

GAO

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Report to Congressional Requesters

July 1994

**RECORDS
MANAGEMENT**

**Retrieval of State
Department's Political
Appointee Files**



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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-257322

July 13, 1994

The Honorable Lee H. Hamilton
Chairman
The Honorable Benjamin A. Gilman
Ranking Republican Member,
Committee on Foreign Affairs
House of Representatives

The Honorable William F. Clinger
Ranking Republican Member,
Committee on Government Operations
House of Representatives

The Honorable Howard L. Berman
Chairman, Subcommittee on International Operations,
Committee on Foreign Affairs
House of Representatives

The Honorable Henry J. Hyde
House of Representatives

In response to your request, we are providing information concerning the retrieval of files on Bush administration political appointees at the Department of State, including information on specific issues raised by the minority requesters. The information is based on our review of the January 31, 1994, investigative report prepared by State's Office of Inspector General (OIG) entitled Report of Investigation: Privacy Act Violation, OIG Case No. 93-173; the OIG's supporting investigative documents; and our interviews with persons having knowledge of the circumstances surrounding the retrieval of the files.

Background

The OIG's investigative report concluded that the Clinton administration staff in State's White House Liaison Office (WHLO) had retrieved and reviewed files containing information on Bush administration political appointees and that the release of information about these files appeared to violate the Privacy Act (5 U.S.C. 552a).¹ The report named the former WHLO Director and a former aide to the Assistant Secretary of State for Public Affairs, as the two primary subjects of the investigation. The

¹The type of information contained in the files is described in our separate report—Records Management: Inadequate Controls Over Various Agencies' Political Appointee Files (GAO/NSIAD-94-156, July 13, 1994).

evidence developed by OIG indicated that the former WHLO Director was the sole person responsible for directing the retrieval of the files and that both the former Director and former aide were responsible for the unauthorized release of privacy-protected information from these files outside the State Department. On November 8, 1993, OIG submitted a prosecutive summary of findings to the Department of Justice and on November 9, 1993, the Inspector General briefed the Secretary of State. The next day, the Secretary directed that the former Director and the aide be fired. On January 28, 1994, the Department of Justice decided not to pursue criminal prosecutions.

Although OIG concluded that the two individuals fired were the only persons involved in possible criminal violations, it found that others may have made mistakes through acts of omission and/or commission in performance of their duties. OIG provided its administrative findings to the Secretary, the Under Secretary for Management, and the Director General of the Foreign Service and Personnel and recommended that they take whatever disciplinary action deemed appropriate. Disciplinary action has been taken in one case — the current Director of WHLO received an official admonishment for ordering the destruction of a WHLO phone log covering the period July 1993 through September 1993, after she was made aware, when she assumed her position in September 1993, that an investigation was underway into possible leaks of information to the press. In addition, none of the staff in WHLO at the time of the incident are still employed by the Department.

Results in Brief

This report discusses (1) the scope of the OIG investigation, (2) the extent of the records retrieved and the lack of precise information on the number of records destroyed, (3) the reasons given by WHLO officials for retrieving the records, (4) the possibility that key people knew of the pending approval by the National Archives and Records Administration (NARA) of State's proposed schedule for destroying the records, (5) the extent of contacts with the media by subjects of the OIG investigation, (6) the security violation at WHLO on August 31, 1993, not reported by OIG, and (7) the employment status of key individuals involved in the matter.

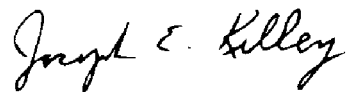
The information we developed generally agrees with OIG's findings and conclusions and supplements the information OIG developed. The one area where we obtained information that the OIG's investigation did not address concerned the adequacy of records management at State and other agencies. OIG's investigation focused on determining whether any

wrongdoing occurred by Department employees. Although OIG concluded that State's information management officials did not violate current regulations when they provided records of Bush appointees to the Clinton appointees, we believe that weaknesses in records management and controls led to the retrieval and release of information to the press.

We conducted our work between September 1993 and May 1994. Our scope and methodology are set forth in appendix II, along with certain limitations we faced in doing our work. As requested by your staff, we did not obtain formal agency comments on this report. However, we provided officials in State's Bureau of Administration and OIG a copy of the draft report and incorporated their comments as appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to other appropriate congressional committees, the Secretary of State, and other interested parties. Copies will be made available to others upon request.

Should you have any questions, or need further assistance, please contact me at (202) 512-4128. Major contributors to this report are John Brummet, Lynn Moore, John Townes, and Olivia Parker.



