



# Report of Investigation of Alleged Misconduct by then

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

## Federal Bureau of Investigation

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



October 2023

## I. Introduction

This report describes the Department of Justice (Department) Office of the Inspector General's (OIG) investigation into allegations concerning (b)(6); (b)(7)(C) of the Federal Bureau of Investigation (FBI) (b)(6); (b)(7)(C).

In (b)(6); (b)(7)(C) we received anonymous allegations that (b)(6); (b)(7)(C) created a "retaliatory work environment" and threatened to retaliate against (b)(6); (b)(7)(C) employees who participated in an earlier OIG misconduct investigation in which (b)(6); (b)(7)(C) was the subject (the earlier investigation). For example, one of the anonymous allegations stated that (b)(6); (b)(7)(C) confronted (b)(6); (b)(7)(C) employees about statements they had made to the OIG, threatened that one (b)(6); (b)(7)(C) employee would "never get another job" in the FBI, and "regularly" boasted that the FBI Deputy Director had told (b)(6); (b)(7)(C) "to keep her head down and the FBI would take care of her." This report summarizes the OIG's investigation of the allegations we received.

Our investigation of the allegations included a review of OIG documents related to the earlier investigation, the FBI (b)(6); (b)(7)(C) investigative file for the earlier investigation, (b)(6); (b)(7)(C) and relevant FBI policies. We also interviewed (b)(6); (b)(7)(C) and seven FBI employees with knowledge relevant to the allegations.<sup>1</sup>

Because we had information that led us to believe (b)(6); (b)(7)(C) might resign from the Department while our investigation was pending, we interviewed her before interviewing any witnesses. Due to the nature of the allegations, our questions to (b)(6); (b)(7)(C) focused on statements she may have made and actions she may have taken after she reviewed the OIG's draft report in the earlier investigation. However, much of the relevant testimony we later received from the witnesses we interviewed concerned statements (b)(6); (b)(7)(C) made and actions (b)(6); (b)(7)(C) took while the earlier investigation was ongoing, before she reviewed the draft OIG report.

(b)(6); (b)(7)(C) resigned from the Department in (b)(6); (b)(7)(C). In (b)(6); (b)(7)(C) we asked (b)(6); (b)(7)(C) if she would be willing to voluntarily interview with us again and respond to the information we obtained from witnesses after we interviewed her. She declined our request. We also asked two former FBI employees who no longer work for the Department to voluntarily interview with us. They similarly declined our request for a voluntary interview. The Inspector General Act of 1978, as amended, does not provide the OIG with

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<sup>1</sup> We contacted two other Department employees but did not interview them because we determined they had no relevant information.

the authority to compel non-Department employees, including former employees, to participate in interviews.

The OIG found that (b)(6); (b)(7)(C) violated FBI Policy Directive 0727D when she made statements about getting back at one individual for their OIG testimony and about suing (b)(6); (b)(7)(C) employees who she believed had provided negative information about her in the earlier OIG investigation. We also found that (b)(6); (b)(7)(C) engaged in unprofessional conduct, in violation of FBI Offense Code 5.22, by making those statements and by speaking to (b)(6); (b)(7)(C) employees about their testimony in the earlier OIG investigation in ways that made them feel uncomfortable, making (b)(6); (b)(7)(C) employees aware of her access to documents related to the earlier investigation, and asking a (b)(6); (b)(7)(C) member to print and deliver to (b)(6); (b)(7)(C) a copy of a document describing (b)(6); (b)(7)(C) in connection with the OIG's finding of misconduct in the earlier investigation.

The OIG has completed its investigation and is providing this report to the FBI for such action that it deems to be appropriate. 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.<sup>2</sup>

## II. Background

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

Beginning in late (b)(6); (b)(7)(C) the OIG investigated complaints it had received that (b)(6); (b)(7)(C) had committed misconduct by allegedly engaging in an "inappropriate" personal relationship (b)(6); (b)(7)(C) (the earlier investigation). The OIG conducted witness interviews in the earlier investigation from (b)(6); (b)(7)(C). The OIG substantiated the allegation that (b)(6); (b)(7)(C) had engaged in a romantic relationship (b)(6); (b)(7)(C) and failed to timely report the relationship, in violation of FBI policy. The OIG also found that (b)(6); (b)(7)(C) allowed the relationship to negatively affect an appropriate and professional superior-subordinate relationship and to disrupt the

