



U.S. Department of Justice

Office of the Inspector General

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July 31, 2018

Shawn Musgrave  
[56550-77808162@request.muckrock.com](mailto:56550-77808162@request.muckrock.com)

Subject: Freedom of Information/Privacy Act Request [18-OIG-344]

Dear Mr. Musgrave:

This responds to your Freedom of Information Act request to the Office of the Inspector General (OIG). Specifically, your request seeks the OIG report entitled "Investigative Summary: Findings of Misconduct by U.S. Marshal for Failing to Work an 8 Hour Day in Violation of Executive Branch Ethics Regulations, U.S. Marshals Service Leave Regulations, and U.S. Marshals Service Time & Attendance Policy."

The report responsive to your request 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 90 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.

You may contact our FOIA Public Liaison, Deborah Waller at (202) 616-0646 for any further assistance of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (202) 741-5770; toll free at 1-877-684-6448.

Sincerely,

*Jeanetta M. Howard*

Jeanetta M. Howard  
Government Information Specialist  
Office of the General Counsel

Enclosure

<b>SUBJECT</b> [REDACTED] United States Marshal [REDACTED]		<b>CASE NUMBER</b> [REDACTED]
<b>OFFICE CONDUCTING INVESTIGATION</b> Washington Field Office		<b>DOJ COMPONENT</b> United States Marshal Service
<b>DISTRIBUTION</b>	<b>STATUS</b>	
	<input checked="" type="checkbox"/> Field Office    WFO <input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component    USMS <input type="checkbox"/> USA <input type="checkbox"/> Other	
		<b>PREVIOUS REPORT SUBMITTED:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <b>Date of Previous Report:</b>

**SYNOPSIS**

This investigation was predicated upon information provided to the Department of Justice (DOJ), Office of the Inspector General (OIG). The anonymous complainant stated that [REDACTED] United States Marshal (USM), [REDACTED] always leaves his residence during the weekday around 9:30 a.m. and returns to his residence at 2:30 p.m. [REDACTED]

The OIG investigation substantiated the allegation that [REDACTED] engaged in misconduct in that he violated executive branch and United States Marshal Service (USMS) time and attendance policies by claiming he worked a full 8 hour day on the three days that the OIG conducted a physical surveillance of him. During an OIG voluntary interview, [REDACTED] stated that his schedule is very flexible. [REDACTED] stated that the OIG happened to conduct surveillance of him on three short days when he didn't work a full 8 hours on each day rather than other days when he may have put in longer hours. [REDACTED] stated whether he works a six, eight, or ten hour day, "it all comes out in the wash." [REDACTED] reported that he was never told that he needed to go to the office at 8:30 a.m. and not leave until 5:00 p.m.

The OIG investigation determined that [REDACTED] engaged in misconduct in violation of Title 5 Code of Federal Regulations (CFR) § 2635.705 (use of official time); 5 CFR Section 630.211(b)(2) (provisions related to leave); 43 CFR 20.510 (fraud or false statements in a government matter, including time and attendance reports); the DOJ Ethics Handbook for Recording Time and Attendance as outlined in the USMS Ethics

DATE	April 27, 2018	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT			
DATE	April 27, 2018	SIGNATURE	Digitally signed by <b>MICHAEL TOMPKINS</b> Date: 2018.06.05 11:21:29 -04'00'
APPROVED BY SPECIAL AGENT IN CHARGE		Michael P. Tompkins	

Guide; and a Memorandum for all United States Marshals dated September 23, 2005, regarding time reporting and use of GOVs by USMs. The OIG concluded that [REDACTED] had ample notice of USMS policy regarding his expected hours of work, and did not consider reasonable his contention that he was not required to work 8 hours each day because of his general availability.

[REDACTED]

The OIG has completed its investigation and is providing this report to the USMS Office of Professional Responsibility (OPR) and the Office of the Deputy Attorney General (ODAG) for appropriate action.

## DETAILS OF INVESTIGATION

### Predication

This investigation was predicated upon information provided to the Department of Justice (DOJ), Office of the Inspector General (OIG). The anonymous complaint was forwarded via U.S. Mail to the OIG on [REDACTED] and received by the OIG on [REDACTED]. The anonymous complainant stated that USM [REDACTED] always leaves his residence during the weekday around 9:30 a.m. and returns to his residence at 2:30 p.m., thereby failing to work an 8 hour day.