Joseph E. Kelley
Director-in-Charge
International Affairs Issues

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Abbreviations

NARA	National Archives and Records Administration
OIG	Office of Inspector General
WHLO	White House Liaison Office

Retrieval of State Department Files on Political Appointees

The Inspector General's Investigation

On September 2, 1993, State's Assistant Secretary for Administration referred the apparent leak of information from the Department's files to the Office of Inspector General (OIG), as a potential violation of the Privacy Act. During its criminal investigation, OIG interviewed 64 persons, including 16 Department of State employees under oath, 3 at the Assistant Secretary level or above, and 8 employees at the White House. OIG also analyzed relevant telephone records and logs, checked for fingerprints on evidence, and attempted to interview a reporter at the Washington Post. According to OIG, the staff members conducting the investigation were experienced and qualified criminal investigators (1811 job series), with training comparable to Federal Bureau of Investigation and Secret Service agents. The OIG investigator in charge told us that the investigative methodology was developed based on their years of experience involving possible criminal and administrative violations by federal employees.

The OIG's emphasis on criminal issues was consistent with its decision to treat the case as a potential violation of the Privacy Act and other statutes from the beginning of its investigation. We did not identify any significant sources of information or lines of questioning that OIG failed to pursue as part of its criminal investigation. The OIG's work did not focus on records management issues. However, in a February 1, 1994, memorandum to the Department's Under Secretary for Management, OIG recommended that increased management oversight be provided to White House Liaison Office (WHLO).

The information we developed on the retrieval of the files is generally consistent with information in the OIG report and the supporting documentation. Furthermore, we believe that the annex in the report entitled OIG Responses to Congressional Questions properly answers almost all of the questions posed to us in a September 2, 1993, letter from Representatives Clinger, Gilman, and Hyde.

The areas where we obtained information that was not discussed in the report, or where OIG did not pursue management-related questions asked by our requesters follow.

- OIG did not determine if White House liaison records of Bush political appointees had been reviewed by Clinton political appointees at agencies other than State. In its answer to a specific congressional question on this, OIG's report stated that this would go beyond OIG's jurisdiction. In our report, Records Management: Inadequate Controls Over Various Agencies' Political Appointee Files (GAO/NSIAD-94-155, July 13, 1994), we reported that

we had found no evidence that unauthorized searches of White House liaison records were attempted at the Departments of Commerce and the Interior and the Agency for International Development. At the Office of the Secretary of Defense, we could not determine the actual disposition of most of the Bush administration files or if any unauthorized searches took place. However, we did find that controls over access to records on political appointees were weak at all of these agencies, which substantially increases the vulnerability of such records to unauthorized access and destruction, and we recommended actions to strengthen the controls.

- The OIG investigation did not draw any conclusions concerning the adequacy of records management controls in the Department. In its answer to a specific congressional question, OIG concluded that the retrieval of files by the Clinton political appointees did not violate Department policy. Consequently, according to the OIG report, information management officials did nothing wrong when they provided records on the Bush political appointees to the Clinton political appointees in WHLO. However, in December 1992, officials in State's Records Management Branch¹ reviewed the records created and maintained by the Bush administration's White House liaison staff at the State Department and determined that the records on Bush political appointees should (1) not be left in the office with the change in administration and (2) be destroyed once approval for disposition was received from the National Archives and Records Administration (NARA). In addition, a records management official stated in a memorandum to the Bush WHLO that the records on Bush appointees would be retained until authority for their destruction was received from NARA. The records were not protected and were retrieved by Clinton appointees 4 days prior to NARA's approval for destruction. Our report on management controls describes how these weaknesses in control at State led to the retrieval of sensitive records and the subsequent release of Privacy Act protected information.
- The OIG report did not identify the security violation issued to WHLO on August 31, 1993, 1 day before the Washington Post article (see page 12). OIG officials said that they were aware of the incident but determined that the records compromised by the security violation were not germane to their investigation.

¹Within the Office of Information Services, the Records Management Branch is responsible for a continuing program for management of State's records as required by federal law.

Information on the Records That Were Retrieved

On January 21, 1993, 12 boxes of WHLO files were sent by State's Records Service Center office to the State Department's temporary storage facility at Hyattsville, Maryland, where they were to be retained until NARA approved the proposed disposition authority and the records on political appointees could be destroyed. The records manifest identified the contents of the boxes as including files on political appointees and ambassadorial appointments by name, Republican National Committee "help files," White House "help files," and visa request files.