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<sup>2</sup> See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).



workplace and adversely affect the FBI mission by interfering with the ability of other FBI employees to complete their work, and that (b)(6); (b)(7)(C) participated in a hiring or organizational decision involving (b)(6); (b)(7)(C) all in violation of FBI policy.<sup>3</sup>

In (b)(6); (b)(7)(C) reviewed a draft report of the OIG's findings in the earlier investigation. In (b)(6); (b)(7)(C) the OIG issued its final report and posted an anonymized investigative summary on the public OIG website. (b)(6); (b)(7)(C)

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

After the OIG completed the earlier investigation, and consistent with OIG practice, we provided a copy of the report and copies of significant transcripts of witness interviews to the FBI for any action the FBI deemed appropriate. (b)(6); (b)(7)(C)

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

(b)(6); (b)(7)(C) In furtherance of preparing a response, according to FBI (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) attorneys reviewed a hard copy of the FBI (b)(6); (b)(7)(C) investigative file in person at FBI

(b)(6); (b)(7)(C) offices. The file included copies of the OIG's interview transcripts. FBI (b)(6); (b)(7)(C) applied

some limited redactions to the transcripts but did not redact the names of the witnesses who provided testimony to the OIG. (b)(6); (b)(7)(C)

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

### III. Relevant Legal Authorities and Policies

#### A. FBI Offense Code 5.16—Retaliation

FBI Offense Code 5.16 prohibits an FBI employee from "[t]aking, or threatening to take, an adverse employment action against an employee who engaged, or who was believed to have engaged, in a protected activity, including making a protected disclosure

<sup>3</sup> (b)(6); (b)(7)(C)

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

or exercising any other legitimate right authorized by the FBI.” Offense Code 5.16 applies where the adverse action is motivated by both retaliatory and non-retaliatory reasons.

## **B. FBI Policy Directive 0727D—Non-Retaliation for Reporting Compliance Risks**

FBI Policy Directive 0727D prohibits FBI personnel “from retaliating against anyone for reporting a compliance concern that the reporting individual reasonably believes to be true, when reported to any individual designated in subsection 8.4. of this directive, even if the FBI ultimately concludes that there was no compliance concern or violation.” The individuals designated in subsection 8.4 include persons designated to receive disclosures under 28 C.F.R. § 27.1, the FBI’s whistleblower-protection regulation. Both FBI’s internal investigations division and the OIG are designated to receive disclosures under the regulation.

The policy directive defines retaliation as “engaging or threatening to engage in conduct, direct or indirect, that adversely affects an individual who reports a compliance concern in accordance with this directive, as a consequence of such reporting. Conduct adversely affects an individual if it is based on a retaliatory motive and is reasonably likely to deter a reasonable employee from reporting a compliance concern.” Although the policy directive’s list of references includes FBI Offense Code 5.16, which requires an FBI employee to have taken, or threatened to take, an adverse employment action against another employee to be found to have engaged in conduct that violates the policy directive, the policy directive is written more broadly than the FBI Offense Code, and it also applies to conduct that is “reasonably likely to deter a reasonable employee from reporting a compliance concern.”<sup>4</sup>

## **C. FBI Offense Code 5.22—Unprofessional Conduct on Duty**

FBI Offense Code 5.22 prohibits unprofessional conduct on duty, which is defined as “[e]ngaging in conduct, while on duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgment or character of the employee; or compromises the standing of the employee among his peers or his community.” Offense Code 5.22

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<sup>4</sup> [REDACTED] told us it was [REDACTED] view that FBI [REDACTED] would base a retaliation finding under Policy Directive 0727D on FBI Offense Code 5.16, which as stated above requires an FBI employee to have taken, or threatened to take, an adverse employment action against another employee in order to be found to have engaged in retaliation. Accordingly, it was [REDACTED] belief that a finding of retaliation would require evidence of an actual or threatened adverse employment action. We strongly disagree with that interpretation of Policy Directive 0727D, which by its plain language clearly provides an alternative definition of retaliation that does not require evidence of an adverse employment action, i.e., “engaging or threatening to engage in conduct, direct or indirect, that adversely affects an individual who reports a compliance concern in accordance with this directive, as a consequence of such reporting. Conduct adversely affects an individual if it is based on a retaliatory motive and is reasonably likely to deter a reasonable employee from reporting a compliance concern.” Otherwise, FBI officials who engaged in actual or threatened retaliatory conduct—but did not take or threaten to take adverse employment action—could not be held to account for their inappropriate conduct.



states that it applies to misconduct not otherwise delineated in other specific FBI Offense Codes.

