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United States Department of Justice,
Respondent.

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Appellant's Brief Regarding Jurisdiction and Timeliness

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V. Appendix (Separate Filing)

A. Full Size Exhibits

B. Section 67, Manual of Investigative Operations and Guidelines, Annotated

spots, leaving approximately 5,000 applicants submitted for Phase II consideration in FY2009. The Human Resources Division at Headquarters determines who is competitive enough to receive an invitation to Phase II.

Of the applicants considered for Phase II, a portion are selected, perhaps 3,500 applicants for FY2009.

The Phase II Interview and Written Exercise

Phase II consists of a lengthy behavioral interview as well as a written exercise designed to test the applicant's ability to [REDACTED].

After the applicant completes Phase II, his Test Ranking Grade for the written test and his grades from Phase II are combined to give the applicant a Percentile Ranking Grade. The PRG is the applicant's total score under the Special Agent Selection System, and "is utilized to rank each applicant in the program(s) under which he/she may qualify." 67-110 MIOG § 67-17.3.7. Applicants are ranked because "[a]ppointments are made on a competitive basis due to the limited number of vacancies occurring in this position." 67-101 MIOG § 67-17.2.3 (emphasis added).

Conditional Appointment

Applicants who pass Phase II and whose rank is competitive receive a Conditional Appointment as a Special Agent in the FBI. Some 2,100 applicants received the conditional appointment in FY2009. The conditional appointment is made by way of a letter from the appointing official, who is the Chief of the Human Resources Division. The applicant has 24 hours to accept the appointment, and this applicant accepted his appointment. The conditional appointment letter specifies the conditions required for further processing and for entrance on duty at the FBI Academy, such as completion of the background investigation. The appointment letter also discusses the grounds under which the appointment may be rescinded. One of the specified grounds is suitability.

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1 A believed lack of candor, whether resulting in a formal suitability determination or
2 simply a rescission of the appointment (i.e., a constructive suitability determination), is a
3 suitability ground over which the Merit Systems Protection Board has appellate jurisdiction.
4 *Upshaw v. Consumer Product Safety Commission*, 2009 MSPB 74 (DC-0731-08-0563-I-1)
5 (discussion at p. 4 et seq.); see *Edwards v. Department of Justice*, 87 M.S.P.R. 518 (2001)
6 (“Given that OPM’s rules contemplate position-specific suitability determinations, we hold that a
7 government-wide bar to competitive-service employment is not a jurisdictional prerequisite to a
8 suitability appeal.”). Admittedly, *Edwards* involved the competitive service. Thus, this
9 applicant relies on:

10 (1) 28 U.S.C. 536 for the proposition that all FBI employees—both support employees
11 and Special Agents—are in the excepted service,

12 (2) the audio recording and text found at
13 <http://www.fbi.gov/inside/archive/inside041709.htm> for the proposition that the FBI nonetheless
14 makes OPM suitability determinations on applicants. According to Supervisory Special Agent
15 Mark Gant (see webpage), “[o]ur background investigation is bifurcated. We do a suitability
16 portion and we also do a security portion. The suitability standards are determined by the Office
17 of Personnel Management (OPM). The security standards are established by the Office of the
18 Directorate of the National Intelligence. We **utilize** governmental standards in order to qualify
19 our candidates on suitability and security.” (emphasis added).

20 (3) 5 CFR sec. 1201.3(a)(8) grants the Merit Systems Protection Board appellate
21 jurisdiction of negative suitability determinations.

22 Of note, one condition of the conditional appointment is passing the FBI Physical Fitness
23 Test. However, this condition is not enforced as demonstrated in applicant’s case. Applicant
24 attained 15 points (12 points are required) but did not pass the pushup repetitions portion of the
25 test. Applicant’s conditional appointment was not rescinded, and applicant continued to be
26 processed.

27 //

Suitability and the Background Investigation

Essentially, throughout the application process and continuing into the background investigation, the applicant's suitability is continuously monitored.

The applicant's suitability is monitored because the Manual of Investigative Operations and Guidelines states, at 67-15, "[d]o not protract investigation when derogatory information developed obviously disqualifies applicant for Bureau employment." 67-15 MIOG at § 67-7.7(8). There is no point in the FBI continuing to process an applicant who is not suitable for employment. Thus, section 67-7.7(8) of the FBI manual figures prominently in this applicant's case because applicant's self-reported conduct was reviewed numerous times and did not rise to the level of suitability.

The continuous monitoring of an applicant's suitability begins with the online application, but continues with the mandated hiring forms provided to the applicant with the conditional appointment letter. One of these forms is the SF-86 Questionnaire For National Security Positions. The SF-86 Cover Sheet containing FBI-specific questions and conditions is also required to be submitted with the SF-86 although it is not provided with the appointment letter.

Once filled out, the SF-86 and Cover Sheet are transmitted to the Special Agent Clearance Unit at Headquarters. If the applicant reports disqualifying information in the SF-86 or Cover Sheet, the applicant is promptly adjudicated not suitable and receives a rejection letter. If the applicant is still suitable after submitting the SF-86 and Cover Sheet, the applicant is given a Personnel Security Interview. The PSI form is filled out by the interviewing agent and records more information about the applicant—both suitability (e.g., alcohol use) and security. The PSI instruction form provided to the interviewer advises the interviewer to immediately report negative information developed during the interview. The applicant is also fingerprinted after the PSI. If the applicant reports disqualifying information in the PSI or if indices checks are unfavorable, the applicant is adjudicated not suitable and receives a rejection letter.

1 An important point is that the scope of the FBI applicant background investigation is age
2 18 and up, except employment and traffic-related offenses committed while a minor. The
3 applicant is supposed to be advised of this fact in the Personnel Security Interview. The PSI
4 Form contains an “Advise Interviewee” section containing this important admonition and other
5 information. This applicant was not so advised.

6 If the applicant is still suitable after completing the PSI and the applicant passes criminal
7 records and fingerprinting checks, the applicant is moved forward and receives a polygraph
8 examination.

9 The polygraph examination asks at least two series of questions: Suitability Series I or
10 others, and Security Series II or others. According to a Human Resources Division officer
11 interviewed on television in 2008 (applicant is unable to locate the citation but will by the time
12 of the hearing if requested), some 30% of applicants do not pass the polygraph examination.
13 This leaves approximately 1,400 applicants per year for some 800 Special Agent slots at the
14 Academy. At some point or other, about 600 of these applicants must be removed from the
15 process or otherwise deferred.

16 After the polygraph, if the applicant is still suitable, the applicant’s completed file is
17 submitted to the Special Agent Clearance Unit with a directive to initiate the substantive portion
18 of the applicant background investigation such as contacts with references and former
19 employers. Although the term “background investigation” is used in memoranda transmitting
20 the applicant file, SACU has already received substantially all of the information through other
21 channels and the investigation technically starts with the submission of the SF-86 and other
22 materials.

23 The function of SACU is to conduct investigations on applicants and approve them for
24 security clearances, or else make suitability determinations or security denials on the applicants.
25 In other words, SACU conducts the suitability and security phases of the background
26 investigation. If the applicant’s background investigation is not completed favorably, the
27 applicant is adjudicated unsuitable or is denied a clearance, and the applicant receives a rejection
28

1 letter. If the ground is suitability, the letter does not mention suitability by name. Until some
2 time in approximately 2007, the letter did mention suitability. For example, “based on
3 statements you made in your Personnel Security Interview, it appears you may not be suitable for
4 employment with the FBI.” Or, for an applicant whose references have been contacted, “based
5 on information developed from several of your former employments, it appears you may not be
6 suitable for employment with the FBI.”

7 This type of suitability letter was changed in approximately 2007 to the current version:
8 “after careful consideration of the requirements for FBI employment, you were not selected.”
9 The letter indicates a negative suitability determination, but the applicant is not advised of this
10 fact or of any right to appeal.

11 If the applicant’s background investigation is completed favorably, SACU transmits the
12 file to the Human Resources Division to make final selections for the FBI Academy, where
13 applicants who receive “The Call” actually enter on duty. Those applicants who are not selected
14 at this competitive stage are advised by the Human Resources Division that the appointment is
15 rescinded because there was not a vacancy or otherwise; these applicants are not disqualified on
16 suitability grounds or denied a security clearance.

17 One of the components of the background investigation is adjudication. In adjudication,
18 the analyst creates leads for SACU Special Agents to reinterview the applicant in areas covered
19 in the background investigation. The applicant “may be reinterviewed for the purpose of
20 procuring additional information not previously furnished by him/her or to clarify information
21 received during investigation.” 67-25 MIOG at § 67-7.8(16)(a). A lead is essentially a mini-
22 investigation to be conducted by the Special Agent. The analyst prepares questions and other
23 matter for use by the Special Agent in communicating with the applicant. The Special Agent
24 reports the results of his/her communications with the applicant to the analyst, and the analyst
25 makes a decision with the information.

26 //

27 //

1 SACU is a component of the FBI in the Security Division, completely separate and apart
2 from the Human Resources Division. SACU is not authorized to make its own determinations
3 about an applicant's competitiveness.

4 SACU is also not authorized to decide which applicants to investigate and which
5 applicants not to investigate.

6 SACU is also not authorized to discriminate between applicants on any basis except what
7 is authorized by law, namely criminal convictions and conduct that rises to the level of OPM
8 suitability. SACU is expressly not authorized to determine that some applicants need to be
9 disqualified while others do not.

10 SACU is also not authorized to decide on its own to pursue particular applicants for
11 disqualifying information, as opposed to other applicants who are not so pursued.

12 SACU is, most importantly, not authorized to "select" or "non-select" applicants. Those
13 decisions are made by the Human Resources Division, not SACU.

14 THIS APPLICANT'S CASE

15 This applicant filed the online application on 12/2/08 and passed.

16 This applicant was invited to and passed the Phase I test conducted on 1/8/09.

17 This applicant was invited to and passed the Phase II interview and written test conducted
18 on 5/1/09.

19 This applicant was conditionally appointed a Special Agent in the FBI on 5/6/09 and
20 accepted the appointment.

21 This applicant completed the SF-86 and Cover Sheet, which were transmitted to SACU
22 on 5/22/09. This applicant was not unsuitable. Applicant reported in his SF-86 Cover Sheet that
23 from his teens (approximately age 13 and up) through approximately his second year in college,
24 he "sometimes" "pirated" commercial software from illegitimate sources, because he could not
25 afford the software but wanted to learn. This was simple copyright infringement, which is not a
26 crime. It was not Criminal Copyright Infringement. In any event, all conduct reported by the
27

1 applicant in his SF-86 and Cover Sheet was adjudicated in applicant's favor, including the
2 statements about software.

3 This applicant completed the Personnel Security Interview on 5/28/09 and was not
4 unsuitable. A significant error occurred: the applicant was not advised of the scope of the entire
5 FBI applicant background investigation, which is age 18 and up except for employment and
6 traffic offenses. As a result, applicant and the interviewer discussed childhood conduct in the
7 interview and applicant believed his whole life was relevant.

8 Applicant and the interviewer discussed applicant's conduct while under age 18 relating
9 to software. In response to a question, applicant advised the PSI agent that he could not recall
10 how often he had "pirated" software, although this was not recorded on the PSI form. Applicant
11 was also instructed to add his high school to the SF-86 even though applicant graduated as a
12 minor and more than 10 years prior. The FBI manual does not require information on the
13 applicant's high school when the applicant has a college degree. 67-20 MIOG § 67-7.8(8). In
14 any event, the completed PSI form and completed SF-86 were transmitted to SACU between
15 5/28/09 and 6/8/09, then again on 6/15/09. All conduct reported by the applicant in the PSI, SF-
16 86, and Cover Sheet including but not limited to past alcohol use and software downloading was
17 adjudicated in applicant's favor. Indeed, if SACU believed the conduct was Criminal Copyright
18 Infringement, it was nevertheless favorably adjudicated.

19 This applicant was given a polygraph examination on 6/9/09. The applicant passed the
20 polygraph examination and was not unsuitable. All conduct reported by the applicant in the
21 polygraph had already been reported in his written application and was adjudicated in applicant's
22 favor. Applicant was advised of the scope of the questions on the polygraph as being age 18 and
23 up, but was not advised of the scope of the applicant background investigation. Because of the
24 PSI interviewer's instructions to add childhood information and due to the PSI agent's and
25 applicant's discussion of childhood information, applicant reasonably believed that the
26 distinction made on the polygraph was intentional.

27 //

1 This applicant's file was transmitted to SACU on 6/15/09 with a directive to initiate the
2 background investigation, and applicant was not unsuitable.

3 The Special Agent Clearance Unit

4 Applicant alleges that a decision was made to attempt to disqualify applicant, and this
5 decision was based on applicant's perceived moral character being compared with other
6 applicants' perceived moral character or otherwise, which are prohibited personnel practices
7 under 5 U.S.C. sec. 2301 and 2302. The Department of Justice has directed all of its components
8 to follow the Merit System Principles and not engage in Prohibited Personnel Practices.

9 The alleged decision to place applicant in a "reject pile" at SACU and develop disqualifying
10 information was made during the 10 day period following applicant's file being transmitted to
11 SACU. Had the alleged discrimination not occurred, applicant would have been asked to enter
12 his SF-86 into the E-QIP system for further processing like any other applicant. Instead,
13 applicant was intended to be diverted to final adjudication after additional negative information
14 was developed.