[REDACTED]

### Investigative Process

The OIG's investigative efforts consisted of:

Voluntary interview of:

- [REDACTED] United States Marshal, [REDACTED]

Physical Surveillance of [REDACTED] during business hours

- Conducted [REDACTED]

Review of the following:

- Predicating Materials
- USMS Ethics Guide
- USMS Ethics Training 2010 PowerPoint
- DOJ Deadly Force Policy PowerPoint
- USMS Legal Authorities/US Marshals Orientation PowerPoint
- USMS Office of General Counsel Top 10 List PowerPoint
- Agenda for US Marshal Training-Phase One In-Processing
- Agenda for New US Marshal Orientation Training [REDACTED]
- Memorandum regarding US Marshal Time Reporting and Use of GOVs
- Certified time and attendance summaries
- [REDACTED] government cell phone data [REDACTED]
- [REDACTED]
- [REDACTED]

## Background

[REDACTED] was sworn in as the USM [REDACTED]

### Activities on [REDACTED]

In response to the complaint, the OIG conducted physical surveillance of [REDACTED] on [REDACTED]. Each day the surveillance began and concluded at [REDACTED] residence in [REDACTED]. The following is a synopsis of [REDACTED] activities documented during the three days of surveillance:

[REDACTED] – [REDACTED] departed his residence at an unknown time but arrived to his work duty station [REDACTED] at 10:00 a.m. [REDACTED] departed the office at 11:30 a.m. for lunch at a local pizza restaurant before returning to the office at 2:12 p.m. [REDACTED] departed the office at 3:32 p.m. and did not return.

[REDACTED] – [REDACTED] departed his residence at 9:19 a.m. and arrived at the courthouse at 10:04 a.m. and left the office at 11:30 a.m. for lunch at a local restaurant. [REDACTED] returned to the office at 12:24 p.m., then departed at 4:03 p.m. and did not return.

[REDACTED] – [REDACTED] departed his residence at 9:43 a.m. and arrived at the courthouse at 9:58 a.m. and departed the office at 10:38 a.m., arriving at [REDACTED] restaurant [REDACTED] at 11:00 a.m. for lunch. [REDACTED] departed the restaurant at 2:43 p.m. and returned to his residence. (All surveillance times listed are approximate.). He did not return to the office.

[REDACTED] certified time and attendance summary [REDACTED] shows that [REDACTED] claimed he worked an eight hour day on each of [REDACTED]

### Applicable Authorities

Title 5 CFR § 2635.705 states that a federal employee shall use official time in an honest effort to perform official duties. Further, 5 CFR 630.211(b)(2) provides that United States Marshals cannot be excluded by the agency head from the annual leave and sick leave provisions of law.

Title 43 CFR 20.510 states that an employee shall not knowingly or willfully falsify or make any fraudulent statements or representations, noting that “Special attention is required in the certification of time and attendance reports . . . .”

The USMS Ethics Guide states that "US Marshals are expected to work a 40-hour week and an 8-hour day. This must be documented on a Time and Attendance form, along with any leave used during the relevant pay period."

A Memorandum for all United States Marshals dated September 23, 2005 regarding time reporting and use of GOVs, states that "Marshals are expected to work a 40 hour work week and an 8 hour day, your workday tour of duty should reflect the business hours for the district."

## Explanation

During his voluntary OIG interview, [REDACTED] stated that his schedule is very flexible. [REDACTED] stated that the OIG happened to conduct surveillance of him on three short days of work rather than other days when he may have put in longer work hours. [REDACTED] stated whether he works a six, eight, or ten hour day, "it all comes out in the wash." [REDACTED] stated he was never told that he needed to be at the office at 8:30 a.m. nor that he was not to leave until 5:00 p.m.; rather he stated "you're the Marshal, you know, you set your hours for the most part. You're flexible." [REDACTED] said he is available by cellphone, "if you need me, call me." The OIG reviewed records of [REDACTED] assigned government cell phone [REDACTED]. During this [REDACTED] time period, records indicate that [REDACTED] used his government cell phone approximately 178 times. Of these 178 phone calls, 31 had no call duration and an additional 73 had a call duration of less than one minute. The balance of 94 phone calls took place after 5:00 p.m.

When questioned about not working complete eight hour days, [REDACTED] replied "If I got six hours and I'm short two I guarantee you somewhere down the road I worked 13 or 14 . . ." [REDACTED] stated he hated to think that his career would be judged on these three days and that he is confident he never shortchanged the Government in his time with the USMS.