#### IV. Factual Findings

##### A. (b)(6); (b)(7)(C) Made Statements to (b)(6); (b)(7)(C) Employees about the Earlier OIG Investigation that Made Them Feel Uncomfortable or They Felt Were Inappropriate

All but one of the seven witnesses that we interviewed testified that (b)(6); (b)(7)(C) spoke about the earlier OIG investigation in ways that made them feel uncomfortable or that they felt were inappropriate.<sup>5</sup> Some of the (b)(6); (b)(7)(C) employees believed (b)(6); (b)(7)(C) was seeking information about their testimony to the OIG. Some of these conversations took place while the earlier investigation was ongoing; others took place after the OIG had issued its report and publicly posted the anonymized investigative summary.

##### 1. Comments by (b)(6); (b)(7)(C) while the Earlier Investigation Was Ongoing

One (b)(6); (b)(7)(C) employee told us that at some point during the earlier investigation, (b)(6); (b)(7)(C) learned that the OIG was interviewing (b)(6); (b)(7)(C) employees and actively tried to figure out which employees were being interviewed. According to this employee, (b)(6); (b)(7)(C) started asking (b)(6); (b)(7)(C) employees if they had been interviewed by the OIG, and (b)(6); (b)(7)(C) employees admitted to (b)(6); (b)(7)(C) that they had been interviewed. This employee said (b)(6); (b)(7)(C) never asked the employee explicitly what the employee had told the OIG.

A second (b)(6); (b)(7)(C) employee told us that when they returned to (b)(6); (b)(7)(C) immediately following their interview with the OIG, (b)(6); (b)(7)(C) asked them about the interview and was “apologetic that she was putting [the employee] through this.” Although they said (b)(6); (b)(7)(C) did not ask about the content of their testimony, the employee found the conversation “extremely awkward” and “strange enough” that they reported it to the OIG employees who had conducted the interview. This employee perceived that (b)(6); (b)(7)(C) was trying to “dig into [their testimony] a little bit,” even though (b)(6); (b)(7)(C) did not ask about their testimony directly. The employee believed (b)(6); (b)(7)(C) also brought up the earlier investigation in conversation a few other times in passing, but they did not recall any other details. Each time, the employee thought that it was inappropriate and did not want (b)(6); (b)(7)(C) to discuss it—but said that they did not fear that (b)(6); (b)(7)(C) would retaliate against them. The employee told the OIG that although “most people would just keep quiet in a scenario like that,” they did not believe (b)(6); (b)(7)(C) had an “ill motivation” in discussing the investigation.

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<sup>5</sup> Unless otherwise noted, all of the individuals whose testimony we discuss in this report were (b)(6); (b)(7)(C) employees or managers at the time their conversations with (b)(6); (b)(7)(C) took place. To anonymize their identities, we refer to them all as (b)(6); (b)(7)(C) employees and intentionally do not identify their job titles, describe their genders, or state whether they were still (b)(6); (b)(7)(C) employees at the time we interviewed them in the current OIG investigation.

A third (b)(6); (b)(7)(C) employee told us that in a conversation where other people were present, (b)(6); (b)(7)(C) brought up the fact that the employee had been interviewed by the OIG. In a different conversation when no one else was present, (b)(6); (b)(7)(C) asked about the employee's OIG interview and what they thought about (b)(6); (b)(7)(C) being under investigation. The employee did not provide any substantive information to (b)(6); (b)(7)(C) about their OIG interview, and they felt that (b)(6); (b)(7)(C) questions were "really inappropriate." The employee told the OIG the second conversation was "very awkward," and that they expressed support to (b)(6); (b)(7)(C) in the moment because they were afraid that (b)(6); (b)(7)(C) otherwise might (b)(6); (b)(7)(C) or get angry at them. This same witness told us that they did not believe (b)(6); (b)(7)(C) had (b)(6); (b)(7)(C)

According to this third (b)(6); (b)(7)(C) employee, on other occasions (b)(6); (b)(7)(C) mentioned the earlier OIG investigation as something (b)(6); (b)(7)(C) "was going through," and she also mentioned, generally, that (b)(6); (b)(7)(C) employees had been interviewed. (b)(6); (b)(7)(C) made these other statements in front of three or four people at a time.