These 12 boxes were retrieved from storage by State's Research and Retrieval Branch² on or about July 13, 1993, and provided to a staff assistant in WHLO. The former Director of WHLO told OIG investigators that he estimated the number of files in the boxes was between 350 and 425. The former WHLO staff assistant told us that there were at least 400 files in the boxes. On July 26, 1993, security officials found several boxes of records on the floor of the WHLO copier room. Because some contained documents marked confidential and secret, the officials issued several security violations. The next day, the WHLO staff began reviewing the files and destroying files that they did not want.

We could not determine the precise number of records that were destroyed. Records forms did not indicate the total number of records retired in January 1993 or retrieved in July 1993, and estimates by former WHLO staff of the number of records destroyed varied widely. According to the former WHLO staff assistant who obtained the records from storage, WHLO staff destroyed about two-thirds of the records. However, according to the former Deputy Director of WHLO, less than two boxes of records were destroyed. The former Deputy Director said that WHLO staff put unneeded classified records in burn bags and disposed of unclassified records in trash cans. According to the OIG report, approximately four burn bags of records were discarded. Records management officials estimated that of the 12 boxes of records, about 4 boxes had been destroyed or were missing.

In late September 1993, OIG gave us access to five boxes of records then in its possession. We were aware that 12 boxes had been retrieved from storage but OIG did not explain why it only had 5 boxes of records, or if the others still existed. In late November 1993, OIG officials told us that they had just confiscated three additional boxes of records from WHLO, and in early December 1993, we were given access to these additional boxes. OIG

²Within the State Department's Office of Information Services, the Research and Retrieval Branch is responsible for conducting searches of official State information sources and retrieving stored records.

investigators explained that they did not confiscate these three boxes earlier because they contained subject files that were not thought to be as closely related to their investigation as the other boxes, which contained name retrievable information on political appointees. OIG officials also said that as soon as they determined that the release of the information would not compromise their investigation, the additional records were made available to us.

We examined these eight boxes and found that they contained 865 files: 197 files on noncareer Senior Executive Service and Schedule C political appointees; 182 files on ambassadors and other presidential appointees; and 486 files labeled by various subjects such as delegations, commissions, and advisory boards. The size of the files varied greatly. Some files contained a large number of documents and some were empty. Documents in the files included resumes, questionnaires for sensitive positions, individual performance assessments, information on political contributions, personal letters and correspondence, and some classified documents.

WHLO Reasons for Retrieving the Files

The former WHLO Director told OIG that he had been tasked to put together a "road map" for the White House of political appointees at State. Specifically, he claimed that he directed the retrieval and subsequent review of the files to (1) understand the scope and duties of WHLO and (2) identify political positions throughout the Department and specific employees that may have been transferred to nonpolitical appointments at State. According to OIG's report, it is common practice for new supervisors of an office to request records of their predecessors to better understand office functions and responsibilities. According to OIG, these purposes appeared to be legitimate reasons for requesting the records.

Both the former Deputy Director and the former staff assistant in WHLO told us that the primary reason the files were retrieved was to learn more about WHLO's functions and to identify all Schedule C positions. The former staff assistant also told OIG that the WHLO Director said he wanted the files so that he would have some idea about the scope of WHLO's duties. She stated that WHLO had almost completed the process of placing political appointees, and that the Office Director wanted to learn about WHLO's other functions and responsibilities. The former WHLO Deputy Director told OIG that a general purpose for retrieving the files was to identify by job, position, and name, each Schedule C appointee from the Bush administration.

State's Presidential Appointments Office and the Bureau of Personnel also had information on political appointees at the Department. According to officials in the Presidential Appointments Office, WHLO staff members had not tried or gained access to the files of the Presidential Appointments Office. We could not verify that claim, however, because that Office did not maintain a checkout list identifying who has had access to the files. According to a State document, on several occasions, the former WHLO Director tried but was unable to gain access to the Official Personnel Folders of Bush appointees. The nature of those records and the controls over them are discussed in our separate report on controls over records on political appointees at State and other agencies.

Possible WHLO Knowledge of Pending NARA Approval for Destruction

It is difficult to determine if, or to what extent, WHLO officials were aware that (1) the files on the Bush administration political appointees had been retired because Records Management had concluded that the records should not be left in WHLO upon the change in administration, (2) Records Management had prepared a proposed records disposition schedule recommending that the records on political appointees be destroyed, and (3) the records were to be retained in storage until NARA approved the proposed schedule. The disposition schedule was approved on July 17, about 4 days after WHLO staff had obtained the files. We could not determine if WHLO officials knew when the approval was to occur, and if they had known, whether this affected their decision to retrieve the files.