15 The applicant alleges that the purpose of SACU's communications with applicant
16 between 6/25/09 and 6/30/09 were attempts to develop disqualifying information, because the
17 conduct previously reported to and approved by SACU was insufficiently negative to sustain a
18 suitability determination if appealed.

19 Applicant alleges that SACU personnel detected and/or confirmed the original error in
20 the PSI regarding the scope of investigation. Applicant alleges that the same personnel used
21 applicant's term "pirate" (describing non-criminal conduct) to suggest Criminal Copyright
22 Infringement. As a result, authorization was obtained to reinterview applicant in this otherwise
23 irrelevant area, which in any event had already been discussed in the written statement and PSI
24 and been favorably adjudicated.

25 This applicant was contacted by phone on 6/25/09 by SACU Special Agent Graham
26 Coder, further information was developed in negative areas previously disclosed by applicant,
27 and applicant was still suitable.

1 This applicant exchanged several email messages with SA Coder between 6/25/09 and
2 6/30/09, including volunteering information when not requested, and applicant was still suitable.
3 On one such occasion, Special Agent Coder asked a number of detailed follow up questions by
4 email to ascertain additional facts concerning an incident reported as improper by the applicant
5 in his application. (Applicant later learned from the person whom applicant identified to SA
6 Coder as a verifier that the conduct was not actually improper). Applicant truthfully answered
7 all of the follow up questions he was asked. Applicant was still suitable after this exchange.

8 **The 6/30/09 Phone Conversation with Special Agent Coder**

9 This applicant had a final telephone conversation on 6/30/09 with Special Agent Coder.
10 SA Coder referred to applicant's original written statement about software with a preamble
11 substantially consisting of "you mentioned in your written application that you sometimes
12 pirated commercial software." The written statement reported non-criminal software
13 downloading by applicant as a minor and young adult. SA Coder then asked applicant "how
14 many times did you pirate software?"

15 Applicant believed he was clarifying his original written statement. As applicant did in
16 the PSI, applicant advised SA Coder that applicant could not recall. SA Coder ignored this
17 answer and used an interviewing technique on the applicant.

18 Applicant recognized the technique, ignored it, and continued to respond by providing an
19 estimate in the absence of recollection. Applicant stated "probably a couple of dozen times."
20 This was applicant's estimate of his non-criminal software downloading for his whole life—both
21 minority and adulthood.

22 The statement was an estimate, and was consistent with applicant's original written
23 statement regarding software, itself containing an estimate that applicant "sometimes"
24 downloaded commercial software. "Sometimes" over 7-8 years or more as a minor and young
25 adult is consistent with the lifelong estimate of "probably a couple of dozen times." Due to the
26 irregularity in the Personnel Security Interview, applicant reasonably believed he was responding
27 for his whole life and not a one or two year period of his adult life.

1 SA Coder did not ask follow up questions that would have uncovered the original error,
2 as well as the fact that the specific nature of applicant's conduct was not criminal. SA Coder did
3 not ask any questions about the specific software involved, the time periods, or any other
4 information.

5 SA Coder also did not confront the applicant with the believed inconsistency or give the
6 applicant any chance to explain. Applicant's further responses would have made the original
7 error in the PSI apparent to both applicant and SA Coder.

8 The FBI manual requires investigators to ascertain the specific factual basis of negative
9 information, in part for the precise reason of preventing misunderstandings in the obtainment of
10 negative information. See 67-15 MIOG § 67-7.7(8).

11 **Special Agent Coder's Communications with the Analyst**

12 SA Coder represented applicant's estimate of "probably a couple of dozen times" as a
13 fact of "a couple of dozen times" to the SACU analyst. SA Coder did not advise the analyst that
14 (1) applicant stated he could not recall, (2) applicant provided an estimate using the word
15 "probably," (3) SA Coder utilized an interviewing technique after applicant advised he could not
16 recall, and (4) SA Coder asked no follow up questions of applicant.

17 When communicating with an analyst or any other personnel in an applicant
18 investigation, a Special Agent in the FBI is required to make any statements necessary to make
19 the statements made to the analyst not misleading.

20 Due to the omission of the word "probably," the omission of the fact that applicant first
21 advised SA Coder that applicant could not recall, the omission of the use of the interviewing
22 technique, and the omission of the fact that no follow up questions were asked, the
23 communication between SA Coder and the analyst was misleading.

24 The analyst wrote in the suitability determination that "a couple of dozen times" is
25 inconsistent with "sometimes" in applicant's written statement, because a couple of dozen times
26 over one or two years of applicant's adult life would not be "sometimes." The suitability
27

1 determination incorrectly assumed that applicant had been advised of the scope of the applicant
2 background investigation.

3 Applicant was adjudicated not suitable for a believed lack of candor, and applicant
4 received a rejection letter from SACU dated 7/1/09. The letter is worded to avoid stating that it
5 indicates a negative suitability determination, and the letter does not advise of any right of
6 appeal. Because the letter states it is not a denial of a security clearance, because SACU is only
7 authorized to conduct background investigations and approve security clearances rather than
8 assess competitiveness of applicants, and because the background investigation is bifurcated
9 between suitability and security, the letter must indicate a negative suitability determination.
10 In the alternative as to basis, the negative suitability determination was based on a believed
11 occurrence of Criminal Copyright Infringement due to the use of the term of art "pirate"
12 inconsistent with applicant's original usage of the term to indicate non-criminal conduct.
13 First, applicant's conduct was not criminal. Second, the balance of the conduct reported by
14 applicant in the 6/30/09 phone call occurred when applicant was a minor. The conduct was
15 therefore was outside the scope of investigation, and was improperly considered.

16 The determination could not have been based on any other grounds than candor or
17 Criminal Copyright Infringement, because all conduct reported by applicant prior to 6/30/09 was
18 reviewed by SACU and adjudicated in applicant's favor.

19 Due to protocol errors and omissions, applicant was improperly disqualified. It was
20 either a misunderstanding or was intentional.

21 Had follow up questions been asked, applicant would have understood what happened
22 and brought the original error to the attention of the SACU agent. The applicant then could have
23 provided a response for only his adult life, which would have been consistent with applicant's
24 characterization of the software downloading as sometimes occurring.

25 While the PSI agent made an error by not advising applicant of the scope of investigation,
26 it was discoverable had the SACU Special Agent asked follow up questions as he had done on
27 multiple prior occasions about less negative things than a believed disqualifying admission.

1 The Special Agent Selection System is designed to predict an applicant's ability to serve
2 as well as his or her success in the FBI. MIOG at 67-17.2.4. The Human Resources Division
3 made its initial determinations in these areas applicant's case, selected applicant, and made the
4 conditional appointment of applicant.

5 Had the misunderstanding or otherwise of 6/30/09 not occurred and had applicant passed
6 the background investigation, applicant would have had the opportunity to compete with other
7 cleared applicants based on merit, as well as the specialized needs of the FBI, for a slot at the
8 Academy. Applicant was harmed.

9 **Applicant's Attempts to Obtain Information and at Informal Resolution**

10 Applicant attempted to learn the basis for the decision, which would have let applicant
11 immediately correct the believed bases, on:

12 7/6/09 (email to SA Coder, phone call to Field Office, and FOIPA request)

13 7/7/09 (emails from/to SA Coder)

14 7/7/09-7/14/09 (phone calls to/from Field Office)

15 7/23/09 (FOIPA request)

16 8/20/09 (additional copy of 7/23/09 FOIPA request)

17 9/7/09 (FOIPA request)

18 9/9/09 (FOIPA appeal)

19 9/16/09 (letter to Acting Unit Chief)

20 9/20/09 (FOIPA request)

21 9/22/09 (FOIPA appeal)

22 9/23/09 (letter to Acting Unit Chief re MSPB)

23 Prior to filing this appeal on 9/25/09, all of applicant's requests for information resulted in:

24 (1) Applicant's FOIPA requests not being acknowledged or responded to;

25 (2) The most basic FOIPA request being responded to, but key information being
26 withheld or redacted under FOIPA;

27 (2) Lengthy delays or non-responses to FOIPA appeals; or

1 (3) Nothing in response.

2 Applicant actually believed he had not been competitive rather than adjudicated
3 unsuitable, and applicant applied to his second choice agency, the CIA. Although not shared
4 with applicant, the negative suitability determination was shared with the CIA between 8/27/09
5 and 9/14/09, when the CIA non-selected applicant. Applicant had not filled out an SF-86 or any
6 similar forms beyond a preliminary handwritten cover sheet similar in scope to the FBI online
7 application. Because the FBI suitability determination involves a believed lack of candor of
8 applicant, applicant has been barred from all federal employment.

9 The SF-86 modified by the applicant during the PSI under the PSI agent's direction does
10 not appear in the file produced to applicant under FOIPA. This is evidence with which applicant
11 could provide further proof that he was not advised of the scope of investigation.

12 Conclusion

13 The applicant's appointment was not "canceled" within the meaning of *Deida v.*
14 *Department of the Navy*, 110 M.S.P.R. 408, ¶ 13 (2009) in that the rescission of the appointment
15 was not based on an internal error of classification as it was in *Deida*. Thus, applicant was not
16 required to enter on duty before the MSPB would have jurisdiction.

17 Rather, applicant was conditionally appointed and an OPM suitability determination was
18 made, as indicated by the Acting Unit Chief's letter of 7/1/09, confirmed by Special Agent
19 Grahm Coder's email message of 7/7/09 indicating that an adjudication was made, and
20 confirmed by applicant's non-selection to the CIA.

21 To the extent any further proof is required, applicant requests adverse inferences
22 accepting applicant's allegations as fact due to the "purposeful sluggishness" of the FBI in
23 acknowledging FOIPA requests and the non-production of information in response to multiple
24 legitimate requests. *Residential Funding Corp. v. DeGeorge Financial Corp.* (2nd Cir. 2002) 306
25 F. 3d 109 (a court ruling on a motion or in a court trial may infer that evidence suppressed is
26 adverse to the party who suppressed it).

27 Pursuant to *Gordy v. Merit Systems Protection Board* (1984) 736 F. 2d 1505 and

1 other cases regarding an agency not informing an applicant of his right to appeal, as well as the
2 suppression of evidence, the normal 30 day time limit for appeals has been tolled for good cause.
3 Applicant filed the appeal within 30 days of learning of the MSPB remedy.
4

5 Date: 10/14/09

By: /S/

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9 Supplemental Notes

10 The Department of Justice has reaffirmed the Merit System Principles and the importance of
11 Avoiding Prohibited Personnel Practices in memoranda provided in the Appendix.

12 This brief alleges violations of these Prohibited Personnel Practices.

13 On 9/29/09, I received the Acknowledgment Order. I calculated 9/29/09 + 15 days as 10/14/09.
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CHRONOLOGY

Each event and a summary of information developed, if any, followed by the conclusion reached by the FBI. Conclusions are stated as allegations on information and belief.

12/2/08 Special Agent application filed

Basic information about applicant, compliance with drug policy, no felony convictions, willingness to be assigned anywhere, etc.

Suitable.

1/8/09 Phase I written test

Biodata inventory contains questions about personal conduct.

Suitable.

5/1/09 Phase II interview and written exercise.

60 minute behavioral interview.

Suitable.

5/6/09 Phase II passing results and Conditional Appointment is made.

5/18/09 SF-86 and Cover Sheet due

All data on the SF-86, SF-86 Cover Sheet and Attachments, including the following statement:

“When I was in my teens up through my second year of college, I sometimes pirated commercial software from online ‘warez’ sites and bulletin boards, because I could not afford to purchase the programs, and my parents denied most of my requests to purchase commercial software. Out of principle, I generally used pirated software for my own education by trial and error, and not for commercial use. When I could afford to purchase the software, which was in my second and third year of college when I was working on campus and also doing computer consulting, I did purchase most if not all of the programs I needed for that.”

The complete SF-86, and presumably the SF-86 Cover Sheet (an inference in applicant’s favor is appropriate), was transmitted to Headquarters by way of a memo to SACU dated 5/22/09.

Suitable.

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1 5/28/09 Personnel Security Interview

2 Applicant not advised of scope of investigation. All data on PSI
3 Form and other information collected, including “Pirating software
4 in his youth.” Information not on the form, including that
5 applicant started using unlicensed software at apx. age 13 in junior
6 high, applicant reports that his uses were non-commercial,
7 applicant is asked how often he “pirated” software; applicant states
8 he cannot recall.

9 Suitable. The PSI instruction sheet dated 5/22/09
10 requires personnel to upload and disperse four copies of the PSI form, and presumably
11 the completed SF-86, including to SACU. The specific papers submitted to SACU are
12 obscured by a FOIPA redaction, and an inference in applicant’s favor is appropriate.

13 6/9/09 Polygraph Examination

14 No new information; report states “pirated commercial software in
15 college,” which is because the examiner transferred this
16 information from applicant’s written statement while appropriately
17 ignoring applicant’s childhood conduct.

18 Suitable. The polygraph report was reviewed by SSA
19 “RGL” at Headquarters on 6/11/09 and applicant passed.

20 6/15/09 Completed SF-86 and all other forms and materials are sent to Special
21 Agent Clearance Unit (SACU) by FBI [REDACTED] with directive to initiate applicant’s
22 background investigation.

23 Suitable. A memo dated 6/15/09 encloses all of the
24 required materials including the “complete” SF-86 and PSI form.

25 6/25/09 First contact with SACU Special Agent Grahm Coder.

