

# An Investigation of Alleged Misconduct by Community Relations Service

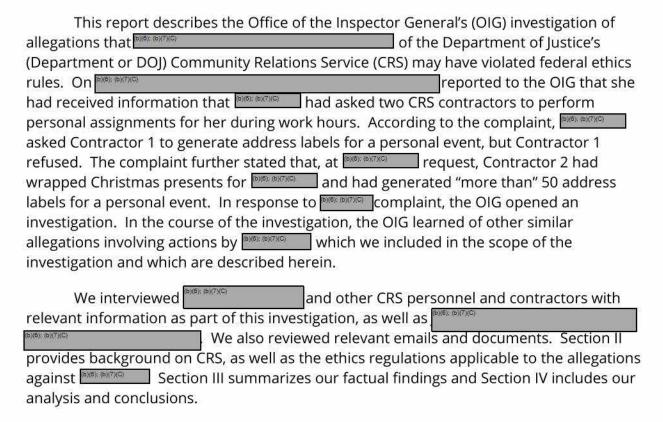
(b)(6); (b)(7)(C)



**Revised February 2023** 



#### I. Introduction

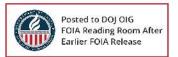


Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether Department personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii). We have provided a copy of our report to the Office of the Deputy Attorney General (ODAG) and CRS. We have also provided a copy of our report to the Professional Misconduct Review Unit.

### II. Background

### A. CRS

According to DOJ's website, the Civil Rights Act of 1964 created CRS "to assist communities facing disputes, disagreements, or difficulties relating to allegations of discriminatory practices based on race, color, or national origin." CRS's mandate was expanded in 2009 under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act to include "working with communities to prevent and respond to alleged hate crimes based on actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability." CRS provides facilitation, mediation, training, and



consultation services that, according to the Department's website, "improve communities' abilities to problem solve and build capacity to prevent and respond to conflict, tension, and hate crimes based on race, color, national origin, gender, gender identity, sexual orientation, religion, and disability." As part of its work with religious organizations, CRS provides "training to law enforcement, government officials, and others on religious customs, cultures, and practices of the Muslim and Sikh communities to strengthen relationships between law enforcement and the communities they serve." CRS staff members are also called "conciliators," to reflect the role they play in the communities in which they operate.

CRS is subdivided into 10 geographical regions across the country and each of these regions has a regional office. The regional offices are primarily responsible for conducting the training sessions, mediations, and other activities of CRS. Each region is led by a Regional Director. CRS Headquarters is located in Washington, D.C. Many of the employees working at CRS Headquarters are contractors and interns.

(b)(6); (b)(7)(C)		
В.	b)(6); (b)(7)(C)	
(b)(6); (b)(7)(C)		
(b)(6); (b)(7)(C)		* * * ** **



6); (b)(7)(C)	
Mark .	did not directly supervise any CRS staff until
(b)(6); (b)(7)(C) (b)(6); (b)(7)(C)	
(b)(6): (b)(7)(C)	told the OIG that during the period when was leading CRS , (***********************************
(b)(6), (b)(7)(C)	managed CRS (P)(F)(G)

### C. Standards of Ethical Conduct for Employees of the Executive Branch

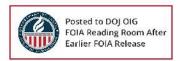
The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), promulgated by OGE and found at 5 C.F.R. Part 2635, set forth 14 general principles of ethical conduct in Subpart A and specific standards in Subparts B through I that apply to executive branch employees. Subparts B through I address the standards governing conduct such as gifts between employees, conflicts of interest, and misuse of position. See 5 C.F.R. §§ 2635.201-902.

Subpart G of the Standards of Conduct is labeled "Misuse of Position" and contains two regulations applicable here. First, 5 C.F.R. § 2635.702 addresses use of public office for private gain. Section 702 begins with a general statement of the rule against using one's public office for private gain and then identifies specific prohibitions in paragraphs (a) thorough (d), although the regulation also states that the specific prohibitions are not intended to be exclusive or to limit the application of this section. Relevant here is Section 702(a), which states that "an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." Induce is a broad term that means "to move by persuasion or influence."

The second Subpart G regulation that is applicable here concerns the use of government property. Section 704(a) states that "an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." The definition of "Government property" includes "the services of contractor personnel," "telephone and other telecommunications equipment and services," "automated data processing capabilities," and "printing and reproduction facilities." (Emphasis added) Section 704(a) must be read in conjunction with 28 C.F.R. § 45.4(a), which authorizes the limited personal use of certain government property—

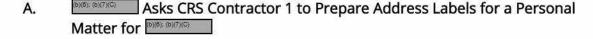
<sup>&</sup>lt;sup>4</sup> See www.m-w.com/dictionary/induce?utm\_campaign=sd&utm\_medium=serp&utm\_source=jsonld.