A fourth (b)(6); (b)(7)(C) employee told the OIG that (b)(6); (b)(7)(C) "alluded to the fact that" the employee was interviewed by the OIG. (b)(6); (b)(7)(C) openly discussed with the employee the fact that the OIG was investigating (b)(6); (b)(7)(C) conduct, and (b)(6); (b)(7)(C) asked questions along the lines of "Have you been asked any questions about me?" (b)(6); (b)(7)(C) complained to the employee about the earlier investigation while it was ongoing, and they felt that (b)(6); (b)(7)(C) was "pumping" them for information. In particular, (b)(6); (b)(7)(C) sought information about what the employee had told the OIG about an FBI employee who had (b)(6); (b)(7)(C) and who (b)(6); (b)(7)(C) apparently blamed for the earlier OIG investigation (b)(6); (b)(7)(C) 6 The (b)(6); (b)(7)(C) employee said they tried to change the subject of the conversation and did not provide (b)(6); (b)(7)(C) the information she requested.

According to a fifth (b)(6); (b)(7)(C) employee, (b)(6); (b)(7)(C) told the employee that she knew they had been interviewed by the OIG and said that if the OIG asked any follow-up questions, they should be open and honest in their testimony. The employee said that (b)(6); (b)(7)(C) did not ask the employee about the substance of their testimony.

One of these (b)(6); (b)(7)(C) employees told us that they learned from (b)(6); (b)(7)(C) that then FBI Deputy Director (b)(6); (b)(7)(C) warned (b)(6); (b)(7)(C) to stop asking (b)(6); (b)(7)(C) employees about their OIG interviews. According to the employee, (b)(6); (b)(7)(C) told them that (b)(6); (b)(7)(C) had gotten in "deep trouble" with then Deputy Director (b)(6); (b)(7)(C) for asking people about their interviews.

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6 (b)(6); (b)(7)(C) declined our request for a voluntary interview.



## 2. Comments by (b)(6); (b)(7)(C) after the OIG Issued its Report

Prior to the release of the earlier OIG report, and consistent with the OIG's usual practice, (b)(6); (b)(7)(C) and her attorneys were allowed to review and provide comments on a draft of the report, which contained information witnesses provided to the OIG. (b)(6); (b)(7)(C) through her counsel, declined to provide comments. After the earlier OIG report was issued, while separately communicating with two individuals, (b)(6); (b)(7)(C) referred to the specific testimony each had provided to the OIG in the earlier investigation. Neither employee said they considered (b)(6); (b)(7)(C) reference to their earlier testimony to be a threat of retaliation or as retaliation for their participation in the OIG investigation.

## 3. (b)(6); (b)(7)(C) OIG Testimony

When we asked (b)(6); (b)(7)(C) whether she had mentioned to any (b)(6); (b)(7)(C) employees that she was aware they had provided testimony to the OIG in the earlier investigation, she said that she had. According to (b)(6); (b)(7)(C) many people in the FBI, including some (b)(6); (b)(7)(C) employees, (b)(6); (b)(7)(C) said she became aware through some of these conversations that certain (b)(6); (b)(7)(C) employees had provided testimony to the OIG. (b)(6); (b)(7)(C) told us that three (b)(6); (b)(7)(C) employees expressed regret about the situation and said they were sorry they had had to testify against (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) told each of them that she did not want to know the substance of their testimony. (b)(6); (b)(7)(C) said she did not start the conversations or solicit any information about (b)(6); (b)(7)(C) employees' testimony. She also told us that the first time she knew the scope of everyone who had provided testimony to the OIG was when she later read (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) told the OIG that the only conversation she had with an (b)(6); (b)(7)(C) employee that "even [came] close to" discussing the employee's testimony to the OIG was a conversation she had with (b)(6); (b)(7)(C). We discuss (b)(6); (b)(7)(C) statements to and about (b)(6); (b)(7)(C) below.