26 Basic information about applicant’s 2008 taxes being on extension;
27 information about applicant’s late [REDACTED] Tax Return
28 for 2007, information about late-paid parking citations,
information about reimbursement of applicant for expenses
incurred on behalf of [REDACTED]—with detailed followup
questions.

Suitable.

6/25/09 Email from applicant to SA Coder with follow up information.

Suitable.

6/25/09 Further email from applicant to SA Coder with follow up information.

Suitable.

6/26/09 Further email from applicant to SA Coder with follow up information.

Suitable.

6/30/09 Last contact with SA Coder. See account of the conversation in applicant's declaration.

Not Suitable.

7/1/09 Date of rejection letter.

7/6/09 Date of applicant's initial FOIPA request seeking applicant file and polygraph results.

7/6/09 Date of applicant's email to SA Coder requesting information.

7/6/09 Date applicant first contacts Field Office for information.

7/7/09 SA Coder responds to applicant's 7/6/09 inquiry without stating the grounds for discontinuation.

7/15/09 Approximate date of applicant's CIA application.

7/23/09 Applicant files second FOIPA request to capture any suitability-related information, communications between key personnel, and other information to confirm that no suitability determination was made. No response.

8/20/09 Applicant files second copy of 7/23/09 FOIPA request. No response.

8/27/09 Applicant has a phone interview with CIA recruiter.

9/3/09 Applicant receives a partial file in response to 7/6/09 FOIPA request.

9/9/09 Applicant appeals the non-response to 7/23/09 and 8/20/09 FOIPA requests. No response.

9/11/09 Applicant realizes there was a suitability determination.

9/12/09 Applicant drafts letter to CIA (sent 9/15/09) requesting advice due to anticipated further pursuit of FBI application. No response.

1 9/14/09 Applicant phones CIA recruiting center requesting a return call. No
2 response.
3 9/14/09 Date of CIA rejection letter.
4 9/16/09 Applicant writes to Acting Unit Chief theorizing that the FBI suitability
5 determination was based on a believed lack of candor and/or believed
6 criminal conduct. Applicant requests confirmation or notice of any other
7 suitability factors. No response.
8 9/22/09 Applicant appeals partial denial of 7/6/09 FOIPA request.
9 9/23/09 Applicant writes to Acting Unit Chief requesting further notice of action
10 for the purpose of appealing to Merit Systems Protection Board. No
11 response. Applicant files additional FOIPA request.
12 9/25/09 Applicant files appeal to MSPB.
13 9/25/09 Date of FBI FOIPA letters acknowledging receipt of apparently
14 applicant's 7/23/09 FOIPA request.
15 9/30/09 Applicant receives FOIPA letters regarding 7/23/09 request.
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1 **DECLARATION**

2 [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 **CHRONOLOGY**

- 7 1. I have prepared a separate Chronology, which appears in the body of this appeal
8 and accurately states the facts that are within my personal knowledge, showing
9 key points of my application process

10 **POST PHASE II PROCESSING**

- 11 2. I passed Phase II and received a conditional appointment as a Special Agent in the
12 FBI dated 5/6/09, which I accepted. The letter is attached to the appeal as
13 Exhibit E0.

14 **PREPARATION OF SF-86 COVER SHEET**

- 15 3. The SF-86 Cover Sheet, which was due 5/18/09, appears as Exhibit E1.
16 4. On 5/18/09, I wrote a statement in response to Question 1—Personal Declarations
17 that appears as Exhibit E2. The statement includes a section on software
18 practices. At the time I wrote the statement, I believed my whole life was
19 responsive to Question 1 and I made no distinction between minority and
20 adulthood. I wrote the statement after contacting the Field Office that day.
21 5. To summarize my statement and my conduct, in my teens (starting when I was
22 approximately 13 years old, although I now recall the beginning was when I was
23 12, not 13, because I was 12 in the 7th grade from 1992-1993 and not 13), and
24 continuing into and probably through the end of my second year of college
25 (around age 20), I sometimes downloaded commercial software from “warez”

26
27 [REDACTED]

28 [REDACTED]

1 message boards for my personal education through trial and error with software I
2 could not afford, and for other non-commercial uses such as education of others.
3 For example, in my first year of college I presented a small workshop to help
4 other students understand how to set up a basic web page. My tutorial included
5 images created with my admittedly unlicensed copy of Adobe Photoshop. I later
6 purchased Photoshop in my second year of college, 1999-2000, when I could
7 afford it.

8 6. I used the term “pirated” in my statement to indicate merely obtaining software
9 without purchase, which is consistent with trade usage and which under the
10 circumstances I described is not a crime because private financial gain is not
11 involved.

12 7. I do not recall ever committing Criminal Copyright Infringement. Among other
13 things, I know I have never sold pirated software, which is a crime, either as a
14 minor or as an adult. I do not recall ever profiting from my use of pirated
15 software either. To the extent there may be an ambiguity in my written statement
16 regarding commercial purposes through placement of a comma, I believe I
17 clarified this during both the Personnel Security Interview and polygraph
18 examination.

19 8. I also do not recall ever downloading without purchase non-commercial software
20 such as games or entertainment, because the educational and economic reasons I
21 cited in my statement as applying to commercial software would not apply to
22 cheaper, entertainment-only software.

23 9. When I prepared my written statement, and prior to receiving my partial applicant
24 file under FOIPA on 9/3/09, I did not review or even remember the law of
25 Criminal Copyright Infringement or any software piracy-related provisions of
26 law, websites, or any other guidance that might suggest what mitigating factors or
27 conduct might exempt me from criminal liability. I also could not recall until I
28

1 prepared this appeal how I arrived at the principle referred to in my statement, I
2 just knew that it was a principle.

3 PERSONNEL SECURITY INTERVIEW

4 10. My Personnel Security Interview was 5/28/09 at the [REDACTED] Field Office.
5 Special Agent [REDACTED] [REDACTED] interviewed me.

6 11. I was not advised of, and was not otherwise aware of, the scope of the applicant
7 background investigation of age 18 and up or any other portion of the “Advise
8 Interviewee” section of the PSI Form. With respect to the interviewer, [REDACTED] did not
9 read the section aloud and did not otherwise advise me of its contents. A copy of
10 page 1 of the PSI form is appears as Exhibit E5.

11 12. Rather, the interviewer made some brief comments stating substantially that I
12 could feel free to be forthcoming with information because Special Agents have
13 heard it all, and that current Special Agents have often not been fired for things
14 that were disclosed, even though they were bad.

15 13. My response to these brief statements was: “I’m here to tell the truth.”

16 14. The PSI then began without further introduction.

17 15. When I saw the contents of the PSI Form for the first time on 9/3/09, some three
18 months after my PSI and two months after the rejection letter, I learned for the
19 first time that the scope of the entire applicant background investigation is age 18
20 and up, except traffic and employment offenses committed while a minor.

21 16. As I was not so aware and was not so advised, I understood in the PSI and when
22 speaking with Special Agent Graham Coder later on that I was expected to answer
23 for my whole life, just as I had done in my SF-86 Cover Sheet.

24 17. When the interviewer asked Question C. about discipline I received in school, I
25 asked the interviewer whether I should report discipline received in school as a
26 minor or an adult.

1 18. I asked because, while I believed such things as my software downloading could
2 be relevant, I believed such things as receiving detention in elementary school as
3 I had on perhaps three occasions were truly irrelevant to my pursuit of federal
4 employment. (I didn't feel the need to explain the details of my reasoning to the
5 interviewer).

6 19. The interviewer thought for several moments, then indicated that I only needed to
7 report discipline received as an adult. I answered accordingly by disclosing
8 discipline of [REDACTED] of which I was President, although I
9 was not personally disciplined or accused of wrongdoing. I did not apply this
10 limitation to other questions and the interviewer did not ask me to do so. The
11 basis for my own inquiry was relevance of the conduct, not the specific time
12 period involved.

13 20. Also pertaining to the education section, SA [REDACTED] instructed me to add my high
14 school to the SF-86. I pointed out that this was contrary to the instructions on the
15 SF-86, which requires information on education going back 10 years or (due to
16 the Cover Sheet) age 18. I had graduated as a minor and more than 10 years
17 prior.

18 21. SA [REDACTED] handed me a sheet of handwritten notes (attached as Exhibit E5A) as
19 her justification for asking for my high school, and I briefly read the first few
20 lines, which note that my high school was not listed, before SA [REDACTED] asked for
21 the notes back.

22 22. I noticed and thought it was odd that there were exclamation points on the form,
23 but I did not read that portion before handing the notes back. I refer to these notes
24 in one of my FOIPA requests, and I did receive them as part of the partial FOIPA
25 file produced on 8/31/09. Despite receiving these notes, I did not receive the
26 modified SF-86 with the additions made during the PSI such as my high school.
27

1 23. After showing me part of the notes, SA [REDACTED] excused herself from the interview
2 room for a short while, and then returned. I don't recall whether she took the
3 paperwork with her, but either way I did not read or attempt to read any of the
4 papers she might have left.

5 24. SA [REDACTED] returned and then instructed me to add my high school to the form
6 anyway. So I hand-wrote in my high school, [REDACTED] [REDACTED] on
7 the form. I provided the school address from memory, and I wrote my high
8 school friend [REDACTED] in as a reference. I couldn't recall [REDACTED]'s current
9 contact information, so I just put in his name and this was acceptable to the
10 interviewer.

11 25. The SF-86 Cover Sheet instructs completing each portion of the SF-86 back to
12 age 18, so I remember thinking that the interviewer's instruction to add my high
13 school didn't make sense, but I complied.

14 26. The interviewer also instructed me to add references to my college and law school
15 (as requested in the sheet of notes), although the time periods were also beyond
16 the instructions on the form. I complied.

17 27. I had forgotten but recalled during the PSI doing some work for attorney [REDACTED]
18 [REDACTED] on an independent contractor basis during my junior year
19 summer in college, 2001. I mentioned this to SA [REDACTED] and [REDACTED] asked me to add
20 this information to one of the SF-86 continuation sheets. I looked up [REDACTED]
21 [REDACTED] contact information on my iPhone web browser [REDACTED]
22 [REDACTED] and I added the requested information.

23 28. The SF-86 in the partial applicant file produced to me on 8/31/09 is a copy of the
24 original one I submitted on 5/18/09. My applicant file as produced does not
25 contain the updated SF-86 showing my high school and other information added
26 during the PSI. The PSI form also doesn't say that my high school was added.
27

29. I responded to Question Q. regarding trustworthiness by recounting (I believe the same) details of my software issues as stated in my written attachment to my SF-86 Cover Sheet.

30. I added, however, that age 13 and when I was in junior high was the approximate starting date, and that I had never sold pirated software. I believe I also added that I had never profited from pirated software. This was recorded on the form as “Pirating software in his youth.”

31. I was also asked one follow up question—either (1) how often I pirated software, or (2) how many times I had pirated software. I could not remember, and I said I could not remember, just as I said to the SACU Special Agent later on. This is not reflected on the form.

32. I don’t remember any other follow up questions about software.

33. I was not asked to review or sign the PSI Form, although I did complete and sign a separate form concerning past experimentation with illegal drugs within FBI policy limits.

34. I was fingerprinted and had other interactions with FBI personnel that are not relevant at this point in the appeal.

POLYGRAPH EXAMINATION

35. My polygraph examination occurred on 6/9/09 at [REDACTED]

36. In the pre-test interview, I remember feeling surprised and then confused when the examiner informed me that the questions on the polygraph only covered my life from age 18 and up. But I thought that since this is the FBI, and because the PSI interviewer and I had talked a number of times about my life before age 18 including me adding my high school to the SF-86, any differences between the PSI and polygraph were intentional. I advised the polygraph examiner that I understood the admonition applicable to the polygraph, and I responded to polygraph questions accordingly.

CONTACTS WITH SPECIAL AGENT CLEARANCE UNIT

37. From 6/25/09 to 6/30/09, I had a number of communications with Special Agent
Grahm Coder, some of which are relevant to this filing.

38. On 6/30/09, SA Coder called me. The portion of the conversation that is pertinent at this time was as follows:

- a. I don't recall the precise preamble of the question SA Coder asked about software. Because it didn't produce surprise, I believe it was "you mentioned in your written application that you sometimes pirated commercial software."
- b. Regardless of the exact preamble, I understood that I was clarifying my original written statement discussing non-criminal conduct that occurred over a years-long period of my life.
- c. SA Coder asked me how many times I had pirated software.
- d. I had already been asked for this information in the PSI, and I had advised the interviewer that I could not remember.
- e. I also advised Special Agent Coder that I could not remember.
- f. I then began speaking again to add to my statement, but I couldn't finish because I was interrupted with
- g. "HOW MANY?!" SA Coder shifted abruptly to a deep, authoritative FBI voice. I remember this part of the conversation well because I felt shocked at how different SA Coder sounded.
- h. I remember feeling confused because I had truthfully answered SA Coder's question by advising him that I could not remember. This was not a situation in which I had been holding something back or had something on my mind that would be susceptible to spontaneous admission, as a criminal suspect might do under interrogation. I have held nothing back from the FBI in my application or otherwise. Although I remember

1 feeling confused why not being able to remember was not good enough, in
2 an attempt to be as forthcoming as I had been before with SA Coder and
3 other personnel, I paused for several moments as I estimated the frequency
4 of my software downloading over my whole life.

5 i. I then said “probably a couple of dozen times.”

6 j. There was a pause.

7 k. SA Coder responded, “a couple of dozen times?!”

8 l. He left of “probably,” although that didn’t seem important at the time.