<sup>&</sup>lt;sup>5</sup> 5 C.F.R. § 2635.704(b)(1).



"Government office and library equipment and facilities"—by Department of Justice employees; specifically, permitting "[p]ersonal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear)" and limited personal "telephone/fax calls to locations within the office's commuting area, or that are charged to non-Government accounts." However, this regulation does not include "the services of contractor personnel" within the scope of the permitted negligible, personal use of government property.

### III. Factual Findings



A CRS Contract employee, Contractor 1, who did not work directly for (DIG) (DI

After this exchange with according to Contractor 1, she contacted the contracting company's to discuss request. Contractor 1 told the OIG that she explained to the assignment for and not for DOJ, and the project manager said that he was not aware that the labels were for a personal matter and had assumed, based on what said, that the labels work request was for CRS.

During the OIG's interview of the contracting company's project manager, he confirmed that had approached him and asked him "if there [was] someone that can help with something." The said that he did not recall if mentioned Contractor 1. According to the said that he did not recall if mentioned that it was printing or creating labels and then printing some addresses." The told the OIG that solve did not mention that the labels project was for her personal, not CRS, use.

<sup>&</sup>lt;sup>6</sup> See 5 C.F.R. § 3801.105 (stating that 28 C.F.R. § 45.4 is a "Department rule authorizing limited personal use of Department of Justice office and library equipment and facilities by its employees").



When we asked (a)(5)(5)(5)(7)(5) whether she asked Contractor 1 to work on the labels, (b)(5)(5)(5)(7)(5) said, "Absolutely not." (a)(5)(5)(7)(5) also denied speaking to the (a)(6)(6)(7)(5) about having Contractor 1 work on labels for her.

## B. Asks CRS Contractor 2 to Generate Address Labels for a Personal Matter, and Contractor 2 Complies with the Request

Another CRS Contract employee, Contractor 2, who did not work directly for told the OIG that in [10](6), (6)(7)(C)] approached Contractor 2 to prepare some address labels for her. Contractor 2 told the OIG that [10](6), (6)(7)(C)] gave her an address book with asterisks next to the names and addresses for which [10](6), (6)(7)(C)] said she needed to have labels created. Contractor 2 said that she typed the names and addresses in a Word document and sent it by email to [10](6), (6)(7)(C)] Emails we reviewed showed that at 10:30 a.m. on [10](6), (6)(7)(C)] emailed Contractor 2 a Word document containing 14 names and addresses and wrote in the email, "Thank you [Contractor 2] for your help." Later that day at 3:20 p.m., Contractor 2 emailed the Word document back to [10](6)(6)(7)(C)] and the document contained a total of 59 names and addresses.

Contractor 2 said that [10] also gave her a case of envelopes and return address labels that had [10] daughter's name on them, not [10] Contractor 2 said that once [10] approved the Word document with the names and addresses, Contractor 2 printed the names and addresses on labels and affixed those labels as well as the return address labels on the envelopes. According to Contractor 2, [10] offered to provide a gift to Contractor 2, but Contractor 2 declined the gift. Contractor 2 estimated that the assignment took her approximately 3 hours to complete. When asked why she performed this assignment for [10] Contractor 2 stated, "[B]ecause she is one of the management people [at CRS], I didn't question it." In an email that [10] sent to another CRS contractor on [10] the day of the labels project, [10] acknowledged that she sometimes served as [10] Contractor 2 also told us that she performed other labels assignments for [10] on a few occasions; however, she did not have documentation of these other assignments and did not recall

<sup>7</sup> In comments submitted after reviewing a draft of this report, ((i)(6)(6)(7)(C)) wrote that her recollection was that the OIG investigator asked her whether Contractor 1 "had helped [her] on any non-work matter," and she responded, "Absolutely not." We note that during her OIG interview, which was audiotaped, investigators asked ((ii)(6)(6)(7)(C)) five successive questions about whether she had sought Contractor 1's assistance—investigators asked her whether she had asked anyone to assist her before she asked Contractor 2 to help her with the labels, specifically whether she asked Contractor 1 to assist her, whether she asked Contractor 1 to assist her with anything that was personal, whether she spoke to the (Contractor 1 assist her with the labels, and a follow-up question confirming that she did not recall any conversation with the ((iii)((iii)(iii))) about having Contractor 1 work on labels for her. ((iii)((iii)(iii))) answers varied among "No," "Not to my recollection," and "Absolutely not."

also stated in her comments to the draft report: "While I was initially sure that she did not help me, I was unsure if during our meetings and conversations I had sought out her help."