The former WHLO Deputy Director told us that, to the best of his recollection, WHLO staff members were not aware that the files were to be destroyed, and therefore, this was not a factor in retrieving the files. The former staff assistant who obtained the records agreed with his statement. She told us that there was no sense of urgency to retrieve the files and commented that she was surprised that the files were provided within a few days after she had requested them. In contrast, the Research and Retrieval Branch official who approved the retrieval of the files told us that the former WHLO staff assistant expressed a sense of urgency when the files were requested.

According to OIG, the former WHLO Director first became aware of the existence of the records in March 1993, from a memorandum left by the Bush WHLO staff. He told OIG that when he was first assigned to WHLO, he did not find any records in the filing cabinets. However, OIG records indicate that a former office secretary found a memorandum stating that records from the previous administration's WHLO had been sent to storage.

The OIG work papers did not identify the date or the source of the memorandum.

We asked a records management official what memorandum the former secretary was referring to, and she said that Records Management's December 23, 1992, memorandum to WHLO was the only memorandum that she was aware of that stated the files were to be sent to storage. This memorandum also stated that (1) most of the records maintained by the Bush WHLO should not be left in the office with the changeover of administration and (2) the records on political appointees should be retired and retained in storage until the proposed disposition schedule was approved by NARA and the records could be destroyed. We believe that if anyone had read the memorandum and fully understood it, they would have known that the files on Bush political appointees were in storage awaiting approval for destruction.

The former WHLO Director told OIG that he was not aware that the approval for destruction of the records was imminent when he told the WHLO staff assistant to request the records. He also said that he did not receive the July 17, 1993, notice approving the disposition authority.

Press Contacts Made by Subjects of Investigation

OIG investigators concluded that an aide to the Assistant Secretary for Public Affairs frequently made calls from his direct Department extension to the direct phone line of the reporter at the Washington Post, who had written a short article on the retrieval of the records and the contents of files on two Bush appointees. OIG also concluded that the aide appeared to make infrequent contacts with other reporters. OIG determined that the Public Affairs aide made 45 calls to the reporter's direct phone line and a number of calls to other reporters from April 26, 1993, to September 1, 1993. OIG could not determine the exact number of calls made to other reporters because identification could not be obtained for many of the residential telephone numbers that appeared on the phone records. OIG determined that the calls made to the Washington Post reporter's personal number were more lengthy than the calls that could be specifically identified to the other reporters.

OIG was unable to document incoming phone calls to the phone line of the Assistant Secretary's aide because the Bureau of Public Affairs does not maintain records of incoming calls. The Public Affairs aide also had regular access to four other phones in the Bureau of Public Affairs, including the line assigned to the Assistant Secretary for Public Affairs. OIG

identified all calls made to the Washington Post from these phones, but because of the nature of the Public Affairs Office and the number of employees that used these lines, did not attempt to conclude if particular employees were responsible or if the calls were legitimate. However, based on its interviews and other documents, OIG determined with near certitude that the aide used the Assistant Secretary's personal phone line to place a 13-minute call to the reporter's direct line at the Washington Post on July 27, 1993, the same day he learned that the files had been retrieved from storage.

According to OIG, the former Director of WHLO spoke with the same reporter at the suggestion of the Public Affairs aide in early August 1993 and again in late August. However, there is no evidence that the former Director contacted this reporter on other occasions or attempted to contact other reporters. It was WHLO policy to transfer media inquiries to the Office of Press Relations in the Bureau of Public Affairs. Automated phone records indicated that there were outgoing phone calls made to the Washington Post from January 22, 1993, to September 2, 1993, from WHLO. However, OIG called those numbers and determined that they were for sports and financial information services. OIG also attempted to check manual logs of WHLO's incoming phone calls, but the logs covering the time period had been destroyed by the current WHLO Director.

Security Violation in August 1993

On August 31, 1993, at 7:35 pm, State security personnel made a routine check of WHLO and found that the office door was unsecured and that a safe containing classified documents was unlocked. As a result, WHLO received a security violation charged to the staff assistant. This violation occurred a day before the Washington Post report on the contents of two of the files in WHLO. The OIG's report did not provide information on this violation.

We could not determine which files were in the unlocked safe because the security guards did not document what records were in that safe. However, the former WHLO Deputy Director told us that he did not believe the files on Bush political appointees were left unsecured because he recalls these files were stored in cabinets with barlocks, not in the safe. The former WHLO staff assistant believed that the files on Bush political appointees were stored in cabinets with barlocks, and therefore, were probably not left unsecured. OIG officials said that they were aware of this security violation and determined that the records were not germane to their investigation.