9 m. I said that that sounded about right, like I would do with any ballpark
10 figure. After all, this would be occasional over my whole life.

11 n. There was another pause.

12 o. I believe I added that it was important to note that I had never sold or
13 profited from pirated software.

14 p. There were no follow up questions about software, like starting date, end
15 date, type of software, value of the software, why I did it, whether I ever
16 purchased it, and so on.

17 q. This concludes the portion of the conversation relevant to this filing.

18 39. When I say I cannot recall, it means I cannot recall. When I provide an estimate,
19 it is my estimate but not a fact. That’s just how I operate. I adopted a course of
20 brutal honesty in the FBI application process long before the 6/30/09
21 conversation, first because that is my nature, and second for reasons that relate to
22 my motivations for applying to the FBI. Regardless of my views on candor, I
23 have not only answered all of the questions I have been asked truthfully, I have
24 also volunteered a significant amount of negative information about myself. So I
25 am having a hard time understanding precisely why I was disqualified except if it
26 was due to the issue with the scope of investigation or the use of the term
27 “pirated” in a manner inconsistent with that in which I used the term in my

1 statement. Needless to say, a brutally honest applicant being disqualified for a
2 lack of candor but not for his negative conduct is, in my opinion, beyond ironic.
3 40. Special Agent Coder had previously asked detailed follow up questions on other
4 negative subjects.

- 5 a. On 6/25/09, SA Coder sent me an email message confirming several areas
6 from our 6/25/09 phone conversation that he said I needed to provide more
7 information on. In the email, SA Coder asked me follow up questions
8 regarding my 2007 [REDACTED] Tax return; a disputed Verizon
9 telephone bill, my attorney license, late-paid parking tickets, and one other
10 matter.
- 11 b. The other matter was an incident I reported in my written application
12 regarding my reimbursing myself for bona fide expenses I incurred on
13 behalf of [REDACTED] I reported this as improper because I had
14 not provided an accounting, and I noted making a donation later on that I
15 believed offset the reimbursement. SA Coder asked a number of detailed
16 follow up questions regarding this incident:

17 Also I need to follow up on additional items:

- 18 1. During your PSI² and SF-86 [sic] you discussed
19 improper reimbursement procedures that you performed
20 while acting as [REDACTED]
21 [REDACTED] You then mentioned that you made a donation
22 back to the organization. How much did you donate?
23 Please provide the name of the foundation that we might
24 confirm the donation. Please also provide the details
25 regarding the mitigation that you made reference to. Was

26
27 ² This is incorrect; the incident was not discussed in my PSI and is not reflected on the
28 PSI form. The incident was reported in my SF-86 Cover Sheet.

1 there an official action taken against you? Was there any
2 allegations [sic] against you? Does [REDACTED] know
3 about the improper reimbursements? Please be very
4 detailed in your description. Please include dates, times,
5 names, and circumstances in your explanations along with
6 any other pertinent details.

7 I answered all of these questions. After I was rejected, I later contacted
8 the [REDACTED] member who is currently responsible for collecting donations, who
9 was also my mentor in my decision to go to law school. His name is [REDACTED]
10 [REDACTED] and I provided his contact information to SA Coder as the verifier of my
11 donation. I contacted [REDACTED] in September 2009 when I made another
12 donation, and I described the same facts that I had reported to the FBI as my
13 reason for donating money. [REDACTED]'s response was that what I did was "not
14 morally questionable in the least," that he's done the same thing himself, and
15 that I certainly should not report it as improper on any future applications.
16 [REDACTED]'s information is in my Initial Disclosure under F.R.C.P. Rule 26 for
17 verification.

18 **GOOD CAUSE FOR LATE-FILED APPEAL**

19 41. 6/30/09 was my last telephone communication with Special Agent Graham Coder.

20 42. On 7/5/09, I received a letter dated 7/1/09 from the Acting Unit Chief of the
21 Special Agent Clearance Unit, Montchell Brice. The letter is attached as Exhibit
22 E10.

23 43. On 7/6/09, I emailed Special Agent Coder in an attempt to learn the basis for the
24 discontinuation of my application.

25 44. Also on 7/6/09, I followed the advice in the Acting Unit Chief's letter regarding
26 the Freedom of Information Act/Privacy Act (FOIPA), by filing a basic FOIPA
27 request for "my file" including but not limited to the polygraph report.

1 45. Also on 7/6/09, I contacted the [REDACTED] Field Office and left messages.

2 46. On 7/7/09, I received a response from Special Agent Coder. This is attached as
3 Exhibit E11.

4 47. SA Coder stated in his email that he did not “adjudicate” my application. This
5 confused me, because the letter from the Acting Unit Chief did not mention
6 suitability.

7 48. Between 7/7/09 and 7/12/09, I had further communications with the Field Office
8 and was advised by the Applicant Coordinator and her assistant that they did not
9 have any information for me, at least until I got my file under FOIPA. They did
10 invite me to call to discuss the materials if the file did not make clear what the
11 basis was for the FBI decision.

12 49. I could not figure out what had happened. Because of SA Coder’s comment
13 about reapplying, his comment about adjudication, and because I had not yet read
14 section 67 of the Manual of Investigative Operations and Guidelines, I thought
15 there were two possibilities:

16 a. I had been adjudicated not suitable because my past alcohol use or other
17 negative conduct was too recent, or

18 b. I was just not competitive this year.

19 50. I wrote SA Coder an email on 7/7/09 thanking him for his message and saying
20 that I hoped the passage of time would alleviate whatever concerns disqualified
21 me. (I didn’t know the difference between permanent disqualification and other
22 suitability grounds at the time).

23 51. It never crossed my mind until 9/11/09 that it might have been believed that I
24 made an inconsistent statement or admitted to criminal conduct.

25 52. Rather, because the Acting Unit Chief’s letter referred several times to the
26 competitiveness of the applicant pool, that I was not “selected,” and so on, I
27



1 actually believed that I was most likely just not competitive this year, and I
2 advised multiple friends and family of this belief.

3 53. I then took steps to increase my competitiveness with the FBI by studying the FBI
4 Critical Skills webpage and online application to see what might make me more
5 competitive, and I pursued several options. I purchased and started reading flight
6 manuals to study for FAA pilot exams, and I purchased a reference book to help
7 me attain the Cisco Certified Network Professional certification, which would
8 qualify me under the Computer Science/Information Technology Critical Skill.

9 54. In addition, in mid-July 2009 I filed an application with the Central Intelligence
10 Agency, my second choice, for a position as a Specialized Skills Officer—
11 Targeting at CIA Headquarters. Within 10 days I was provided hiring materials,
12 was asked to fill out a preliminary written application, and was asked to complete
13 the CIA's preliminary online tests in preparation for further processing. See para.
14 75 below regarding further processing.

15 MULTIPLE FOIPA REQUESTS AND APPEALS

16 55. In July 2009, after filing my basic FOIPA request and after reading portions of
17 section 67 of the Manual of Investigative Operations and Guidelines, I did
18 anticipate that the FBI might not have been telling me everything, and that not
19 everything might be filed in the applicant file. I also learned from internet
20 research that, approximately two years ago, the FBI appears to have changed the
21 language of the letters it uses to discontinue applicants.

22 56. According to my research, the previously used suitability letter contained such
23 language as “based on information developed during your PSI/polygraph/from
24 several past employments/etc., it appears you may not be suitable for employment
25 with the FBI.” I did not know whether the letter I received was a new version of
26 the suitability letter made perhaps to discourage employment litigation, or a
27 different letter entirely. So I filed multiple FOIPA requests seeking production of
28

1 all suitability-related information and other information from which I might infer
2 what happened, whether contained in “my file” or not.

3 57. My FOIPA requests dated 7/23/09, 8/20/09 (a second copy of the 7/23/09
4 request), 9/7/09, and 9/20/09 remain not responded to.

5 58. I did receive two letters acknowledging receipt of at least one of these requests—
6 dated 9/25/09, the very day I filed my MSPB appeal, and mailed 9/28/09, the very
7 day my MSPB appeal was faxed by MSPB to the FBI.

8 **9/3/09-9/23/09**

9 59. While I was waiting for my 7/6/09 FOIPA request to be responded to, and
10 continuing after I received the partial file, I continued doing research into the FBI
11 application process. I discovered a web page at
12 <http://www.fbi.gov/inside/archive/inside041709.htm> that contains an audio
13 interview with Supervisory Special Agent Mark Gant of the Initial Clearance
14 Unit.

15 60. On 9/3/09, I received a partial file in response to my 7/6/09 FOIPA request.

16 61. The file as produced does not contain any material labeled as a suitability
17 determination or that I can possibly consider to be a suitability determination.
18 Please see separate index provided as Exhibit E12. In addition, none of my
19 communications with SA Coder are reflected in the file.

20 62. What also does not appear in the partial file is the SF-86 as modified during the
21 Personnel Security Interview with information from my childhood that is outside
22 the scope of investigation.

23 63. 8 pages of material are reported to be withheld, reportedly because they are
24 exempt under FOIPA exemptions pertaining to law enforcement information and
25 selection tests. The materials were not identified with any particularity in the
26 FOIPA response.

1 64. On or about 9/9/09, I appealed the non-response of my 7/23/09 and 8/20/09
2 requests to the U.S. DOJ Office of Information Policy. I never heard back.
3 65. On 9/22/09, I appealed the partial denial of my 7/6/09 FOIPA request to the U.S.
4 DOJ Office of Information Policy. On 10/10/09, I received a response advising
5 me that there is a large backlog of FOIPA appeals. The reference number
6 assigned to my appeal of the partial denial is 2010-0048.
7 66. On 9/11/09, while replaying my communications with SA Coder in my head, I
8 had a sudden realization that the phone call on 6/30/09 was the most likely cause
9 of the negative suitability determination in my case due to the question and
10 answer about software, and the problem with the scope of investigation in my
11 Personnel Security Interview that I had noticed earlier when I saw the form.
12 67. I experienced denial that what I believe happened (as presented in the Statement
13 of Facts/Allegations) could have occurred in the FBI, as I did not want to believe
14 it.
15 68. On 9/16/09, I sent the Acting Unit Chief a letter theorizing what suitability
16 grounds I believe were relied upon and requesting confirmation of them, plus
17 notice of any other grounds for the suitability determination. I never heard back
18 as of this writing.
19 69. On 9/23/09, I sent the Acting Unit Chief another letter stating that it appeared to
20 me that MSPB had jurisdiction, and requesting notice of the adverse action for the
21 purpose of making my appeal timely. I also offered to meet and confer in an
22 attempt to resolve the problem at the lowest level possible. I never heard back as
23 of this writing.
24 70. On 9/30/09, I wrote the Employment Law Unit requesting that we meet and
25 confer in an attempt to resolve the problem at the lowest level possible. I never
26 heard back although I received a phone call about another aspect of my appeal on
27 10/14/09.

71. As of this writing, I still have not been given notice of the official action.

PROCESSING OF CIA APPLICATION

72. A few weeks after completing the preliminary CIA application and online test batteries in late July to early August, I was contacted by phone by a recruiter who identified himself as being with [REDACTED]. The recruiter invited me to do a phone interview, and we set up the interview. On 8/27/09, I had a 36-minute phone interview with I believe the same recruiter.

73. The recruiter and I discussed [REDACTED]

74. The recruiter seemed most interested, however, in the end of my FBI application.

75. I advised the recruiter that I had passed the polygraph examination and that I had no information why my conditional appointment was rescinded. I said that I didn't believe a suitability determination was made, and I even read the exact language of the rejection letter to the recruiter. This did not resolve his concerns. He seemed confused by the fact that I had passed the polygraph but was later rejected. However, the interview continued.

76. I advised the recruiter that I thought I could more ably serve in a headquarters officer position than as a collection officer overseas, which is why I was applying for a headquarters position and not the Clandestine Service Trainee program.

77. The recruiter acknowledged this and recommended that I [REDACTED]

78. The recruiter said nothing about competitiveness of the CIA applicant pool at any time. In fact, the recruiter asked me if I would consider positions with the CIA other than [REDACTED], such as [REDACTED] and [REDACTED]

1 [REDACTED] I told the recruiter that I would be open to those other
2 positions.

3 79. The recruiter advised that I could expect [REDACTED] a decision [REDACTED]
4 [REDACTED] regarding further processing in [REDACTED]
5 [REDACTED].

6 80. On 9/12/09, having made inferences about what occurred with my FBI
7 application, I decided that I would try to put my CIA application on hold until
8 resolving the FBI application.

9 81. At this point, I was still unaware of any remedy with the Merit Systems Protection
10 Board and I began writing draft letters to send to the Acting Unit Chief of SACU
11 because I thought there would be an internal appeals process. On or about
12 9/14/09, I called the CIA recruiting center asking to be contacted about my
13 application. No one returned my call.

14 82. On 9/15/09 or so, I sent the letter that I had written on 9/12/09 (I didn't get around
15 to mailing it for a few days) advising the CIA that the grounds for the FBI decision
16 appeared to have been withheld from me and appeared to be based on information
17 from my minority. I advised the CIA that I intended to pursue the FBI application
18 further, and I asked to be contacted for advice on how to proceed with the CIA
19 application. No one responded to my letter.

20 83. On or about 9/17/09, I received a CIA rejection letter dated 9/14/09.

21 84. Although the letter mentions the CST position, I did not apply for the Clandestine
22 Service Trainee position. The recruiter also did not mention competitiveness of
23 the applicant pool as reported in the letter.

