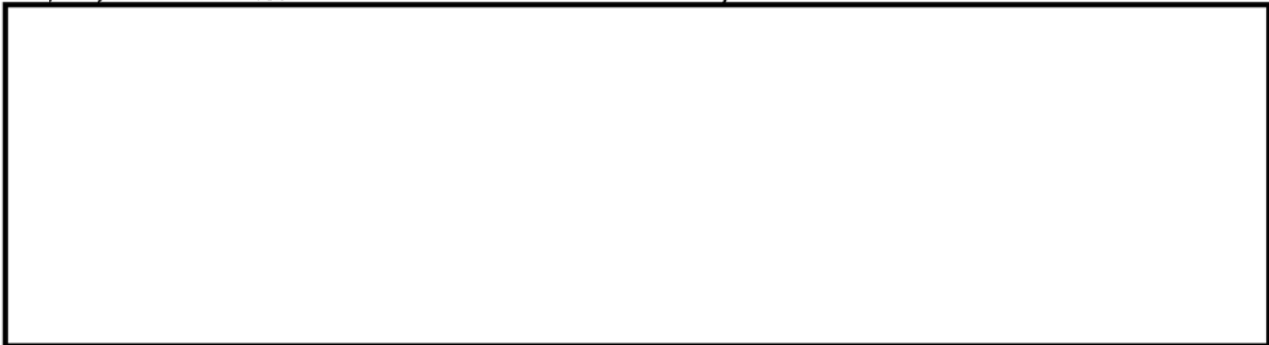
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02/11/2013 15:12:19



02/11/2013 15:51:09



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(b) (6)

(U//~~FOUO~~) This user has spent time on the following non-work related Excel spreadsheets stored on his unclassified computer, during the timeframe of this review.



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IV-13-0067

Appendix C

(U) Response to the Tentative Conclusions

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[Redacted]

(b) (3) - P.L. 86-36

October 25, 2013

(b) (3) - P.L. 86-36
(b) (6)

Dear [Redacted]

I am writing in response to your e-mail dated October 23, 2013, titled "response to tentative conclusions (IV-13-0067)," concerning your investigation of an allegation that I possibly misused Government resources. You stated that in your report you concluded that I misused my "unclassified NSA/CSS Information System" by using "Government resources to type adult oriented e-mails in violation of NSA/CSS Policies 6-4 and 6-6."

Respectfully, I disagree with your conclusion.

INTRODUCTION

I do not agree with your conclusion because at all times my use of my National Security Agency [NSA, Agency] unclassified information system was authorized by my contracting officer representative [COR] and because I at all times exercised good judgment and common sense when using my NSA unclassified information system to generate content of personal e-mails. Furthermore, any perceived misconduct on my part is completely mitigated since I no longer work at NSA.

All of my use of NSA information systems was authorized; and therefore, I did not violate NSA/CSS Policy 6-4.

Because we were given permission to access the Internet by our contracting officer representative [COR], I did not violate Policy 6-4.

Policy 6-4 pertains to contractor use of NSA/CSS information systems, and as stated in your e-mail, it "limits contractor use to only perform tasks that are authorized by the contract (i.e. Work-related) and does not allow personal use of the systems except in extremely limited cases."

On three separate occasions, our COR informed us that we had permission to access the Internet while working, provided that such use did not interfere with our work performance. Based upon this authorization, I felt free to access my personal Internet-based e-mail account from my *unclassified* information system. During the [Redacted] that I was an NSA contract worker, I consistently had good performance reviews, pay raises, and a positive experience. Therefore, my personal use of my unclassified information system did not exceed the scope of the authorization granted by the COR.

(b) (6)

In conclusion, I did not violate Policy 6-4 because my personal use of my unclassified information system was within the scope of the authorization given--re-stated on three separate occasions--by our contracting officer representative.

When generating personal e-mail content via my unclassified information system, I exercised good judgment and common sense at all times; and therefore, I did not violate NSA/CSS Policy 6-6.

Because I did not believe that the recipient of any of my personal e-mail would subjectively find the content in poor taste, and because the e-mails were sent from my personal e-mail account and encrypted end-to-end for privacy, I did not violate Policy 6-6.

As stated in your e-mail, Policy 6-6 pertains to the use of unclassified information systems such as the Internet, and it "requires all users to exercise good judgment and common sense when accessing Agency provided" information systems. I suggest that the exercise of good judgment and common sense when accessing NSA-provided information systems for sending personal e-mail would include: the use of an unclassified information system rather than a classified one, the use of a personal Internet-based e-mail account rather than an NSA work-related account, to send only content that one believes the recipient would be receptive to receiving, and to encrypt each email from end-to-end for privacy.

No aspect of my conduct when accessing an NSA-provided information system lacked an exercise of good judgment and common sense. The information system at issue was unclassified, not classified. The e-mails at issue originated from my personal Internet-based e-mail account, not an NSA work-related account. These e-mails were intended for single recipients, and to ensure the privacy of the communication, they were encrypted end-to-end. I did not send any e-mail content that I believed the recipient might subjectively find in poor taste, and I in good faith relied upon the recipient to inform me otherwise. I did not receive any complaints about the content of my messages. Therefore, the contents of the e-mails I sent by accessing an NSA-provided information system were in conformity with good judgment and common sense.

In conclusion, because, in the exercise of good judgment and common sense, I isolated my personal e-mail from my work-related correspondence when using my unclassified information system, and because the contents of my personal e-mails were not subjectively viewed by the recipients to be in poor taste, I did not violate Policy 6-6.

The situation is completely mitigated since I no longer work at NSA.

Because I am no longer a contractor employee at NSA, any perceived misconduct on my part is completely mitigated. After [redacted] successful years of employment at NSA, [redacted]

CONCLUSION

(b) (6)

In conclusion, [redacted] I disagree with your conclusion that I misused my unclassified NSA/CSS information system in violation of NSA/CSS Policies 6-4 and 6-6 because personal use of the Internet was authorized by my contracting officer representative and, when using my unclassified information system, I exercised good judgment and common sense when sending personal e-mail from my Internet-based personal e-mail account. Furthermore, any perceived misconduct was completely mitigated when my employment at NSA ended in [redacted]

(b) (3) - P.L. 86-36

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IV-13-0067

Respectfully submitted,

[Redacted signature area]

25 October 2013

(b) (3) - P.L. 86-36
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