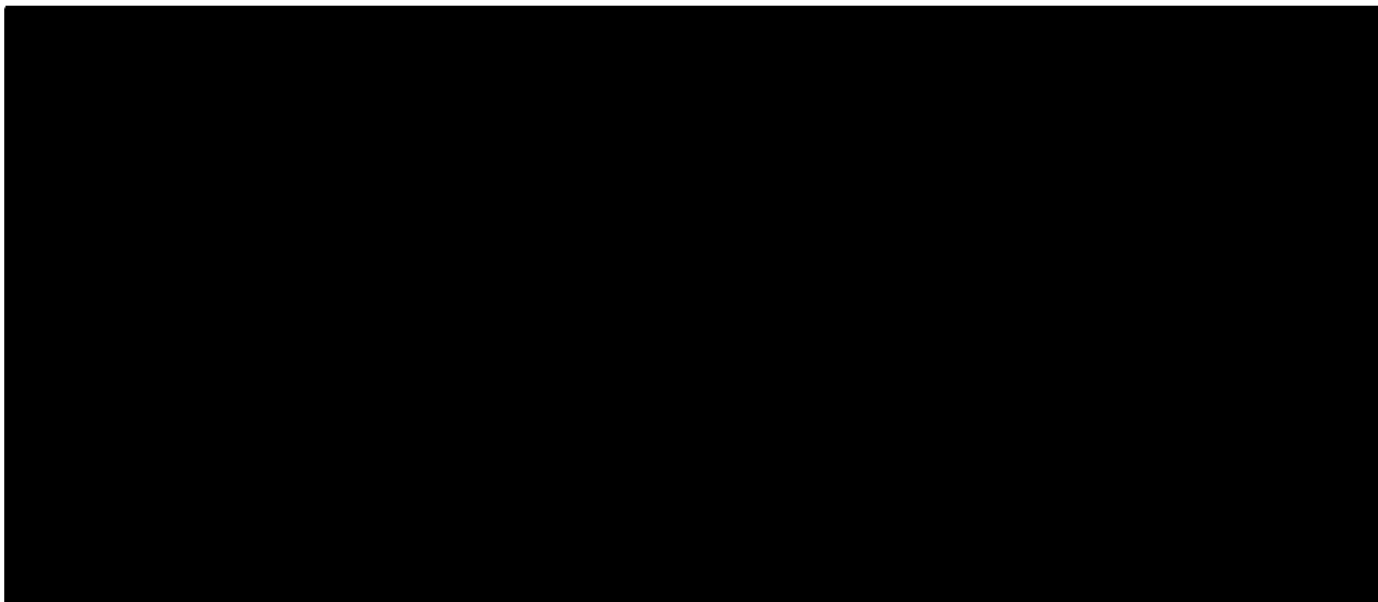
Concerning the over two hour lunches he had on two of the three days during surveillance, [REDACTED] stated, "And as far as lunch, like I said, I look at it as salary. I mean, you know, I'm working on the cellphone. I mean, if I'm sitting there at Pizza Hut [REDACTED] or if I'm talking to [REDACTED] [personal friend] for an hour and a half, I mean, I'm on my cellphone. You know. If you need me, call me. You know, I could sit here. I could sit here for an hour and a half and nothing would happen and I'm working, you know. To me it's no different than being out in the public and if you see somebody, hey, how you doing? You know, its networking." [REDACTED] was not claiming to be working on his cell phone during those extended lunches, rather that he was available, just as he would be if he was sitting in his office.

[REDACTED] stated he would apologize for the perception given during the three day surveillance, but this was not a pattern of "months and months and years and years of neglect, you know, I won't apologize for that because I've not done that. You know, like I said, there's good days and bad days and obviously these three, you know, were so so. But, you know, I can tell you it's just, it's my style. It's flexible. I give them more, you know, so."