24 **EVENTUAL MSPB FILING**

25 85. After writing the Acting Unit Chief on 9/16/09, I was still not aware of any
26 remedy with the Merit Systems Protection Board, and my plan was to pursue
27 whatever internal appeals process there might be. I was also not aware of any

1 time limits on an internal appeals process. I did not want to spend time and space
2 addressing areas that were not part of the suitability determination, so I wanted to
3 confirm which suitability grounds were relied upon before sending the letter
4 appeal. I never heard back as of this writing.

5 86. I had not even heard of the Merit Systems Protection Board until I stumbled upon
6 it on the internet some time after 9/16/09. I have no idea how I found the website,
7 but when I read on approximately 9/22/09 that the MSPB has jurisdiction to
8 review negative suitability determinations, that is when I finally realized that I
9 might be able to appeal to the MSPB. I noted the normal 30 day time limit stated
10 on the MSPB website and the exceptions to this time limit stated in the
11 regulations.

12 87. On 9/23/09, I sent a letter to the Acting Unit Chief requesting notice of appeal
13 rights, mentioning MSPB, and offering to meet and confer about the grounds in the
14 suitability determination. I still have not heard back as of this writing.

15 88. On 9/25/09 I filed my MSPB appeal. By my calculation, this was 22 days after I
16 received my FOIPA file, 14 days after I initially realized what I believe happened
17 in the 6/30/09 phone call, and 3 days after I realized that the MSPB appeared to
18 have jurisdiction.

19 89. On 9/30/09, I received two letters from the FBI FOIPA unit dated 9/25/09. They
20 were postmarked 9/28/09, the same day my MSPB appeal was faxed to the FBI
21 (according to the Certificate of Service). I am unable to determine which specific
22 FOIPA requests the letters acknowledge, although it appears at least one of the
23 letters acknowledges part of my 7/23/09 FOIPA request for part of the FBI
24 manual.

25 90. On 10/10/09, I received a letter from the USDOJ Office of Information Policy
26 acknowledging receipt of my appeal of the partial denial of my 7/6/09 FOIPA
27 request, and assigning an appeal number of 2010-0048.

91. On 10/14/09, the date of this filing, I received a phone call from the Agency representative, Ms. Patricia Miller, regarding a motion to stay discovery reportedly filed on 10/13/09. I requested, and was not provided, information on what recourse I may have if other than an appeal to the Merit Systems Protection Board. It was not clear where Ms. Miller was advising me to raise my concerns, but I did advise her that I had twice written the Acting Unit Chief with my beliefs of what the suitability grounds were and received nothing in response. Ms. Miller stated she was not sure she could do anything to encourage a response.

I declare under penalty of perjury [REDACTED] that the foregoing is true and correct.

10/14/09

/S/

Date [REDACTED]

EXHIBIT KEY

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date: 6/15/2009

To: Security Attn: SACU
Room 10130

From: [Redacted]
Squad A-1, Applicant Recruiting Unit

Contact: [Redacted]

Approved By: [Redacted]

Drafted By: [Redacted]

Case ID #: 67B-HQ-[Redacted] (Pending)

Title: [Redacted]
BUAP - SPECIAL AGENT

Synopsis: Initiate Background Investigation.

Enclosure(s): Above-captioned Applicant is applying is a Special Agent candidate. Enclosed are Applicant's SP-96 application for Federal Employment, the completed Personnel Security Interview guide document, and all mandated "Release" hiring forms.

Details: Please initiate Candidate's Background Investigation and assign the Above-captioned Candidate an analyst.

♦♦

Third Party
b6
b7C

E10 *115*

FOIPA office redaction

FOIPA office justification for redaction under 5 U.S.C. sec. 552 and 552a

Border of document in FBI storage system

Appellant's FOIPA file index number

Appellant's Exhibit Number

All exhibits are resized for convenience of annotation.
Original sizes are provided in the Appendix.

Exhibit E0 - Conditional Appointment of Applicant

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 06, 2009

Dear Mr. [REDACTED]:

I am pleased to inform you that you attained a passing score on the Phase II of the Special Agent Selection System (SASS) and are, therefore, being offered a conditional appointment as a Special Agent in the Federal Bureau of Investigation (FBI), United States Department of Justice.

This appointment is contingent upon the existence of a vacancy of a funded Special Agent position and successful completion of a background investigation, preemployment polygraph examination, physical examination, urinalysis drug test and physical fitness test (PFT). Your conditional appointment offer (CAO) will be rescinded if you fail any of the testing and/or investigative aspects of the background investigation. If you do not pass the initial PFT, your CAO will be rescinded and no further processing will occur until you are prepared to retake the PFT. If you have a disability which may require an accommodation during the preliminary phase of processing, please notify the Applicant Coordinator in the nearest FBI field office as soon as possible. All requests for reasonable accommodation should be accompanied by current medical documentation, and include a personal statement which indicates the type of accommodation being requested. The FBI will give full consideration to the request, and grant a reasonable accommodation, whenever possible.

As the next step in the process, you will be scheduled for the PFT. You must also complete the SF 86 - Questionnaire for National Security Positions. The SF 86 is available on the FBI's website at www.fbijobs.gov. If you pass the PFT, this application will be used to conduct your background investigation. To fully address security issues, the FBI requires that you answer many of the questions back to age 18 rather than seven years as requested on the

E0

Processing field office: [REDACTED]
067-HQ-[REDACTED]

(Continued - Over)

The letter spells out the conditions:

1. Vacancy.
2. Background.
3. Polygraph.
4. PFT
5. FFD Exam.
6. Drug test.

The PFT requirement was not enforced. Applicant met all other requirements except, obviously, the background investigation.

No condition is stated regarding competitiveness of the applicant, or that the Special Agent Clearance Unit may decide on its own that an applicant is not competitive.

Exhibit E0 - Conditional Appointment of Applicant, continued

application. Be sure to print and follow the FBI's specific instructions for completing the SF 86 so that you provide all additional information required by this agency. You should fully complete the SF 86 and submit it to the nearest FBI office within five days from receipt of this letter. Failure to fully and accurately complete the entire SF 86 will result in the delay or discontinuation of your processing.

Frequently, applicants ask questions about the nature of the background investigation. The following information is intended to answer the questions which are asked most often:

The purpose of the background investigation is to ensure that applicants meet the FBI's personnel security standards. Background investigations are extremely thorough. At a minimum, the FBI will conduct extensive and thorough interviews of all references and close personal associates, any former spouse(s), and all former employers and coworkers. Please note, we will also contact your current employer.

The FBI will conduct neighborhood checks on all residences, interviewing landlords as well as neighbors. We will verify your attendance at all institutions of higher education, and if you have served in the military, we will review your military records. We will contact regional credit bureaus covering areas where you have lived, and conduct checks of local law enforcement agencies for jurisdictions in which you have resided, attended school, or been employed.

We will withdraw this employment offer if the investigation reveals information that precludes a security and/or suitability clearance (e.g., serious credit problems, abuse of alcohol, history of illegal drug usage outside of FBI guidelines, misrepresentations during the application process, etc.). In addition, applicants who have been convicted of a felony or domestic violence charge or who display a lack of candor during any phase of the hiring process will be automatically disqualified from further consideration.

The FBI, which is firmly committed to a drug-free society and work place, realizes that qualified individuals may have used illegal drugs at some point in their past. It is the policy of the FBI that prospective employees will be required to pass a urinalysis test which screens for illegal drug use prior to final appointment. In addition, our hiring policies automatically preclude consideration of applicants when any of the following conditions exist:

E0 * The applicant has used marijuana/cannabis during the three year period preceding the date of his/her application for employment, has extensively used marijuana/cannabis,

2

(Continued - Over)

Apparently refers to SF-86 Cover Sheet, which was not provided with the appointment letter.

Appointment to be rescinded if (1) the applicant is not suitable, or (2) the applicant is determined to be a security risk. A believed lack of candor is an OPM suitability ground. 5 C.F.R. sec. 731.103(d).

The appointment letter describes the background investigation.

Exhibit E0 - Conditional Appointment of Applicant, continued

or has used it over a substantial period of time. In making the determination about an applicant's suitability for FBI employment, all relevant facts, including the recency and frequency of use, will be evaluated.

* The applicant has used any illegal drug (including anabolic steroids after February 27, 1991), other than marijuana/cannabis, during the ten-year period preceding the date of his/her application for employment, or engaged in more than a minimal experimentation in his/her lifetime. In making the determination about an applicant's suitability for FBI employment, all relevant facts, including the frequency of use, will be evaluated.

* The applicant has engaged in the unauthorized use of any illegal drug while employed or serving in a position of public trust.

* The applicant has sold illegal drugs for profit.

To ensure potential Special Agents are capable and fully qualified to safely and efficiently perform the duties without undue risk to themselves or others, you will also be subject to a preemployment physical examination and a PFT. Upon receipt of this letter, please download and complete Standard Form 93, Report of Medical History, from the www.fbijobs.gov website and provide it by facsimile transmission to the Health Care Programs Unit (HCPU), Fitness for Duty Program, Attn: Applicant Processing, at (202) 324-0468 for initial review. Any questions may be referred to HCPU at (202) 324-4976. Your facsimile cover sheet should include a contact phone number for discussion of your medical history with an FBI Headquarters medical professional. Failure to complete this in advance of your medical examination appointment could significantly delay completion of this portion of applicant processing.

All employees of the FBI are required to have a Top Secret security clearance. Therefore, applicants will also be required to pass a polygraph examination which will address security issues, veracity of the information on the application, and use of illegal drugs.

It creates significant hardship for both the FBI and the applicant if this conditional offer must be withdrawn at the end of the background process. To prevent such hardship, we want to alert you to these potential problems now, at the outset, and invite you to discuss any concerns you may have. The Applicant

The letter continues regarding drug use.

Exhibit E0 - Conditional Appointment of Applicant, continued

Coordinator in your processing Field office is your point-of-contact throughout the hiring process. Please contact the Applicant Coordinator at the telephone number listed below if you wish to discuss any aspect of the background investigation process.

You will be notified upon the successful completion of your processing. If the results are favorable and a vacancy remains open for the funded position for which you applied, and you continue to meet the qualifications for the position (including age requirements), you will be contacted regarding a reporting date for an upcoming New Agents' Training Class at the FBI Academy, Quantico, Virginia. Your conditional appointment is at the GL-10 level. The salary at this grade is currently \$ 46,598 per annum. In addition, following successful completion of training and upon assignment to your duty station, additional compensation (up to 25 percent of your base salary) may be earned as availability pay performed in connection with official duties, provided certain necessary requirements are met. Depending on your office of assignment, you may also be entitled to an interim geographic adjustment (locality pay).

Be aware that as a Special Agent, you must be prepared to accept temporary duty or transfer anywhere world-wide. Should you elect not to accept this offer of appointment with the FBI, we request that you notify the Applicant Coordinator in your processing office at the telephone number listed below within 24 hours of receipt of this letter.

We look forward to having you join us at the FBI, where you will find a great opportunity for public service and a distinguished career in law enforcement.

Sincerely yours,

John G. Raucci
Assistant Director,
Human Resources Officer
Human Resources Division


By: [Redacted]
Applicant Coordinator
[Redacted]
Telephone Number

E0

The appointing official is the Assistant
Director of the Human Resources Division

Exhibit E1 - SF-86 Cover Sheet

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SF-86 Cover Sheet

67B-HQ- [redacted]

Federal Bureau of Investigation

INSTRUCTIONS: Please attach this form when submitting the SF-86 to FBIHQ

Your Name: [redacted] Your Social Security Number: [redacted]

PERSONAL DECLARATIONS:

1. Are you aware of any information about yourself or anyone with whom you have been closely associated (including relatives and roommates) that tends to reflect unfavorably on your reputation, morals, character, abilities or loyalty to the United States? If yes, provide details on an attached sheet of paper.
☒ Yes ☐ No

2. Do you understand that all prospective employees will be required to submit to a urinalysis test for drug abuse prior to employment?
☒ Yes ☐ No

SUPPLEMENTAL QUESTIONS: If sufficient space is not available on this form, please continue on a separate sheet of paper (please make sure to note your name, social security number, and the question number).

Employment Activities

1. Have you previously submitted an application for employment with the FBI? If yes, indicate date(s) and the position(s) for which you applied.
☒ Yes ☐ No

Date: December 2005 Position: Special Agent (withdrew application)

2. List all federal agencies and any state or local law enforcement entities to which you have applied for employment.

Agency/Entity: _____ Position: _____

3. Has any organization listed above investigated, interviewed, tested, or subjected you to a polygraph examination? If yes, indicate the name of the agency, the date, and the type of pre-screening method.
☐ Yes ☐ No

Agency: _____ Date: _____ Pre-screening Method: _____

Financial Delinquencies

4. Are you currently delinquent or have you ever been in default on any student loan?
☐ Yes ☒ No

5. Are you current on all federal, state, and local tax debts (including individual and employer tax debts that apply to you)?
☒ Yes ☐ No

6. Do you have income from sources other than your salary and your spouse's salary? If yes, specify the source and amount?
☐ Yes ☒ No

Source: _____ Amount: _____

Licenses and Certifications

7. Are you a member of the bar? If yes, give the date of membership and the state. Also indicate on a separate sheet of paper if any complaints or grievances were ever filed against you.
☒ Yes ☐ No

Date of Membership: _____ State: _____

8. Are you a licensed automobile driver? If yes, provide the information requested below.
☒ Yes ☐ No

License Type: _____ Expiration Date: _____

State: _____ License Number: _____

9. Do you possess any other licenses or certifications (e.g., Nurse, Emergency Medical Technician, Real Estate, etc.)? If yes, provide the information requested below. Also indicate on a separate sheet of paper if any complaints or grievances were ever filed against you.
☐ Yes ☒ No

License Type: _____ Issuing Entity: _____

Availability to Begin Work With the FBI

10. How much advance notice (e.g., number of weeks) do you need to report to work at the FBI?
Number of Weeks: 2-3

E1

14

No time period specified.