### B. (b)(6); (b)(7)(C) Made Negative Comments to Two (b)(6); (b)(7)(C) Employees about the OIG Testimony of (b)(6); (b)(7)(C) in the OIG's Earlier Investigation

During the earlier OIG investigation, the OIG interviewed (b)(6); (b)(7)(C). When we questioned (b)(6); (b)(7)(C) in connection with the present investigation, (b)(6); (b)(7)(C) told us that, prior to the initiation of the OIG's earlier investigation, she and (b)(6); (b)(7)(C) had had conversations about (b)(6); (b)(7)(C) but it



later “became clear” to her that (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C).<sup>7</sup>

According to one (b)(6); (b)(7)(C) employee, (b)(6); (b)(7)(C) told them she was furious about information that (b)(6); (b)(7)(C) had shared with the OIG in the earlier investigation and that she had confronted (b)(6); (b)(7)(C) directly. The (b)(6); (b)(7)(C) employee further stated that (b)(6); (b)(7)(C) frequently disparaged (b)(6); (b)(7)(C) to this employee because of their OIG testimony. (b)(6); (b)(7)(C) told the employee that she was “playing the long game” and planned to “get (b)(6); (b)(7)(C) back eventually.” This employee said that (b)(6); (b)(7)(C) did not elaborate as to what she meant by that statement. The employee did not know what if anything (b)(6); (b)(7)(C) may have had in mind, but they explained that (b)(6); (b)(7)(C) “currency” was in spreading negative gossip.<sup>8</sup>

The (b)(6); (b)(7)(C) employee said they understood that (b)(6); (b)(7)(C) even though (b)(6); (b)(7)(C) according to this employee, “constantly reminded” (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C). The employee understood that (b)(6); (b)(7)(C) found out that (b)(6); (b)(7)(C) had shared with the OIG information (b)(6); (b)(7)(C) believed she had shared with them in confidence, and that (b)(6); (b)(7)(C) became upset that (b)(6); (b)(7)(C) had shared the information with the OIG. The employee’s impression was that (b)(6); (b)(7)(C) was venting her feelings about having been “betrayed” by (b)(6); (b)(7)(C) sharing information with the OIG. The employee said they never told (b)(6); (b)(7)(C) about (b)(6); (b)(7)(C) comments about them.

Similarly, another (b)(6); (b)(7)(C) employee told the OIG that (b)(6); (b)(7)(C) even though (b)(6); (b)(7)(C) was always very clear with (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) told the other (b)(6); (b)(7)(C) employee that (b)(6); (b)(7)(C) had “backstabbed” her in the earlier OIG investigation and that (b)(6); (b)(7)(C) was “never going to trust [them] again.”

The OIG obtained these employees’ testimony after we had interviewed (b)(6); (b)(7)(C). Because (b)(6); (b)(7)(C) declined our request for a voluntary follow-up interview, we did not have the opportunity to ask for (b)(6); (b)(7)(C) response to it.

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<sup>7</sup> During her OIG interview in the earlier investigation, the OIG told (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C)

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

<sup>8</sup> (b)(6); (b)(7)(C) during the earlier OIG investigation, (b)(6); (b)(7)(C) told us that they would have known if (b)(6); (b)(7)(C) had tried to make any personnel decisions for (b)(6); (b)(7)(C) employees, and that they were not aware of any information that (b)(6); (b)(7)(C) did so or attempted to do so. We found that all seven witnesses that we interviewed have been either promoted, detailed, or transferred to new positions since they interviewed with the OIG in the earlier investigation. None of the witnesses told the OIG that they perceived the transfers or reassignments to be retaliatory.

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

**C. (b)(6); (b)(7)(C) Told One (b)(6); (b)(7)(C) Employee that She Would Sue Everyone Who Had Provided Negative Information to the OIG in the Earlier Investigation**

According to an (b)(6); (b)(7)(C) employee, on one occasion when the earlier investigation was ongoing and (b)(6); (b)(7)(C) "was at a very high emotional point," (b)(6); (b)(7)(C) said that she was going to sue everyone who had provided negative information about her to the OIG in the earlier investigation. The (b)(6); (b)(7)(C) employee said that at the time they did not consider (b)(6); (b)(7)(C) statement to be a threat directed at the employee, because (b)(6); (b)(7)(C) was not aware, when she made the statement, that the employee had interviewed with the OIG. No one else was present for the conversation, and the employee said they never shared its substance with anyone. The employee also stated that (b)(6); (b)(7)(C) never made a statement like that to the employee again.