Employment Information on Key Individuals

On July 13, 1993, the day the files were retrieved, three Clinton administration political appointees were assigned to WHLO—the Office Director, its Deputy Director, and a staff assistant. The staff assistant to the Assistant Secretary for Public Affairs was also a political appointee. WHLO is located in the Office of the Under Secretary for Management. It had been transferred from the Bureau of Public Affairs in February 1993.

In late July 1993, the WHLO Director was detailed to the North American Free Trade Agreement working group in the Office of the United States Trade Representative. He was reassigned to State's Foreign Service Institute on September 3, 1993. On November 10, 1993, he was fired by the Under Secretary for Management. On April 4, 1994, a lawyer representing the former Director told us that he was not employed by the federal government, and declined to provide further information.

The Public Affairs aide remained in the Office of Public Affairs until November 10, 1993, when he was fired by the Assistant Secretary for Public Affairs. The former aide and his lawyer declined to provide us any information on his subsequent employment.

The WHLO Deputy Director was assigned to the Foreign Service Institute on September 10, 1993. On February 18, 1994, he resigned from the State Department. In March 1994, he told us that he was working as an independent consultant.

The WHLO staff assistant was detailed to the North American Free Trade Agreement working group at the Office of the United States Trade Representative on September 1, 1993. On January 24, 1994, she received a letter from a special assistant to the Under Secretary for Management, stating that as a result of changes in WHLO staffing, there was no longer an appropriate position for her there. The letter stated that her services at State would no longer be required as of February 18, 1994. In April 1994, she told us that she worked at the White House for several days in mid-March 1994 to help plan and arrange a presidential trip. She did not identify her employer at that time. She added that she began working as a consultant to the Democratic National Committee on March 28, 1994.

Officials in State's Office of Personnel said that their records do not indicate that any of these people have been employed by any other U.S. government agency since they were fired or resigned from State. Personnel officials said that they had not received any Standard Form 50s "Notification of Personnel Action" for these people, which would typically

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be used by another agency requesting a State Official Personnel Folder. The current WHLO Director also did not have any information concerning the employment status of these individuals.

Scope and Methodology

OIG initiated a criminal investigation of this case on September 2, 1993. On September 13, we met with the Inspector General to discuss the scope of OIG's work and were told that their investigation would address all but 1 of the 22 questions we had been asked to pursue. That question dealt with possible searches of files of Bush administration political appointees at agencies other than the State Department. The OIG's report said this question raised issues beyond the scope of their jurisdiction. On September 15, 1993, we also met with an official in the Justice Department's Office of Public Integrity, who was working with OIG on the investigation.

On September 16, we told the requesters' staffs that we would coordinate our work closely with OIG and Justice to ensure that we did not compromise the OIG investigation and any Justice Department prosecutions that might result. Our work from September until early November 1993, focused on reviewing the WHLO files on the Bush political appointees at the Department of State, and the controls over access to records on political appointees at four other agencies.

Shortly after November 8, 1993, when OIG submitted a prosecutive summary to Justice, we began to meet with officials from State's Bureau of Administration, Office of Information Services, Office of the Legal Adviser, and the Bureau of Diplomatic Security. We also contacted former WHLO officials at State during the Bush administration. However, as agreed with Justice, we did not contact the principal targets of the investigation or key witnesses until Justice agreed that such contacts would not compromise any possible criminal prosecutions. On January 28, 1994, Justice decided not to pursue criminal prosecutions and on January 31, 1994, OIG completed its report. As a result, we then (1) initiated efforts to contact the principal individuals involved in the retrieval of the files and the subsequent release of information, (2) obtained a copy of OIG's administrative referral report, (3) interviewed OIG investigators that conducted the investigation, and (4) read and took notes on supporting records of interviews and other documentary evidence in OIG's possession. This included reviewing follow-up OIG interviews with the Assistant Secretary for Public Affairs and the Under Secretary for Management.

Based on our review of OIG's report and supporting evidence, we concluded that OIG's work had answered almost all of the questions that had originally been posed to us by congressional requesters. We did not attempt to reinvestigate the same issues that OIG had covered.

Appendix II
Scope and Methodology

Through their lawyers, the former WHLO Director and the former Public Affairs aide declined our request for an interview. We contacted their lawyers and submitted a list of questions we wanted to discuss. The former aide's attorney told us that the aide had informed him that he was not interested in discussing our questions or any others. The attorney for the former WHLO Director said that he was not interested in discussing these questions with us. Both the former WHLO Deputy Director and the former staff assistant declined our requests to meet with them. However, each spoke to us over the phone and provided some information.

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