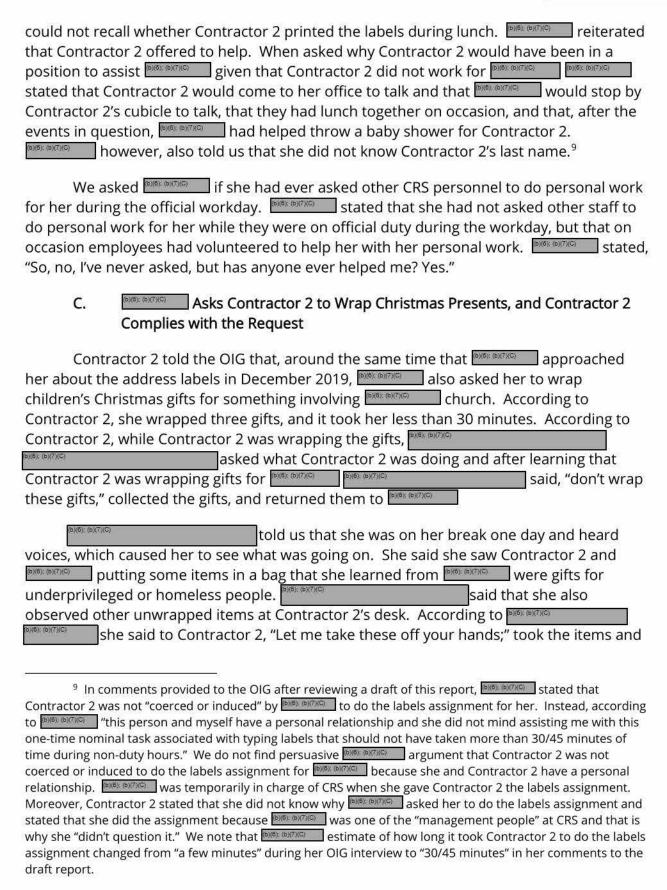
specific details other than that she believed the labels assignments were also for

Contractor 1 and Contractor 2 told us that they had a conversation outside the work place a few weeks after Contractor 2 had performed the label work for and during this conversation they both became aware that each of them had been asked by to perform the label assignment.8 told the OIG that she was planning to have lunch with Contractor 2 and that was "freaking out" because "couldn't figure out how to print" (couldn't figure out) something out" and was about to go on a trip out of the country. "had to print out a couple labels" and also stated, "it was simply a couple labels" that were " According to (b)(6): (b)(7)(C) in response to (b)(6): (b)(7)(C) expressing that she was "frantic, trying to get things done," Contractor 2 "offered to help" and told that she "didn't have anything to do." said that she accepted the offer but told Contractor 2 that Contractor 2 was not required to complete the work. that she emphasized to Contractor 2 that the work should be done on Contractor 2's lunch break. OIG investigators followed up and asked, "So, as far as what [Contractor 2] did though, she just—you were saying she just printed some labels out?" responded, "[Contractor 2] assisted me, yeah. I couldn't straight—I couldn't get it straight." When asked whether Contractor 2, in addition to printing out the labels, affixed them to envelopes, stated, "No. No, no. It was just print out a couple sheets of labels. It was just print them out. There were some names that had to be adjusted and print them out." When asked whether she provided Contractor 2 an address book or a Word document to use on the project, (b)(6)(6)(7)(C) contradicted her previous statement that the project consisted of only printing and told us that she either wrote down the names and addresses for Contractor 2 or simply handed Contractor 2 a piece of paper with the names and addresses that "hadn't...gotten to" and that she "had done most" "had done most of the names." stated that she of the labels onto the envelopes herself, as well as the return address labels, and (b)(6): (b)(7)(C) denied that (b)(6): (b)(7)(C) name appeared on the return address labels. also denied offering to pay Contractor 2 for helping her. According to the work that she needed help with would only have taken "a few minutes" because there were not many labels. (D)(5)(5)(7)(C) stated that any use of government property for this project was "de minimis government use." stated that because she was "the Ethics person" she "would never use subordinates" and that she would "never do anything unless it's lunch time or break time." According to she and Contractor 2 had lunch together in a conference room that day, but she 8 Contractor 1 also told us that Contractor 2 told her that she had wrapped gifts for ((a)(7)(C)) during