The SF-86 Cover Sheet, which applicant's supplemental attachment regarding software practices was prepared in response to.

Exhibit E1 - SF-86 Cover Sheet, Continued

FBI SF 86 REQUIREMENTS:

The SF-86 is a standard background investigation form used by the entire U.S. Intelligence Community. Several questions on the form ask for seven years of information. However, because of some security requirements unique to the FBI, the FBI requires certain questions to be answered back to age 18. Please validate that you completed the following sections of the SF-86 back to age 18.

Section 9: Where You Have Lived		No
Section 10: Where You Went To School		
Section 11: Your Employment Activities		
Section 12: People Who Know You Well		
Section 17: Your Foreign Activities		
Section 18: Foreign Countries You Have Visited		
Section 21: Your Medical Record		
Section 22: Your Employment Record		
Section 23: Your Police Record (questions e and f)		
Section 24: Your Use of Illegal Drugs (questions a and c)		
Section 25: Your Use of Alcohol		
Section 27: Your Financial Record		
Section 28: Your Financial Delinquencies (question a)		
Section 29: Public Record Civil Court Actions		

AGENCY USE ONLY. APPLICANTS ARE NOT TO FILL OUT THIS SECTION

Please ensure to obtain the following during the PSI:

- A copy of the applicant's passport, if necessary
- All counseling information, to include the name of the person conducting the counseling, their address, the relevant dates, and any medication(s) prescribed.
- Date and place of birth for all references/roommates

Please ensure that all of the applicant's fingerprint cards sent to CJIS.

E1

15

SF-86 Required to be completed back to age 18.

Applicant did not list his high school until instructed to do so by the PSI agent.

Exhibit E2 - Statement Regarding Software

MAY-18-2009 14:56 [redacted] P.005
File: [redacted] supplemental attachment.txt Page 1 of 1
Supplemental Attachment 1. to SF-86 Cover Sheet: Personal Declarations

[redacted]

This sheet supplements my initial disclosure filed 5/18/09.

1. Negative Information About Myself

Character
In my freshman year of college (1998-1999), two of my high school friends and I made fake IDs using templates we found on the internet. I used the ID on two or three occasions that year before retiring it for fear of getting in trouble.

[redacted]

[redacted]

When I was in my teens up through my second year in college, I sometimes pirated commercial software from online "warez" sites and bulletin boards, because I could not afford to purchase the programs, and my parents denied most of my requests to purchase commercial software. Out of principle, I generally used pirated software for my own education by trial and error, and not for commercial use. When I could afford to purchase the software, which was in my second and third year of college when I was working on campus and also doing computer consulting, I did purchase most if not all of the programs I needed for that.

5/18/09 [redacted]

E2

TOTAL P.005 13

Clarified during PSI as apx. 13 and up

"Sometimes" over applicant's whole life, including this apx. 7-8 year period, is consistent with estimate of "probably a couple of dozen times," most of which was during applicant's minority, which is outside the scope of investigation.

"Pirated" used consistent with trade usage to mean merely downloading software. This is not a crime.

Reference to applicant's parents indicates conduct before age 18.

Education by trial and error is a non-commercial use, and is not Criminal Copyright Infringement.

Mitigating conduct stated in detail indicating that applicant's conduct was not criminal.

Applicant's original statement regarding software practices. Applicant believes his whole life is relevant and reports conduct from his childhood and early adulthood. All statements herein were provided to SACU in memoranda well before the 6/30/09 phone call and were favorably adjudicated. No one asked about the specific nature of the conduct at any time, perhaps because the FBI is the very agency responsible for enforcing the law of Criminal Copyright Infringement and is familiar with its provisions.

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Date: 5/22/2009

Attn: SACU
Room 10130

Attn: SA [redacted]
Personnel Security Interview

From: [REDACTED]
A-1 Applicant Recruiting Unit
Contact: [REDACTED]

Drafted By:

Case ID #: 67B-HQ-[REDACTED] (Pending)

Title: BUAP - SPECIAL AGENT

Synopsis: Conduct Personnel Security Interview. This Electronic Communication sets forth the assignment of a lead to conduct the PSI, complete the Applicant Fingerprinting Process and submit the required reports documenting the results of the PSI by the listed BUDED WITHOUT FAIL.

Details: Please conduct Pre-Employment Personnel Security Interview (PSI) on Above-captioned Applicant. The PSI must be conducted in accordance with the instructions provided.

Enclosed are: the Applicant's SF-86 FBI employment application and the "Security Investigation PSI Form", which is used for the interview. The PSI needs to be conducted within a seven-day time period. Please follow all instructions on the attached BLUE cover sheet.

Enclosed are also two fingerprint cards. Send completed fingerprints with "original" PSI interview results to Author of this EC IMMEDIATELY UPON COMPLETION. All other designated copies to IMA - Squad A-1.

Probationary Agents receiving leads to conduct PSI's and Fingerprints should have their Training Agents review the PSI Questionnaire and fingerprint cards to ensure proper completion.

NOTE: If you are unable to conduct this PSI interview for any reason, YOU MUST IMMEDIATELY NOTIFY THE FOLLOWING INDIVIDUALS:

1425ka02.ec

126

Interviewer
receives next
exhibit--instruc-
tion sheet.

Unknown why error in scope of investigation was apparently not detected by the training agent.

Appellant's Brief Regarding Jurisdiction and Timeliness

Exhibit E3 - Memo to SACU continued

To: Security From: [REDACTED]
Re: 05/22/2009

1. YOUR IMMEDIATE SUPERVISOR
2. SSA [REDACTED]
3. AUTHOR OF THIS EC - [REDACTED]

Third Party
b6
b7C

IT IS THE RESPONSIBILITY OF THE ORIGINALLY ASSIGNED PSI AGENT OR SQUAD SSA TO ADVISE THE APPLICANT RECRUITING UNIT (ARU) OF YOUR NON-AVAILABILITY TO CONDUCT THIS INTERVIEW AND FINGERPRINT DIRECTIVE AND TO MAKE APPROPRIATE ASSIGNMENT CHANGES IN ACS. THE ORIGINAL BUDED CANNOT BE CHANGED.

E3

2

127

Page 2-3 of memo contain ancillary information.

To: Security From: [REDACTED]
Re: 05/22/2009

LEAD(a):
Set Lead 1: (Action)
[REDACTED]
[REDACTED]
Conduct PSI interview and fingerprinting of [REDACTED]

E3

3

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Exhibit E4 - PSI Instruction Sheet

Third Party
b6
b7C

PERSONNEL SECURITY INTERVIEW (PSI)

* Assigned to Special Agent: [redacted]
* Supervisor: [redacted]
* Deadline: *June 27*

BUAP - SPECIAL AGENT: [redacted]
#: **67B-HQ-** [redacted]

A Personnel Security Interview (PSI) request is being set forth on Above-captioned Applicant. Follow Instructions contained on this cover sheet and on the attached "interview instructions". Results of this investigation are to be reported on the "Personnel Security Interview Guide"(enclosed). This PSI Guide REPLACES the FD-302. Follow this Guide, having the Applicant SIGN it at completion. This PSI report should be HANDWRITTEN by the interviewing Agent. If security issues arise as a result of this PSI interview, a "302" write-up should be completed and attached to this completed "PSI INTERVIEW GUIDE".

**** Conduct Fingerprinting of Applicant as indicated.

**** **PSI INTERVIEWER: IMMEDIATELY SEND COMPLETED**
FINGERPRINT CARDS TO: [redacted] **in the APPLICANT UNIT.**

**** AGENT: SEND FOUR COPIES TO 'IMA' [redacted] for**
UPLOADING and DISPERSAL. COVER LEAD in ACS.

**** 'IMA': SEND ONE COPY OF THE RESULTS TO:**

- 1.) Security, Special Agent Clearance Unit, Room 10130,
Attn: [redacted]
- 2.) Applicant 67. File (IMA [redacted] Squad A-1 (see above)
- 3.) Security Officer (261B- [redacted])
- 4.) Applicant Recruiting Unit, Administrative Specialist (name indicated on PSI EC)

Applicant Recruiting Unit:
*Applicant Coordinator - [redacted]
* Admin. Specialist - [redacted]
✓ * Admin. Specialist - [redacted]

E4

130

Special Agent
[redacted]
(sp?)

Instruction sheet
advises SA [redacted]
[redacted] to follow the
instructions on
the PSI Form.

There is actually
nowhere on the
form for the ap-
plicant to sign.

SACU receives
a copy of the
PSI report
and favorably
adjudicates its
contents, in-
cluding "Pirat-
ing software in
his youth."

FOIPA redaction
makes it impos-
sible to determine
what precisely was
sent to SACU.
An inference in
applicant's favor
that the completed
SF-86 was sent to
SACU is appropri-
ate.

The completed SF-86 and PSI form, both reporting childhood conduct of the applicant, are sent to SACU and the applicant's headquarters file, #67B-HQ-1505893. The completed SF-86 is later withheld from applicant when the FBI responds to applicant's preliminary FOIPA request on 8/31/09.

Exhibit E5 - Personnel Security Interview Form

Security Investigation PSI Form
January 2007
FBI Security Division

Security Investigation Personnel Security Interview (PSI) Form

This is a form for the interviewer. It should be written clearly or typed by the interviewer. It is not to be filled out by the applicant. Please include addendum pages if necessary and title the pages appropriately under the section and question that required the addendum. This document will be used to set leads. If it is not legible, it can caused unnecessary delays in processing.

Interview Date: 5/28/09 Start Time: 8:56am

Interviewee Classification: ☒ Agent ☐ Support

Advise Interviewee:

The purpose of the PSI is to review and finalize your SF-86 as part of a Personnel Security Investigation for employment with the FBI. Prior to beginning this interview, please provide all copies that you were requested to bring, i.e., professional certifications, drivers license, any past or current foreign issued passports, U.S. passports, proof of payments to address any financial delinquencies, DD-214, etc. (Interviewer should obtain these from the applicant to ensure a thorough interview and if necessary follow up information for lead purposes)

Any issues regarding habits or experiences that concern you should be discussed during this interview to assure successful completion of the investigation. Candor and forthrightness are significant considerations during the application process. Lack of candor may disqualify you from employment. Holding back or refraining from discussing any issues of concern can negatively impact the results of your investigation. Concealed matters in your life could be the basis for coercion, attempted pressure or influence. The scope of this background investigation covers the period from your 18th birthday to the present. If you had any employment or traffic violations or arrests prior to your 18th birthday, you must include that information as well.

A. Interviewee Information

File Number: <u>67B-HQ-</u>	
Name: <u>[REDACTED]</u>	AKA(s): <u>[REDACTED]</u>
POB: <u>[REDACTED]</u>	SSAN: <u>[REDACTED]</u>
Driver's License#: <u>[REDACTED]</u>	<u>[REDACTED]</u>
Expiration Date: <u>[REDACTED]</u>	
State: <u>[REDACTED]</u>	
Cellular# or Best Contact#: <u>[REDACTED]</u>	

This is a form for the interviewer.
It is not to be filled in by the interviewee.

Page 1 of 17

E5

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Applicant was not advised of any of the Advise Interview section, including the key section, "The scope of this background investigation covers the period from your 18th birthday to the present. If you had any employment or traffic violations or arrests prior to your 18th birthday, you must include that information as well."

Exhibit E5 - Personnel Security Interview Form, Continued

Security Investigation PSI Form
January 2007
FBI Security Division

Are the bulk of your cultural and recreational activities (e.g., the TV programs you watch, the books and magazines you read, the games you play, the activities you participate in, the restaurants you go to) based in English or in your native tongue?

Are you registered to vote in any country other than the U.S.? If yes, what country? No

C. Education

Is info on the SF-86 ("Where you went to school") correct? Include all education to include universities that you were registered for credit hours from even though you did not graduate from that institution. ☐ No ☒ Yes

Was any disciplinary action taken against you while you were in school or were you dismissed or suspended from school for academic reasons? ☐ No ☒ Yes. If so, provide details:

Did you receive any education/training in a foreign country? If so provide details, to include purpose of training/education, when and where. Be specific. No

D. Employment

Has any or the following happened to you? If applicant responds yes, obtain specific details of circumstances.

Have you ever been fired from a job? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, provide circumstances*:
Quit a job after being told you would be fired? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, provide circumstances*:
Left a job by mutual agreement following allegations of misconduct/unsatisfactory performance? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, provide circumstances*:
Left a job for other reasons under unfavorable circumstances? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, provide circumstances*:
Have you ever been denied any federal government employment? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, provide circumstances*:
Have you ever been the subject of any disciplinary action? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, provide circumstances*:

This is a form for the interviewer.
It is not to be filled in by the interviewee.

Page 3 of 17

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E5

Applicant's high school was added to the SF-86, although outside the scope of investigation, but this is not indicated here or at the end of the form.

Applicant asked the interviewer whether he should report discipline received in school as a minor, because applicant believed it was not relevant, not that the time period was restricted. The interviewer responded in the negative without applying this limitation to any other questions.