The (b)(6); (b)(7)(C) employee said that at the time (b)(6); (b)(7)(C) made the statement, they considered it to be an "an anger outburst," or "emotional outburst," after which (b)(6); (b)(7)(C) moved on to other topics of conversation. In the moment, the employee thought (b)(6); (b)(7)(C) was using them as a "sounding board" and said they did not take (b)(6); (b)(7)(C) statement seriously. However, the statement stayed in the employee's mind for a long time, and the employee said they

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

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

The employee told the OIG in the present investigation that they believe that (b)(6); (b)(7)(C) is going to sue them.

The OIG obtained this testimony after we interviewed (b)(6); (b)(7)(C). Because (b)(6); (b)(7)(C) declined our request for a voluntary follow-up interview, we did not have the opportunity to ask for (b)(6); (b)(7)(C) response to it.

**D. (b)(6); (b)(7)(C) Made (b)(6); (b)(7)(C) Employees Aware That She Had Not Been Fired and Had Copies of Documents Related to the Earlier OIG Investigation**

After the earlier investigation concluded, (b)(6); (b)(7)(C) had a (b)(6); (b)(7)(C) staff member print and deliver to (b)(6); (b)(7)(C) a copy of (b)(6); (b)(7)(C) and made other (b)(6); (b)(7)(C) employees aware that she had not been fired and that she had copies of documents that related to the earlier OIG investigation.

According to an (b)(6); (b)(7)(C) employee, (b)(6); (b)(7)(C) directed a (b)(6); (b)(7)(C) staff member to print and deliver to (b)(6); (b)(7)(C) her (b)(6); (b)(7)(C). This (b)(6); (b)(7)(C) employee said they felt that (b)(6); (b)(7)(C) wanted people to know that she was not going to get fired. The employee believed that (b)(6); (b)(7)(C) wanted the (b)(6); (b)(7)(C) staff member to tell other (b)(6); (b)(7)(C) staff members about the document, so that soon all of (b)(6); (b)(7)(C) would become aware of it. In fact, although the employee we interviewed did not see the (b)(6); (b)(7)(C) first-hand, the employee heard about it from someone who saw the document. We found the employee's testimony



to be credible because they testified that [REDACTED] facts that were memorialized in [REDACTED]. A second [REDACTED] employee similarly testified that [REDACTED] told them that "she was recommended [REDACTED] but that FBI leadership kept [REDACTED] on board and instead [REDACTED].

[REDACTED] showed the first of these two [REDACTED] employees a three-ring binder of documents that [REDACTED] implied in conversations with the employee contained information people had provided to the OIG about [REDACTED]. A third [REDACTED] employee was in the room with [REDACTED] when [REDACTED] either reviewed or had on her desk a document that related to the earlier investigation. Although this third employee did not know what the document was, [REDACTED] referred to it as being something related to the earlier OIG investigation, and the employee found the fact that [REDACTED] had it in her office to be "definitely uncomfortable" and "inappropriate."

[REDACTED] previously told us that she did not share the [REDACTED] with anyone, show it to anyone, or describe its contents to anyone. The OIG obtained the above-described testimony from the three [REDACTED] employees after we had interviewed [REDACTED]. Because [REDACTED] declined our request for a voluntary follow-up interview, we did not have the opportunity to ask for [REDACTED] response to it.

## V. Analysis

### A. Retaliation

Retaliation allegations may give rise to two separate types of inquiries, subject to different legal standards and analytical constructs. The first inquiry concerns legal standards that protect whistleblowers and provide for corrective action. See 5 U.S.C. § 2303; 28 C.F.R. pt. 27. The second inquiry is whether the individual alleged to have committed retaliation has committed misconduct that may warrant disciplinary action. In this instance, the OIG does not have a complainant seeking corrective action. Accordingly, this report only addresses whether [REDACTED] committed misconduct that would warrant disciplinary action.