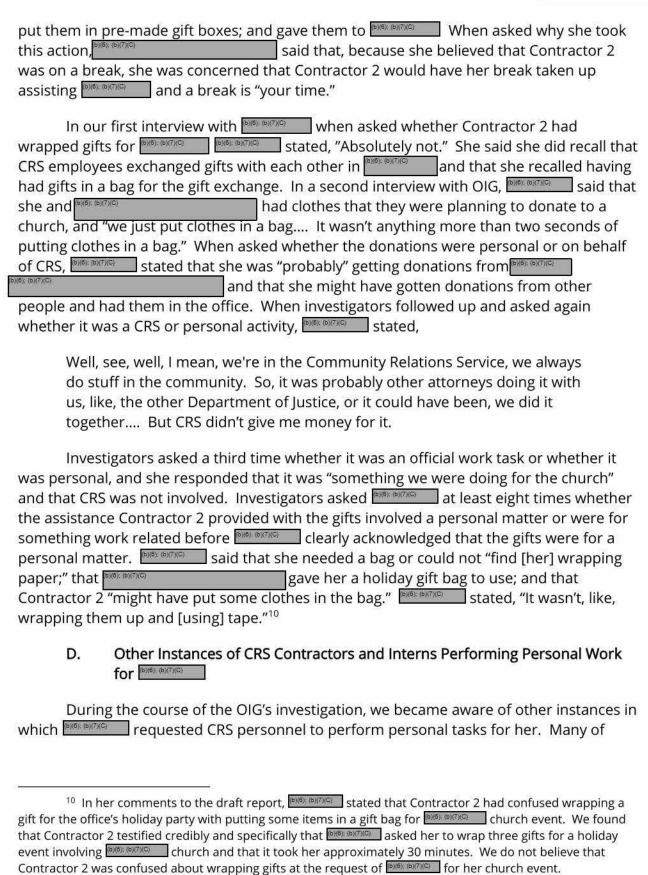
We discuss the gift wrapping below.

the workday in (b)(6); (b)(7)(C)











these instances involved contractors or unpaid interns who had left CRS before we began our investigation. We describe the available evidence concerning these instances below.

### 1. Evidence Regarding Contractor 3 Creating a Brochure for (INC.) Another CRS contract employee, Contractor 3, told the OIG that asked her on several occasions to do personal assignments for but Contractor 3 almost always declined due to her heavy workload and because she "need[ed]to be able to make sure we are doing the mission [of CRS]." Contractor 3 described how appeared displeased to learn that Contractor 3 was too busy to help her. However, Contractor 3 told the OIG that on one occasion, she did assist with something personal. According to Contractor 3, (b)(6): (b)(7)(C) asked her to put together a brochure for something related to the for According to Contractor 3, emailed her the images and wording that wanted her to use, and Contractor 3 put together a brochure using what what had given her. 11 We asked whether Contractor 3 ever did any personal work for her, and she said that she did not recall. When we asked whether Contractor 3 ever worked on a flyer for her, said that she "might" have asked Contractor 3 one evening if Contractor 3 knew how to do something because Contractor 3 was "really good" with information technology but that they "weren't able to connect." In a follow-up interview when we asked (b)(6)(6)(7)(5) whether Contractor 3 had worked on something (b)(6): (b)(7)(C) related for her, (()(6)(6)(7)(0) said that Contractor 3 had "helped [her] out many, many years ago, about five years ago, when first came [to CRS], because she knows I don't know technology." also said that Contractor 3 "was going to help [her] with something with ..later in the evening, off work, (\*)(6). (\*)(7)(©) but that ultimately Contractor 3 did not perform the work for Contractor 3 said that she was too busy. 12 (b)(6): (b)(7)(C) stated, "But if the question is in the five past years that we worked together, have a relationship, [Contractor 3] has probably helped me with something, yeah." [990] further clarified that "99%" of the work that Contractor 3 did for her was related to her official duties and was not personal in nature. 13 11 According to Contractor 3, (b)(6): (b)(7)(6 Contractor 3 did not provide an approximate date for when she created the brochure for

and sought a (6)(6): (6)(7)(C)