Exhibit E5 - PSI form, continued

Security Investigation PSI Form
January 2007
FBI Security Division

Do you have any obligations or connections to a foreign person, group, business or country?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, detail:
Do you maintain regular contact with foreign nationals through e-mail, chat-rooms, telephone, postal mail, or any other method?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, detail:
To the best of your knowledge, have you or any members of your immediate family or roommates ever committed or attempted to commit, or aided or abetted another who committed or attempted to commit an act of sabotage, espionage, treason or sedition against the United States?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, detail:
To the best of your knowledge, have you or any members of your immediate family or roommates ever publicly or privately advocated the overthrow of the Government of the United States by unconstitutional means?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, detail:
Other than when on official business, to the best of your knowledge have you or any members of your immediate family or roommates ever knowingly established an association with individuals whom you have reason to believe may be suspected of espionage or sabotage?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, detail:
Other than when on official business, to the best of your knowledge have you or any members of your immediate family or roommates ever knowingly established an association with representatives of foreign nations, interest groups, terrorist organizations or militia groups whom you have reason to believe may be hostile to the interests of the United States or United States Government?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, detail:

(If necessary, provide attachment of additional information)

Q. Personal Conduct

Your responses will be validated during the background investigation

Is there anything in your background or activities that someone might use to coerce or blackmail you?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, explain:
Is there anything in your background or conduct that could raise questions about your trustworthiness or reliability?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	If so, explain: [REDACTED] <i>Pirating software in his youth.</i>

If you are coming from a law enforcement background, are you aware of any Giglio	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, explain:
--	---	-----------------

This is a form for the interviewer.
It is not to be filled in by the interviewee.

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E5

“Pirating software in his youth” indicates childhood conduct. The form omits applicant’s statements that the conduct started in junior high at approximately age 13, as well as applicant’s important qualification that he had never sold pirated software. The PSI agent also did not ask about the specific nature of the conduct.

Exhibit E5 - PSI form, continued

Security Investigation PSI Form
January 2007
FBI Security Division

issues (Derogatory information that would necessitate disclosure to defense counsel) that may affect your ability to testify?	
Are you aware of any personal conduct, now or in the past, which could cause unfavorable notoriety or embarrassment to the Federal government?	

(If necessary, provide attachment of additional information)

R. Conclusion

Is there anything we haven't discussed that you feel may be important to your investigation?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	If so, describe:
--	---	------------------

(If necessary, provide attachment of additional information)

Please review your SF-86 for accuracy one last time before we submit it for your background investigation. *Added to SF-86 another former employer that he remembered (on continuation sheet).*

"Thank you for your time and cooperation"

Print name of Interviewer: Interview End Time: 10:11am

Signature of Interviewer: Date: 5/28/09

Third Party
b6
b7C

Page 17 of 17

This is a form for the interviewer.
It is not to be filled in by the interviewee.

E5

Applicant is not asked to review or sign the form.

Form omits that applicant's high school was added to the SF-86. Neither the modified SF-86 nor the SF-86 continuation sheet referred to here appear in the FOIPA file.

Exhibit E5A - Notes Prepared for Special Agent [REDACTED]

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DoB: [REDACTED]

[REDACTED] - [REDACTED] (86 Review) 5/18/2009

Continuation sheet for "Where you Lived" from 9/1998-2/2006 Lived in 7 locations (some repetitive). and did not name persons who knew him.

PAGE 4, Where you went to school! H.S. was not listed.

Note: Applicant noted on his SF 86 13A, and attached a statement saying that he will be let laid-off 5/9/2009 on indefinite terms but the reason is because OFFICE found out he is pursuing a career with FBI.

PAGE 4 IT IS 23 illegal drug activity: in May 2008 applicant ~~attempted~~ accompanied a friend to purchase Marijuana, but did not smoke.

Applicant Faxed in supplemental sheet citing past character flaws. (A MUST READ!!)

5/19/2009

Applicant Faxed in another supplemental sheet citing another past character flaw. At the end of statement applicant refers to an incident discussed during the interview.

E5A

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The author had the correct date of birth and age for the applicant.

The FBI manual, instructions on the SF-86, SF-86 Cover Sheet, and scope of investigation indicate that applicant was not required to list his high school. Nevertheless, applicant was instructed to disclose his high school during the PSI and apparently both SA [REDACTED] and [REDACTED] supervisor were of this view.

The author, who has not identified himself/herself, is presumably SA [REDACTED] training agent at the [REDACTED] Field Office.

Exhibit E6 - Polygraph directive

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 6/06/2009 Date: 6/08/2009

To: Security Attn: SACU
Room 10130

Attn: Polygraph Unit
SA [redacted]

From: [redacted]
11D Applicant Recruiting Unit
Contact: [redacted]

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: 67B-HQ-[redacted] (Pending)

Title: [redacted]
BUAP - SPECIAL AGENT

Third Party
b6
b7C

Synopsis: Conduct PRE-EMPLOYMENT Polygraph Examination. Appointment date/time is: Tuesday, June 9th, 2009 @ 9a.m.

Details: Please conduct a Polygraph Examination on Above-Captioned Applicant.

Enclosed is Applicant's SF-86 application. A copy of his Personnel Security Interview (PSI) will be forthcoming from interviewing agent.

E6

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SACU allows applicant to take the polygraph examination.

Applicant would not have been allowed to take the polygraph if anything in his SF-86, Cover Sheet, or PSI were disqualifying.

Exhibit E7 - Polygraph Results

FD-498 Revised 10-30-2006		FEDERAL BUREAU OF INVESTIGATION POLYGRAPH REPORT	
REVIEWED BY: SSA [redacted] <i>ROR</i>	DATE: 06/11/2009	FOR FBIHQ USE ONLY Third Party b6 b7C	
RESULTS: Series I NDI Series II NDI Series III <i>[red arrow]</i> Series IV Series V			
COUNTERMEASURES: None Suspected X Suspected Confirmed			
Date of Report 06/09/2009	Date of Examination 06/09/2009	Case ID # 67B-HQ-[redacted]	
Field Office/Agency Requesting Examination FBIHQ			
Authorizing Official Director, FBI		Date Authorized 03/01/1994	
Examinee's Name (Last, First, Middle) [redacted]		Date of Birth (mm/dd/yyyy) SSN (xxx-xx-xxxx) [redacted]	
Case Title: BUAP-SUPPORT PRE-EMPLOYMENT POLYGRAPH EXAMINATION			

Applicant passes the polygraph examination (no deception indicated). Again, all conduct is favorably adjudicated, including the statements about software.

Case Synopsis/Examiner's Conclusion:

This applicant is seeking employment with the FBI and has agreed to undergo polygraph testing as part of the application process. The focus of this examination involved issues relating to [redacted]

k6
b2
b7E

On June 9, 2009, the applicant, [redacted] came to the [redacted] FBI office to take the exam. He was provided with the opportunity to view a FD-328B, "Applicant Agreement to Interview With Polygraph" form. After reading the form, he stated that he understood everything on it and then signed it.

Applicant advised on his SF-86 (6-8 usages) and pre-test interview usage on no more than 10 occasions. Applicant was present in 2008 when a friend purchased less than \$100 of marijuana. No recent use. Applicant applied for a college parking pass under what he described as false pretenses. Pirated commercial software while in college. Applicant was advised these were not serious crimes however crime question was changed. All of the previously mentioned items are explained by applicant in his application.

He was given Suitability Series I of a polygraph examination, consisting of the following relevant questions:

Suitability Series I:

A. [redacted]

B. [redacted]

k6
b2
b7E

Examiner's Name SA [redacted] *RGL*

Third Party
b6
b7C

E7

5

The examiner transfers information from applicant's SF-86 Cover Sheet while appropriately ignoring the portion of conduct that is obviously from applicant's childhood. Even this statement is favorably adjudicated by SACU.

Exhibit E7 - Polygraph Results

c. [REDACTED]

The results of Suitability Series I were deemed to be not indicative of deception.

Applicant was then given Security Series II, consisting of the following relevant questions:

b6
b2
b7E

Security Series II:

A. [REDACTED]

B. [REDACTED]

The results of Security Series II were deemed to be not indicative of deception.

Exhibit E8 - Initiation of Substantive Background Investigation

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 6/15/2009

To: Security

Attn: SACU
Room 10130

From: [REDACTED]
Squad A-1, Applicant Recruiting Unit

Third Party
b6
b7C

Contact: [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

Case ID #: 67B-HQ-[REDACTED] (Pending)

Title: [REDACTED]
BUAP - SPECIAL AGENT

Synopsis: Initiate Background Investigation.

Enclosure(s): Above-captioned Applicant is applying is a Special Agent candidate. Enclosed are Applicant's SF-86 application for Federal Employment, the completed Personnel Security Interview guide document, and all mandated "Release" hiring forms.

Details: Please initiate Candidate's Background Investigation and assign the Above-captioned Candidate an analyst.

♦♦

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Applicant is clear to proceed with the substantive background investigation.

Go to website

Exhibit E9 - Complete audio interview with SSA Mark Gant of Initial Clearance Unit



Federal Bureau of Investigation - Inside the FBI

<http://www.fbi.gov/inside/archive/inside041709.htm>



Background Checks for New Applicants, 04/17/09

Listen with [Windows Media Player](#)
Also available on iTunes



Apparently this is
for support appli-
cants. →

Mr. Schiff: Hello I'm Neal Schiff and welcome to *Inside the FBI*, a weekly podcast about news, cases, and operations. Early this year the FBI began a hiring blitz. Thousands have applied.

Mr. Gant: "Over 280,000 applications."

Mr. Schiff: That's Supervisory Special Agent Mark Gant. He's the Chief of the FBI's Initial Clearance Section in the Security Division. A key part of processing of applications for employment with the FBI is the background check. And Gant says it's "essential."

Mr. Gant: "No one will enter into the FBI as an employee, contractor, or law enforcement officer without a background investigation."

Mr. Schiff: Tell me a little bit about the background investigation.

Mr. Gant: "We work very closely with our Human Resources Division. The Human Resources Division identifies individuals that they deemed to try to hire with the FBI. The first initial step for any applicant is the S.F., Standard Form 86, that an individual fills out which goes back approximately 10 years. And we capture information about a person's background; their history; their date and place of birth; their family; their associates; their employment, and other pertinent information that we then do our background investigation."

Mr. Schiff: And Gant says agents checking applicants don't stop there.

→ Bifurcation; OPM
suitability

Mr. Gant: "Our background investigation is bifurcated. We do a suitability portion and we also do a security portion. The suitability standards are determined by the Office of Personnel Management (OPM). The security standards are established by the Office of the Directorate of the National Intelligence. We utilize governmental standards in order to qualify our candidates on suitability and security."

Mr. Schiff: You may be wondering how long background checks take. Could be two to three months or even longer depending on the applicant. And Gant says there are some key areas investigators look at.

Mr. Gant: "The issues that we're looking at for suitability involve candor issues; individual's use and/or abuse of intoxicants; their criminal behavior; personal conduct; financial considerations; and employment histories. As it relates to security issues, and we utilize trying to verify a person's date and place of birth; their citizenship status. We check FBI files and other agency checks and we also verify education, employment, organizations that a person belongs to. We check their references and associates; their relatives; associates and roommates; check their marital status and then try to also assess their associations in their neighborhoods, trying to find out if this person is a true and loyal citizen of the United States."

E9

2 of 3

10/12/2009 11:57 PM

Mr. Schiff We asked Gant about the processing of applications. Depending on each situation, portions of the background may be conducted at other than ones' local FBI field office; could be several field offices around the country.

Mr. Gant "Correct. We have 56 field offices throughout the country. In addition to utilizing our field offices, we have our Background Investigative Contract Services (BICS), which is another part of our Security Division that also handles these leads. What my Personnel Security Specialists do is from their S F. 86, they establish leads; they go out, establish the lead. And the lead is basically an investigation to be conducted. We assign those leads to either the field office or the BICS investigator, the special investigator through BICS, the Background Investigative Contract Services. They go out, cover the lead, and then forward that information back to my Personnel Security Specialists to review, analyze, and make an adjudication whether a person is suitable for security and suitability."

Mr. Schiff Is there a polygraph that has to be taken?

Mr. Gant "Yes. All FBI employees are polygraphed on two issues. The first issue is on drug usage; the second issue is on counterintelligence, national security polygraph. Those are the two issues that all FBI employees have to pass a polygraph on."

Mr. Schiff What happens after the background is completed?

Mr. Gant "After the background is completed, again, my Personnel Security Specialists, they gather all of the information regarding an individual's background. They then go through what we call the adjudication phase. And in the adjudication phase we get all of the information. The term that we use is 'the whole person.' We try to assess the person as a 'whole' and not putting too much emphasis on any one particular area that may raise a flag, but try and look at a person as a 'whole' and determine their suitability and whether they meet our security standards. Once they have reviewed, gotten all of the information in, they make their adjudication and it's basically a yes or no call from the Personnel Security Specialists. Then we have various levels of review."

Mr. Schiff If you had one message to these several hundred thousand applicants from the Security Division's standpoint, what would that message be?