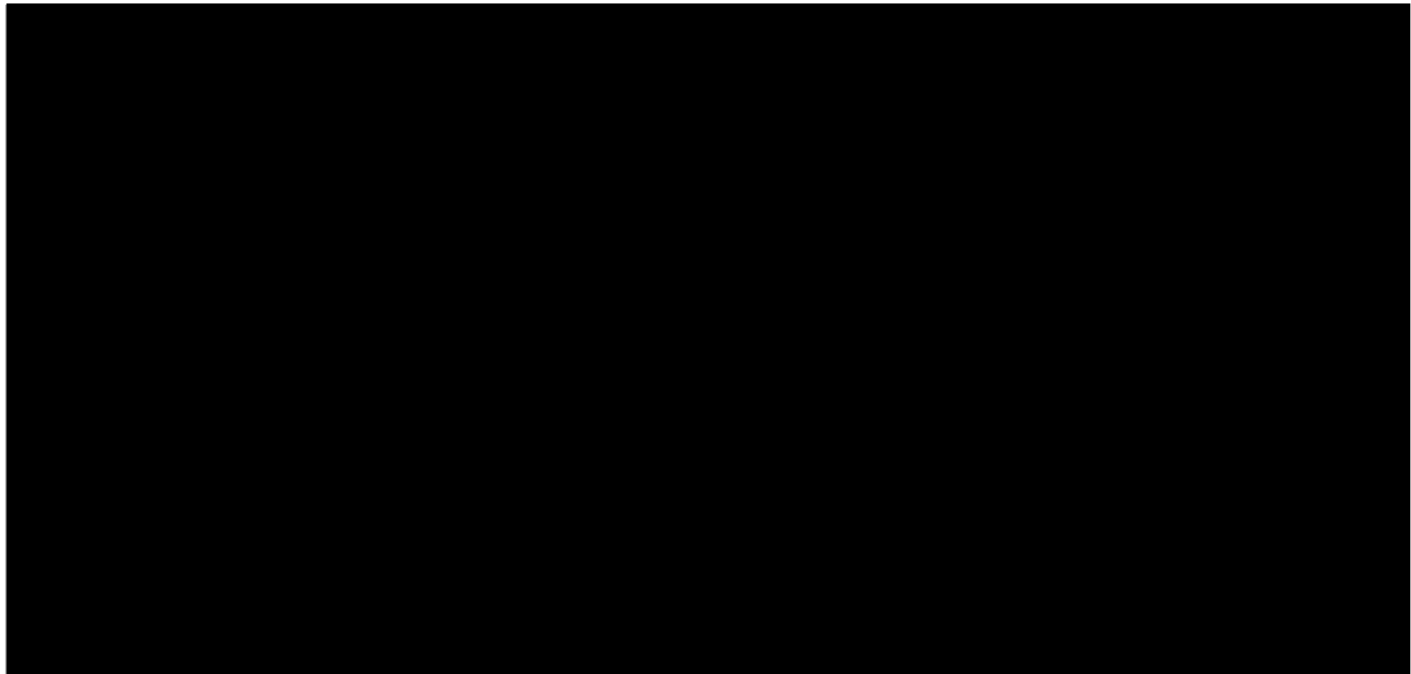
### ***OIG's Conclusion***

The OIG investigation concluded that [REDACTED] engaged in misconduct in violation of executive branch and USMS time and attendance policies by claiming he worked a full 8 hour day on [REDACTED]. The evidence demonstrated that [REDACTED] spent approximately 3 hours at the USMS office on [REDACTED], about 5 hours on [REDACTED], and less than 1 hour on [REDACTED]. The OIG's conclusion that [REDACTED] did not regularly work 8 hours each of those days, which is consistent with the anonymous complaint allegation, is supported by [REDACTED] admission when he was confronted with the results of the OIG's surveillance that his work days were "flexible." His actions violated 5 CFR § 2635.705, 43 CFR 20.510, DOJ's Ethics Handbook for Recording Time and Attendance as outlined in the USMS Ethics Guide, and a Memorandum for all United States Marshals dated September 23, 2005, regarding time reporting and use of GOVs by United States Marshals. Specifically, the USMS Ethics Guide states the following regarding recording time and attendance: "US Marshals are expected to work a 40-hour week and an 8-hour day. This must be documented on a Time and Attendance form, along with any leave used during the relevant pay period." In addition, the USMS Ethics Guide included an enclosure marked as "Tab E – USMS Director Memorandum on US Marshal Time Reporting and use of Government-owned Vehicles." The Memorandum, which is dated September 23, 2005, states "By way of guidance, Marshals are expected to work a 40 hour work week and an 8 hour day, your workday tour of duty should reflect the business hours for the district."

The OIG believes that [REDACTED] had ample notice of USMS policy regarding his expected hours of work, and did not consider reasonable his contention that he was not required to work 8 hours each day because of his general availability. As USM [REDACTED] has an obligation to abide by USMS policies, and as the leader of the USMS office [REDACTED] [REDACTED] should model the conduct expected by the USMS of all its employees.







The OIG has completed its investigation and is providing this report to the USMS OPR and ODAG for appropriate action.