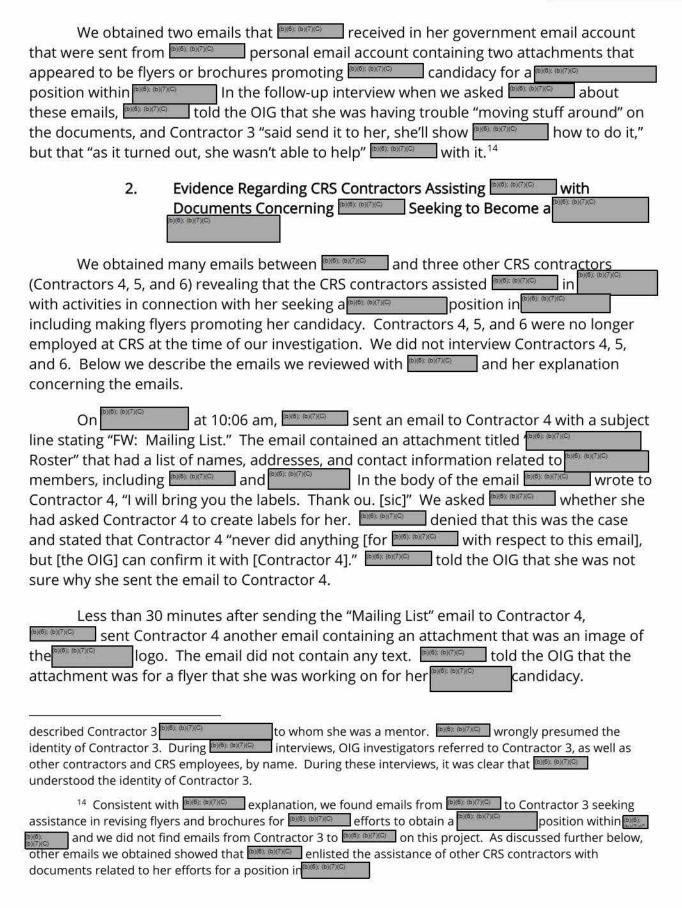
was involved in

As discussed further below,

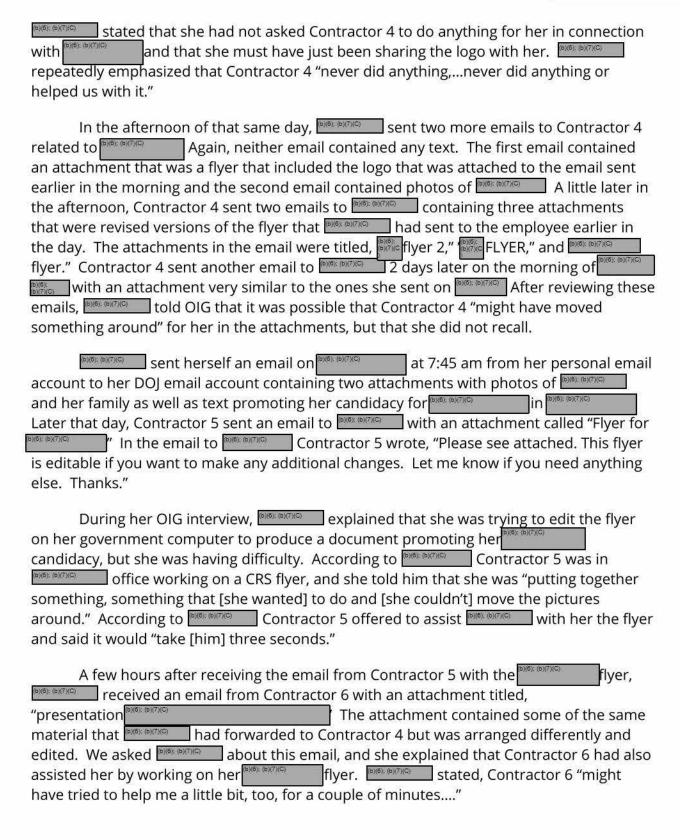
position within the organization (b)(6): (b)(7)(C)

<sup>13</sup> In her response to the draft report, (10)(6)(10)(7)(10) stated that Contractor 3 was not induced or coerced to perform a personal assignment for her because she and Contractor 3 have a personal relationship. She (Cont'd.)











### 3. Evidence Regarding CRS Intern 1 Creating a Poster for (()(5)(6)(7)(C)

Based upon emails we reviewed and other evidence, we determined that CRS Intern 1 created a poster for ((a)(6)(6)(7)(G) that was for an event involving ((a)(6)(7)(G) ((a)(7)(G)
(b)(6); (b)(7)(C)
stated that, before CRS Intern 1 came to work at CRS, she knew of her and knew that CRS Intern 1 was involved in but she had never met her. but she became a mentor to CRS Intern 1 and other employees at CRS. but the OIG that she also assisted CRS Intern 1 with her resume.
In our first interview with she was contemplating hiring someone to generate a poster for an event involving and that CRS Intern 1 volunteered to do it. work or outside of work. Told us that she told CRS Intern 1 about the poster occurred at work or outside of the workplace. Told us that that CRS Intern 1 to do the personal assignment outside of the workplace. To recalled that CRS Intern 1 completed the poster and emailed it to her "at home" and that she workplace printed it at Kinko's.  To recall that CRS Intern 1 completing the poster, she sent CRS Intern 1 a thank you note and gift card.
We obtained email exchanges between and CRS Intern 1 that were sent and received during the workday using their DOJ email accounts concerning the personal poster project. In one such email, CRS Intern 1 reported to on the status of the project and asked for further guidance.
In a follow-up interview with we reviewed these emails with her and asked if this project was solely performed outside of the work place. told us that CRS Intern 1 "did it mainly at home," and she estimated that "99 percent was outside of work." explained that there were a few emails concerning the project using the DOJ email system, but these emails were then forwarded to personal email address and that nothing further regarding the project involved work time or resources.
4. Evidence Regarding CRS Intern 2 Editing Documents for
We also found two emails sent by CRS Intern 2 during the workday to containing attachments related to personal