Mr. Gant "The biggest message that I tell anybody that's applying for the FBI or any other federal government agency is to be truthful. The issue, the concern, that can eliminate anyone's employment or opportunities for employment is candor. If we find that that information you have provided to us is inaccurate, false, misleading, then at that point we can discontinue an applicant for lack of candor. If an individual has applied for the FBI and is deemed to show lack of candor in any issue during the process, that will eliminate that person from ever applying with the FBI ever again. There are issues; there are certain standards; there may be things in your background that you don't want us to find out. I assure you we have some of the best investigators; we have, the, I believe, the best adjudicators; we are going to go ahead and try to find out everything about this person so that we bring in the best and the brightest and most suitable to be employees of the FBI."

Mr. Schiff If you've applied, hang in there. If you want to work for the FBI and you're qualified, head for your computer, get onto the Internet, visit www.fbi.gov and the process begins. Good luck to you. That concludes our show. Thanks for listening. I'm Neal Schiff of the FBI's Office of Public Affairs.

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E9

Exhibit E10 - Unannotated Suitability Letter



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

July 1, 2009

Dear Mr. [REDACTED]:

This is to advise you of the status of your application for a position with the FBI.

Your application was reviewed along with those of other applicants. I regret to inform you that after careful consideration of the requirements for FBI employment, you were not selected. As a result, we must rescind our Conditional Appointment Offer. In making this decision, we conducted an objective assessment of the information available to us and the needs of our organization. The choice between the many qualified candidates is a difficult one, and I regret that we are unable to offer you a more favorable decision.

Our action to rescind your Conditional Appointment Offer does not constitute a security denial. On future security applications and forms you may affirm, insofar as it relates to this action, you were not denied a security clearance.

You may request specific information from your file under the provisions of the Freedom of Information/Privacy Acts (FOIPA) by submitting a written request. Should you decide to submit a request, you should include your full name, date and place of birth, and present address. You must verify your identity with a notarized signature, or in lieu of the notarized signature, a declaration pursuant to Title 28, U.S. Code, Section 1746. Please forward your request to the Federal Bureau of Investigation, Record/Information Dissemination Section, Attention: Work Processing Unit, 170 Marcel Drive, Winchester, VA 22602

Thank you for your interest in the FBI. We wish you well in your future endeavors.

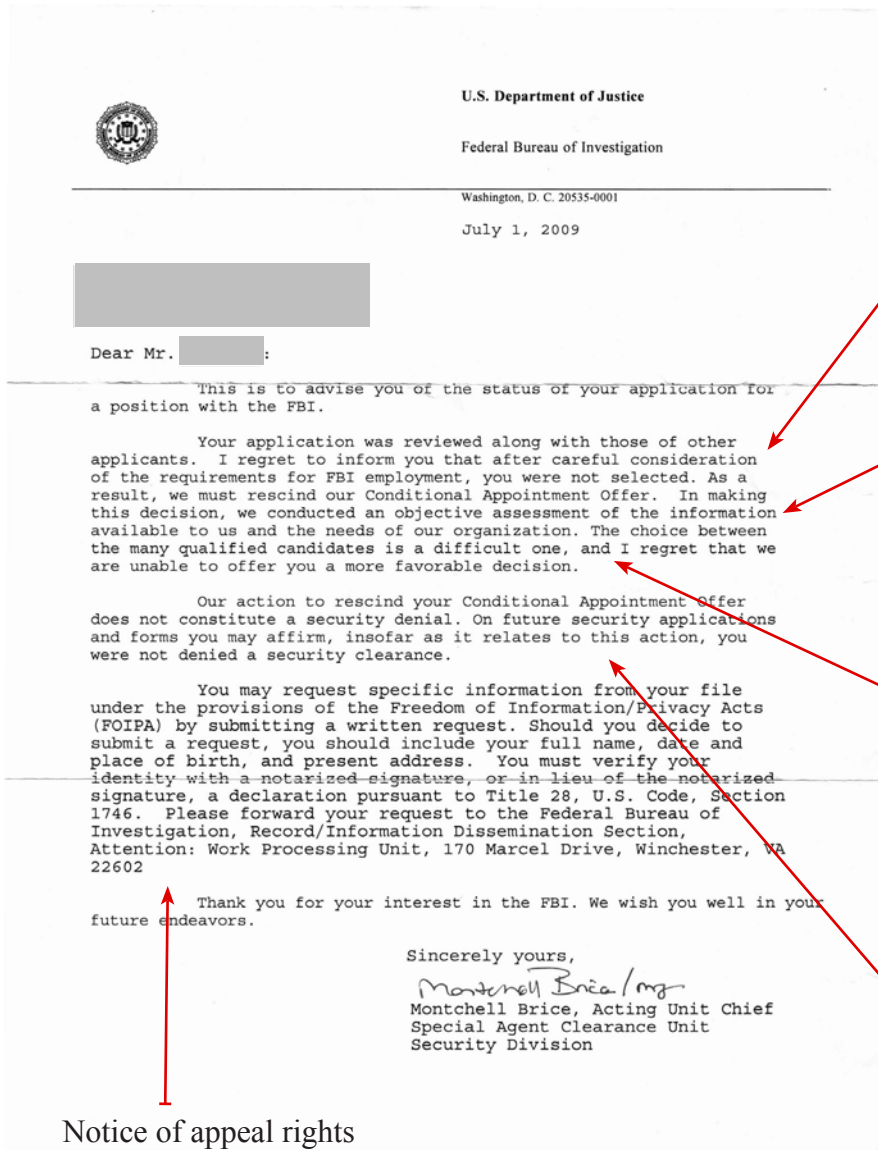
Sincerely yours,

Montchell Brice /mg

Montchell Brice, Acting Unit Chief
Special Agent Clearance Unit
Security Division

E10

Exhibit E10 - Annotated Suitability Letter



"The requirements for FBI employment" are a euphemism for suitability, as SACU handles suitability and security and not selection or appointments.

Objective assessment of the available information--the "whole person" concept? Needs of organization--suitability.

The choice between the many applicants; SACU is not authorized to make selection choices between applicants.

The letter does not deny a security clearance. The investigation is bifurcated, therefore the letter indicates a suitability determination.

Notice of appeal rights omitted. The normal 30-day time limit is tolled.

E10

Exhibit E11 - Emails to/from Special Agent Graham Coder

RE: Background information

The Applicant Coordinator does not have access to the information at SACU.

Subject: RE: Background information
From: "Coder, Graham L." <Graham.Coder@ic.fbi.gov>
Date: Tue, 7 Jul 2009 17:02:33 -0400
To: [REDACTED]

Well I'm sure you have reached out to your applicant coordinator. If not please do, he or she will be the best resource for you. I was only a small part of your application, and I did not adjudicate your application.

I also recommend that you ask your coordinator the options of re-applying etc.

I wish I could be more helpful.

-SA Graham Coder

-----O-----
From: [REDACTED]
Sent: [REDACTED]
To: Coder, Graham L.
Subject: Re: Background information

Graham,

I received a letter dated 7/1/09 from Acting Unit Chief Montchell Brice of the Special Agent Clearance Unit withdrawing my conditional appointment offer. Can I ask what was enough of a concern in my application to withdraw the offer?

Thanks,

Reference to adjudication.

Co [REDACTED] rahm L. wrote:

Thank you for the information. I just sent you a follow up email. Please ignore the items that you have answered in this email.

Please also note the items in the email that are new, or still have need to follow up on.

Call me at [REDACTED] with any questions. I will be in the office tomorrow from 2pm eastern time to 5pm, and then again next week at regular business hours

-SA Coder

-----O-----
From: [REDACTED]
Sent: [REDACTED]
To: Coder, Graham L.
Subject: Background information

Hi Graham,

Thank you for talking with me today 6/25/09 about my FBI application. Here is the information you requested. You also asked for documentation; I intend to send that separately, as I need to find a scanner. Actually, I was wondering if I could mail you documents if I can't find a scanner within a reasonable time. Are you at Headquarters?

1. Parking citations that went to collections: date, amount, circumstances, disposition, where received, agency.

2001 (est.) \$40 (est.) I received a citation for parking in a street cleaning zone during posted hours for street cleaning. I believe I missed the initial deadline to pay the citation and I do not recall whether the citation was sent to collections. In any event, I paid

2002 (est.) \$40 (est.) I received a citation for parking in a street cleaning zone during posted hours for street cleaning. I believe I missed the initial deadline to pay the citation and do not recall whether the citation was sent to collections. In any event, I paid

2002 (est.) \$40 (est.) I received a citation for parking in a campus parking lot with an expired daily pass. I

In a case of a candor-based disqualification, there are no options of reapplying.

1 of 2

10/13/2009 12:11 AM

Appellant's Brief Regarding Jurisdiction and Timeliness

Exhibit E12 - Partial Applicant File Index

Page no.	Item Description	Date (if applicable)	Notes
1-3	FBI Freedom of Information/Privacy Act response letter and attachment describing FOIPA exemptions By: Section Chief David M. Hardy	8/31/2009	
4	FOIPA Deleted Page Information Sheet	n/a	8 pages are deleted, citing 5 U.S.C. 552a(k)(6) (selection test materials, et al.)
5-6	Polygraph Report By: SA [REDACTED] Reviewed By: SSA "RGL"	6/11/2009	Deception not indicated. Actual questions redacted.
7-8	SF-86C Certification updating applicant's address and employment status By: Applicant	6/12/09	
9	SF-86 Attachment 23—Illegal Drugs By: Applicant	n/a	Handwritten notes apparently written by polygraph examiner, SA [REDACTED]
10	SF-86 Attachment 24—Alcohol By: Applicant	n/a	
11	SF-86 13A—Employment Information By: Applicant	n/a	
12	Second Supplemental Attachment 1. To SF-86 Cover Sheet: Personal Declarations By: Applicant	5/18/2009	Additions to SF-86 cover sheet due to clarification from Field Office staff regarding scope of question.
13	Supplemental Attachment 1. To SF-86 Cover Sheet: Personal Declarations By: Applicant	5/18/2009	Additions to SF-86 cover sheet due to clarification from Field Office staff regarding scope of question. Margin note and underlining by unknown author.
14-17	SF-86 Cover Sheet and Personal Declarations By: Applicant	5/18/2009	
18-21	SF-86A Continuation Sheet By: Applicant	5/18/2009	Additions to employment section of SF-86 due to later-recalled employer
22-48	SF-86 By: Applicant	5/17/2009	SF-86 is missing additional information provided during the Personnel Security Interview p. 29 (education information) corrected by letter to Applicant Coordinator dated 7/25/09 (p. 58 of this file)
49-57	Authorizations for Release of Medical/Financial Information		
58	Letter from Applicant to Applicant Coordinator regarding error in higher	7/25/09	Post-rejection correction from applicant.

	education portion of SF-86 By: Applicant		
59	Handwritten notes from unnamed reviewer of SF-86 and SF-86 Cover Sheet	Undated	
60-76	Personnel Security Interview Form By: SA [REDACTED] (sp?)	5/28/2009	
77-79	FD-991 Illegal Drug History Disclosure	5/28/2009	
80-84	Passport and Driver's License photocopies	5/28/2009	
85-112	Medical Records; Fitness For Duty Exam	5/27/2009	
113-114	Memo from FBI [REDACTED] Applicant Unit to FBI [REDACTED] Security requesting pre-employment polygraph examination	6/8/2009	
115	Memo from FBI [REDACTED] Applicant Unit to SA Clearance Unit—Security Division requesting initiation of Background Investigation	6/15/2009	Memo encloses SF-86, PSI Form, and all required hiring forms.
116-117	Duplicate of 113-114		
118	Personnel Consent to Release Information	5/15/2009	
119	Non-Personnel Consent to Release Information	5/15/2009	
120	Memo from FBI [REDACTED] Applicant Unit to CJIS requesting fingerprint processing of applicant fingerprints.	6/8/2009	
121	Page 2 of SF-86 Roommate Attachment (partial)	5/17/2009	
122-123	Memo from FBI [REDACTED] Applicant Unit to FBI [REDACTED] Security requesting pre-employment polygraph examination	5/28/2009	Exam rescheduled by examiner.
124-125	Memo from FBI [REDACTED] Applicant Unit to SA Clearance Unit—Security Division, FBI [REDACTED] Security requesting pre-employment investigative checks	5/22/2009	
126-128	Memo from FBI [REDACTED] Applicant Unit to FBI [REDACTED] Security requesting Personnel Security Interview	5/22/2009	Encloses PSI Form, SF-86
129	Electronic FBI Physical Fitness Test score report	5/13/2009	
130	PSI assignment sheet and instructions	Undated	
131	TB Skin Test result	5/29/2009	
132	Paper FBI PFT score report	5/12/2009	
133-134	FBI PFT liability waiver	5/12/2009	
135-136	FBI PFT Certificate of Wellness	3/31/2009	
137-140	FBI Phase II Conditional Appointment Offer	5/6/2009	
141-142	Updated applicant resume	3/13/2009	
143	FBI PFT Self-Test Evaluation	2/3/2009	

144-157	FBI Online Application	12/2/2008	
158	FBI PFT Self-Test Evaluation	1/18/2009	
159	FBI Phase I Results letter	1/12/2009	
160-165	File Closures from withdrawn 2005 application	9/23/2005-11/10/2005	

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Agency Representative

FBI

Office of General Counsel

Employment Law Unit

Attn: Patricia Miller

935 Pennsylvania Avenue, NW, Room PA-400

Washington, DC 20535

by way of:

☐ Email

☒ U.S. Mail (printed and electronic)

☐ Overnight Delivery

☐ Facsimile

I declare under penalty of perjury [REDACTED] that the foregoing is true and correct.

Date: 10/14/2009

By: /S/

[REDACTED]
Appellant