

Subject: [Fwd: [Fwd: Contact information]]

From: [REDACTED]

Date: Tue, 03 Nov 2009 18:52:54 -0800

To: patricia.miller@ic.fbi.gov

Ms. Miller,

This is my request for a privilege log of all of your office's communications with SACU. Prior to preparing a formal privilege log, Please immediately advise me of the exact time, date, recipient list, and nature of the communication from which the redacted paragraph-long comment cited in the 6/30/2009 suitability determination was excerpted.

From the partial information that I have, it appears that your office's curbstome opinion was written solely from the information reported in the FD-302, by an attorney who is not licensed in [REDACTED] or familiar with the legal or ethical rules that apply to me, who was not advised of the more significant ethical dilemmas developed elsewhere in my application in which I made difficult choices much more recently and about more serious subjects than the incident in question. As your office was not advised of any mitigating ethical conduct developed elsewhere, such as the April 2009 disclosure of my FBI application to my law firm out of an ethical duty, which caused me to lose my job, your office appears to have concluded that I lacked sufficient integrity to be a Special Agent in the FBI.

Apparently you were also not advised about the Phase II interview response where I describe [REDACTED], in which I declined a gift worth approximately \$8,000 from a client for whom my boss and I had obtained about \$20 million by [REDACTED]. My boss had approved the gift but I felt it was inappropriate and I believe I memorably explained this in my Phase II interview. I assume SACU has access to this information upon request, as the Special Agent asked me about a different Phase II interview response in one of my conversations with him, which is also not reflected in the FD-302.

If my forthcoming declaration recounting the 6/25/2009 phone conversation and the remainder of the 6/30/2009 phone conversation are believed and you were not aware of what was going on, you appear to have been misled into giving SACU a plausibly deniable basis upon which to base its negative suitability determination.

Unless, of course, your office had complete access to and reviewed my file before reaching your recommendation. Including the decision shown on the polygraph report to "CONTINUE" applicant processing despite this incident occurring and being reviewed. A harmless description of the incident is given directly in the report, just as it is in the Personnel Security Interview form. I could not have known what the polygraph report or notes might contain when I advised the Special Agent on 6/25/2009 that he should probably look at the report and the examiner's notes. Me being an applicant, I am not supposed to tell a Special Agent how to do his job, so it's phrased in the nicest possible manner. Now I wish I had been more direct. Is an applicant even allowed to revise his SF-86 during an investigation, other than doing a Certification with additional information that has occurred since

the SF-86 was filed? What about after FBI personnel develop the information that would have been added to the revised version, which the applicant reasonably believes will be added to the file and which he notifies the SACU Special Agent about?

You don't yet have some of the key information, which is the declaration I am preparing recounting the 6/25/2009 conversation with the Special Agent. Unless your office helped the Special Agent plan exactly what he did and helped him write the FD-302 in the way that it is, which would be very disappointing to me, my declaration should make a number of things more clear.

If my 10/30/2009 MSPB filing and its contents do not clarify the issue sufficiently, I would like an opportunity to address the merits of your legal analysis and the facts upon which it is based; for one, I freely admit that it wasn't a good idea, but I cannot be held to a higher standard than the law of my state. If the law of my state says that what I did was not a crime, then it seems to me that your office really has no right to provide an opinion to the contrary, much less discuss your view from partial and even wrong information of the ethical propriety of what occurred. And if the particular law in my state is "de facto" [REDACTED] punished less severely than [REDACTED] or not at all in the locality in which this incident occurred, my question to you would be why the offense is severe enough to warrant disqualification from the FBI in light of other occasions in which clearly more serious ethical dilemmas were resolved appropriately. Which you and whoever approved the determination were not told about.

With that said, I assume there are stated somewhere the ethical duties of the Office of General Counsel when advised of Brady-Giglio information, and I look forward to discussing them with your office. I also would very much like to know what standards or guidelines there might be for your office to recommend to SACU that an applicant is discontinued without giving the applicant any input into the matter, not to mention not ensuring that you have the necessary information or research- or that you have been told everything.

I hope to hear from you or your office by 11/6/2009.

Best,

Subject: [Fwd: Contact information]
From: [REDACTED]
Date: Tue, 03 Nov 2009 11:48:15 -0800
To: patricia.miller@ic.fbi.gov

Ms. Miller,

Please see attached message of 6/30/2009 reporting contact information of one of my verifiers for the May 2008 incident to the SACU Special Agent.

I am sorry to presume, but in my professional opinion, there is no

possible way he can deny that I spoke with him on 6/30/2009 and was asked to provide the verifiers' information. Fortunately, my discovery requests include long distance telephone records which should conclusively resolve the issue of when and for how long we spoke. My best estimate is [REDACTED] on 6/30/2009, because I had to take a couple of minutes to [REDACTED] obtain my friend's contact information, which I did immediately after speaking with the Special Agent.

I fail to understand why the Special Agent did not simply prepare two FD-302's, one for each phone interview, or state in the FD-302 that a second phone conversation occurred on 6/30/2009. I wonder when Ms. Halle first emailed your office about the incident and what specifics your response asked for?

You are getting a completely free look at my case and the eventual appeal, which (if the matter is not resolved sooner than that) I hope the eventual appeals board views favorably.

Best,

Subject: Contact information
From: [REDACTED]
Date: Tue, 30 Jun 2009 10:55:00 -0700
To: grahm.coder@ic.fbi.gov

Hi Grahm,

[REDACTED]'s contact information is:

Thanks,

[Fwd: Contact information].eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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—Contact information.eml—

Contact information.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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