organization. In this first email CRS Intern 2 wrote, "Here is what I could finish. Thank you."  Or CRS Intern 2 sent another email containing an attachment with an updated version of the volunteer service document. CRS Intern 2 wrote in the text of the email to "I am attaching the community service sheet to this email. Please let me know if I need to make some changes."
We asked about these emails, and she stated that she was a mentor to CRS Intern 2 and that the intern "might have looked at this for me and sent it back to me."
E. Explanation for Personal Work Performed by CRS Contractors and Interns on her Behalf
explained her actions with respect to engaging contractors and interns to perform personal work for her by stating:
It was innocent, it was de minimis, it was not a big deal. These are relationships with employees that I continue to have, who might have helped me with some technology here and there, but not, like, eight hours of government time, or two hours, or even one hour. I wouldn't do that I've explained to you what's going on, and I think that is it. I mean, if I innocently have asked them or they offered and they helped me a couple—you know, helped me do something here and there with technology, I mean, I don't know that anything is wrong with that.
also told OIG that the employees involved with assisting her on personal matters were colleagues and friends and that she did not supervise them. When asked whether, given her senior position within CRS, there was implicit pressure on lower-level employees to assist her, she stated, "No Because these are personal relationships. So, I think you have to factor in the differences, personal relationships [B]ecauseI'm not anybody's boss. So, I don't supervise people at all."
told us that she believed that the OIG's investigation into this matter was a "witch hunt" and that her conduct "was not a big deal." also stated that she believed that the referral of these allegations to OIG was racist and discriminatory. According to misconduct allegations have come up at CRS before involving white employees, and decided to keep the matter in house, but when allegations about surfaced, surfaced, referred the allegations to OIG. We asked what the CRS policy was for referrals of misconduct or ethics issues to OIG, and she said there was no written policy, but there were normal practices followed and
15 (D)(6); (D)(7)(C)



sometimes similar matters were handled internally within CRS.
concerns that she should have been given an opportunity to address these issues prior to
any referral to OIG and that was out to "smear" her reputation. 16
denied that her referral of these allegations to the OIG was racist or discriminatory, or that she was motivated by personal animus towards told the OIG that because is the management official in CRS who would typically handle any internal investigation for CRS and the allegations were against believed that someone outside of CRS would have to investigate the allegations. For this reason, according to who decided that the allegations against she consulted with who decided that the allegations should be shared with the OIG. who would the original who decided that the allegations to him, and that he in turn decided that they should be reported to the OIG. who would be shared with the oil of the allegations are true or not, but these allegations—since they are involving ethics lapses and other things it is so concerning." She also stated, "I know I have a duty to report these concerns to OIG. I am extremely concerned that this behavior, if true, compromises where the state of the concerns to oils. I am extremely concerned that this behavior, if true, compromises was motivated by personal animus towards or should to the OIG who would typically handle the oil of the oil
IV. Analysis and Conclusions
We found that wiscommisused her public office for private gain in violation of 5 C.F.R. § 2635.702(a), and because "the services of contractor personnel" are considered "government property," we found that wiscommisused government property in violation of 5 C.F.R. § 2635.704. We also found that lacked candor during two of her interviews with the OIG when she repeatedly failed to fully and completely answer questions from OIG investigators and attempted to minimize and explain away her actions.
A. Misuse of Public Office for Private Gain—Section 702(a)
We found that wisk (b)(7)(C) misused her public office for private gain in violation of 5 C.F.R. § 2635.702(a) on several occasions when requested CRS contractors to perform personal tasks and the CRS contractors complied with her requests. Section 702(a) states that an employee shall not use "his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to
16 In response to the draft report, (In response to the draft report) (In response to the draft report, (In

this matter stems from intentional, nefarious discriminatory discipline practiced by the (b)(5)(b)(7)(C)

for corrective action."

 $<sup>^{17}</sup>$  The Inspector General Act and Department regulations require DOJ components to report all non-frivolous allegations of misconduct to the OIG.



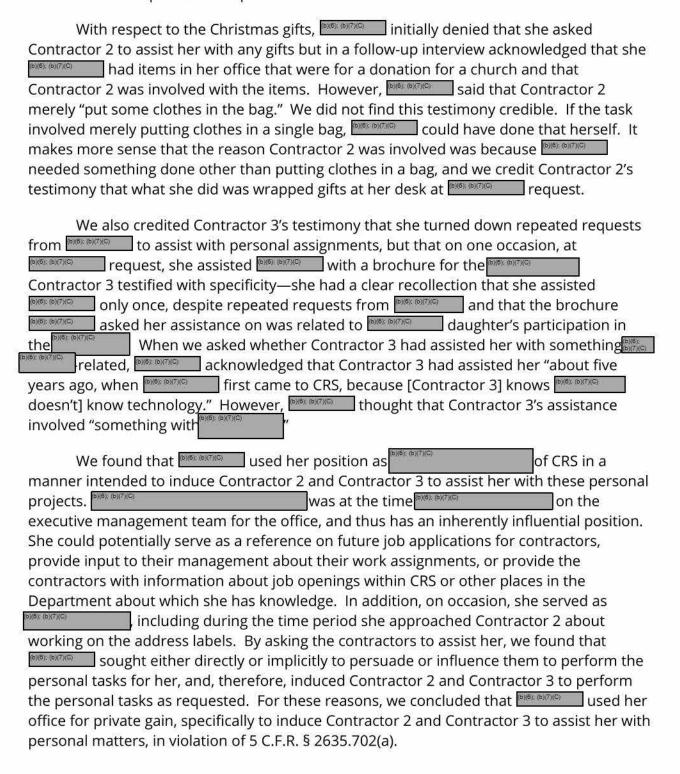
himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." Induce is a broad term that means "to move by persuasion or influence."

Specifically, we found that the requested contractors to, and that the contractors did, in fact: prepare, print, and affix address labels for something related to wrap Christmas gifts for donations to a church; and create a brochure for something related to the [5/6): (b)(7)(5) The witnesses who testified about these events were credible, and their testimony was corroborated by other witnesses and contemporaneous emails. With respect to the address labels, [SIGN OF INCOME.] flatly denied ever speaking with Contractor 1, and, while (IND) acknowledged that Contractor 2 performed a personal task for her, [100] claimed that Contractor 2 "offered to help" her with the labels project and that the project involved only "a couple labels" and would have taken only "a few minutes." We found testimony lacked credibility and therefore do not credit her testimony that Contractor 2 "offered to help" her or that the project took only a few minutes. As an initial matter, we noted that (b)(6)(0)(7)(0) claim that she never spoke with Contractor 1 about the labels project is contradicted by Contractor 1's testimony and that Contractor 1's testimony was corroborated by the who testified that Contractor 1 told him that [10,00,10,07,10] had asked Contractor 1 to assist her with a project. Similarly, Contractor 2's testimony that asked her to work on the labels is corroborated by Contractor 1's testimony, as well as that of the [016]; (0)77(0) whom told the OIG that (10/5) (10/7/C) asked for contractor assistance with a task involving labels. We believe that after asking Contractor 1 for assistance and not getting the response she was looking for, then asked Contractor 2 for assistance. credibility is further undermined by the fact that her description of the work changed—first she stated repeatedly that it involved only printing labels and only acknowledged that more was involved after additional questioning by investigators. Moreover, the number of instances in which (b)(6)(6)(7)(5) asked contractors and interns to assist her with personal matters further supports our finding that of the last experience asked Contractor 2 to prepare address labels for her. 18 We also did not credit (1975) (1977) (1977) testimony that the project involved only a few labels. Contemporaneous emails between and Contractor 2 show that Contractor 2 typed approximately 45 names and addresses before preparing the labels and that Contractor 2 performed this task during work hours, not during lunch, as claimed by ((i)(i)(i)(ii)(iii) We credited Contractor 2's

Although it is clear from the emails we reviewed and ((i)(6), (b)(7)(C)) testimony that several contractors and an intern assisted ((i)(6), (b)(7)(C)) with her involvement in ((i)(6), (b)(7)(C)) we did not include those instances in this section because of the lack of testimonial evidence concerning the contractors' and interns' interactions with



testimony that she typed names and addresses, printed them on label sheets, and affixed them onto envelopes at the request of [0.05] (0.07)(C)





### B. Misuse of Government Property—Section 704

We also found that violated the provision of Subpart G relating to the use of government property by using the services of government contractor personnel to perform personal tasks for her, including preparing address labels, wrapping Christmas presents for a church, preparing a flyer for and preparing flyers in connection with her seeking a position in See 5 C.F.R. § 2635.704. Section 704(a) states that an "employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." Section 704(b)(1) defines "government property" as including "the services of contractor personnel."

Although, as described above, 28 C.F.R. § 45.4 authorizes Department employees limited personal use of certain government property, including "Government office and library equipment and facilities," the regulation does not include "the services of contractor personnel" in the description of government property of which limited personal use is allowed. Even assuming, as testified, that Contractors 2, 3, 4, 5, and 6 spent only a small amount of time performing personal assignments for her argument that the personal tasks consisted of permitted "de minimis use" lacks merit given that the limited personal use exception does not extend to the services of contractor personnel. In addition, even assuming that Contractors 2 and 3, as well as Contractors 4, 5, and 6—whom conceded assisted her with her campaign flyers—volunteered or offered to help it was impermissible for her to allow them to perform any personal tasks for her. Based upon the foregoing, we concluded that solve the services of contractors 2 violated 5 C.F.R. § 2635.704.

Although it does not appear that any contractor or intern spent a significant amount of time on any of the personal projects for we were troubled by the number of instances in which requested contractors and interns to assist her with personal matters. Solve of the appearance of impropriety. In addition, she should have known that the exception permitting an employee limited personal use of government property did not extend to having contractors performing personal tasks for her. We find it inexcusable that someone in her position would repeatedly ask CRS contractors and interns to do personal tasks for her—a request that is clearly at odds with the principles laid out in the Standards of Conduct.

<sup>&</sup>lt;sup>19</sup> In response to the draft report, <sup>(N)(6), (N)(7)(7)</sup> reiterated that any use of government computers and paper was "de minimis" or "negligible" and cited to 28 C.F.R. § 45.4. <sup>(N)(6), (N)(7)(5)</sup> did not address the fact that our finding concerns her misuse of the services of contractor personnel, not government computers and paper. As noted above, Section 45.4 does not include the services of contractor personnel as a type of property for which limited personal use is allowed.



### C. (b)(5): (b)(7)(C) Lacked Candor

We found that lacked candor during the first two of her four OIG interviews. DOJ policy states that "Department employees have a duty to, and shall, cooperate fully with the Office of the Inspector General." A fundamental component of "cooperat[ing] fully" is testifying truthfully and completely when interviewed by OIG investigators. Although the Department, unlike many of the Department's law enforcement components, does not have standards of conduct or a policy that defines "lack of candor," the Merit Systems Protection Board (MSPB), in comparing "lack of candor" to the separate and distinct charge of "falsification," defined lack of candor as follows:

Falsification involves an affirmative misrepresentation, and requires intent to deceive. *Naekel v. Dep't of Transp.*, 782 F.2d 975, 977 (Fed. Cir. 1986). Lack of candor, however, is a broader and more flexible concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete. It would be comparable to the distinction in the Federal securities laws governing securities registration statements between 'an untrue statement of a material fact' and the failure 'to state a material fact...necessary to make the statements therein not misleading.'<sup>21</sup>

In another case, the MSPB has stated that two elements are necessary to prove a "lack of candor" charge: "(1) that the employee gave incorrect or incomplete information; and (2) that he did so knowingly."<sup>22</sup>

We found that [SOCK SOLTION] lacked candor during her OIG interviews given her repeated failure to fully and completely answer questions from OIG investigators and her attempts to minimize and explain away her actions. As discussed above, [SOCK SOLTION] flatly denied asking Contractor 1 to work on labels for her, and we found that she lacked credibility when she testified that Contractor 2 "offered to help" her with the address labels project, that the project consisted of only printing labels, that the project would have taken only a few minutes, and that, with respect to the Christmas gifts, that she simply asked Contractor 2 "to put some clothes in a bag" rather than wrap the gifts for her. We similarly found that [SOCK SOLTION] minimized her interactions and requests for assistance to Contractor 3. In addition, OIG investigators had to ask [SOCK SOLTION] at least eight times whether the assistance Contractor 2 provided with the gifts involved a personal matter or were for something work related before [SOCK SOLTION] finally acknowledged that the gifts were for a

<sup>&</sup>lt;sup>20</sup> 28 C.F.R. § 45.13; *see also* Justice Manual 1-4.200 (Allegations of Misconduct by Department of Justice Employees—General Considerations).

<sup>&</sup>lt;sup>21</sup> Ludlum v. Dep't of Justice, 278 F.3d 1280, 1283-84 (Fed.Cir.2002). see also Gootee v. Veterans Admin., 36 M.S.P.R. 526, 529–30 (1988); Soc. Sec. Admin. v. Steverson, 111 M.S.P.R. 649, 655-56 (2009).

<sup>&</sup>lt;sup>22</sup> Fargnoli v. Dep't of Commerce, 123 M.S.P.R. 330, 338 (2016)



personal matter. That exchange was characteristic of OIG interviews and falls far short of a Department employee's duty to cooperate fully with an OIG investigation.

Based on the foregoing, we found that OIG interviews.