FBI Policy Directive 0727D prohibits FBI personnel "from retaliating against anyone for reporting a compliance concern that the reporting individual reasonably believes to be true."<sup>9</sup> The policy directive defines retaliation as "engaging or threatening to engage in

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<sup>9</sup> Consistent with the OIG's practice, we allowed [REDACTED] and her attorneys to review a draft of this report. Through her attorneys, [REDACTED] submitted a written response to the OIG. We have included in this report footnotes in which we identify several of the points [REDACTED] raised in her written response. In her written response to the OIG after reviewing a draft of this report, [REDACTED] stated that Policy Directive 0727D is "irrelevant" because the "individuals did not report a compliance concern. The OIG asked to interview them—they did not

(Cont'd.)

conduct, direct or indirect, that adversely affects an individual who reports a compliance concern in accordance with this directive, as a consequence of such reporting.” Conduct “adversely affects an individual” if it is “based on a retaliatory motive and is reasonably likely to deter a reasonable employee from reporting a compliance concern.” Our analysis of this provision is guided by the Supreme Court’s decision in *Burlington Northern & Santa Fe Railway Company v. White*, which held that Title VII’s anti-retaliation provisions should be construed more broadly than that law’s anti-discrimination provisions, and the prohibition on retaliation applies to any conduct that might have “dissuaded a reasonable worker” from reporting or supporting a discrimination allegation. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (internal quotation marks omitted).

(b)(6); (b)(7)(C) made two statements that implicate Policy Directive 0727D. The first statement was to an (b)(6); (b)(7)(C) employee that she was aware that (b)(6); (b)(7)(C) had shared information with the OIG, that she was furious with (b)(6); (b)(7)(C) for having done so, that she had confronted (b)(6); (b)(7)(C) directly, and that she was “playing the long game” and planned to “get (b)(6); (b)(7)(C) back eventually.” As we noted above, because (b)(6); (b)(7)(C) and declined our request for a voluntary interview, we were unable to question (b)(6); (b)(7)(C) about the conversation that (b)(6); (b)(7)(C) said she had with them and its impact on them. The second statement was to an (b)(6); (b)(7)(C) employee that (b)(6); (b)(7)(C) was going to sue everyone who had provided negative information about her to the OIG. This second statement caused the (b)(6); (b)(7)(C) employee to subsequently (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) we nonetheless concluded that (b)(6); (b)(7)(C) threatening statements—made by (b)(6); (b)(7)(C) with regard to an OIG investigation into her own misconduct—were made with retaliatory motive as a consequence of employees providing information to the OIG, were made to an (b)(6); (b)(7)(C) employee who had provided information in the earlier OIG investigation, and were “reasonably likely to deter a reasonable employee from reporting a compliance concern.”<sup>10</sup> With regard to (b)(6); (b)(7)(C) first statement, (b)(6); (b)(7)(C) made the statement

report a concern.” (b)(6); (b)(7)(C) did not identify any part of Policy Directive 0727D or any other authority limiting the circumstances in which an FBI employee can report a compliance concern under Policy Directive 0727D. The witnesses who interviewed with us in the prior investigation reported several compliance concerns to the OIG during their testimony.

<sup>10</sup> In her written response to the OIG after reviewing a draft of this report, (b)(6); (b)(7)(C) stated that “Title VII is irrelevant” and that, even if it were relevant, the OIG misrepresents Title VII precedent by omitting that the Supreme Court in *Burlington Northern* restricted Title VII’s antiretaliation protection to “retaliation that produces an injury or harm,” cautioned that the challenged action must be “materially adverse,” and identified the importance of separating “significant from trivial harms.” (b)(6); (b)(7)(C) also pointed to several Title VII cases in which courts found challenged conduct to be “petty slights” and “minor annoyances” that often occur in the

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specifically because of the testimony [REDACTED] had provided to the OIG in the earlier investigation. Although the threatened retaliation was directed toward [REDACTED] and not the [REDACTED] employee with whom [REDACTED] was speaking, we believe such a statement by a supervisor to a subordinate employee has a substantial chilling effect on the subordinate employee, who also had provided information to the OIG, because it sent the unmistakable message that the supervisor would “get [any employee] back eventually” if they reported the supervisor’s misconduct to the OIG. This chilling effect is more clearly demonstrated by [REDACTED] second statement threatening to sue every employee who provided negative information about [REDACTED] to the OIG.<sup>11</sup> This statement, which [REDACTED] made to a subordinate employee who had provided information to the OIG in the prior investigation, caused that employee [REDACTED]<sup>12</sup> As with the first statement, we found that [REDACTED] made this

workplace rather than materially adverse acts that constituted retaliation. We continue to find the Title VII context relevant, and we find the following passage from *Burlington Northern* to be instructive:

The antiretaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm. As we have explained, the Courts of Appeals have used differing language to describe the level of seriousness to which this harm must rise before it becomes actionable retaliation. We agree with the formulation set forth by the Seventh and the District of Columbia Circuits. In our view, a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, “which in this context means it well might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’”

548 U.S. at 67-68 (internal citations omitted). As we discuss below, we found that [REDACTED] statements about [REDACTED] and employees who had provided negative information about [REDACTED] to the OIG were reasonably likely to deter a reasonable employee from reporting a compliance concern. Accordingly, those statements met the “materially adverse” standard articulated by the Supreme Court in *Burlington Northern* and thus support the OIG’s finding of retaliation.

<sup>11</sup> As we noted above, the [REDACTED] employee said that at the time [REDACTED] made this statement, they did not consider it to be a threat directed at the employee, because [REDACTED] was not aware that the employee had interviewed with the OIG. But [REDACTED] comment stayed on the employee’s mind for a long time, and the employee told the OIG in the present investigation that the employee continues to believe that [REDACTED] will sue the employee.

<sup>12</sup> See *Skarada v. Dep’t of Veterans Affairs*, 2022 MSPB 17 (2022):

The legislative history of the 1994 amendment to the [Whistleblower Protection Act (WPA)] indicates that the [adverse actions] should be interpreted broadly, to include ‘any harassment or discrimination that could have a chilling effect on whistleblowing or otherwise undermine the merit system and should be determined on a case-by-case basis.’ (Internal citations omitted). Notwithstanding the broad interpretation accorded to the term ‘significant change in duties, responsibilities, or working conditions [in the WPA],’ not every agency action is a “personnel action” under the WPA. See *King v. Department of Health & Human Services*, 133 F.3d 1450, 1453 (Fed. Cir. 1998). Rather, to constitute a covered personnel action under the WPA, an agency action must have practical consequences for the employee. *Id.*

The “practical consequences for the employee” in this instance [REDACTED] The effect of the retaliatory statements was, therefore, tangible, and it provides further evidence of the chilling effect of the retaliatory statements.

threat because she understood that [REDACTED] employees had provided negative information about her to the OIG in the earlier investigation. Accordingly, we substantiated the allegation that [REDACTED] retaliated or threatened to retaliate against [REDACTED] employees in violation of FBI Policy Directive 0727D.<sup>13</sup>

## B. Unprofessional Conduct

We also found that [REDACTED] engaged in unprofessional conduct in violation of FBI Offense Code 5.22. This offense code prohibits unprofessional conduct on duty, which is defined as “[e]ngaging in conduct, while on duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgment or character of the employee; or compromises the standing of the employee among his peers or his community.”

[REDACTED] had a responsibility to act professionally during and in connection with the earlier OIG investigation. That responsibility included not discussing with [REDACTED] employees the fact that they were being asked to provide testimony to the OIG, not seeking information about their OIG testimony, not asking a [REDACTED] staff member to print and deliver to her a copy of a document describing [REDACTED] in connection with the OIG’s finding of misconduct in the earlier investigation, and not making statements about getting back at or suing [REDACTED] employees for testimony they provided in the earlier OIG investigation.

[REDACTED] actions and statements call [REDACTED] judgment seriously into question. Particularly in her role [REDACTED] needed to be attentive to how [REDACTED] employees would perceive her remarks. By speaking about the earlier investigation as it was ongoing and asking about [REDACTED] employees’ interviews with the OIG, [REDACTED] displayed a lack of appreciation for how those employees would perceive her statements in view of her position as [REDACTED] of the office and created an atmosphere that was likely to chill [REDACTED] employees’ willingness to participate in the OIG’s ongoing and any future investigative process. Further, [REDACTED] diminished her standing within [REDACTED] when she made statements and took actions in connection with the earlier investigation that made some [REDACTED] employees feel uncomfortable and that other [REDACTED] employees felt were inappropriate.

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<sup>13</sup> In her written response to the OIG after reviewing a draft of this report, [REDACTED] argued that the Whistleblower Protection Act (WPA) is the “only law that prohibits ‘retaliation’ for cooperating with or disclosing information to the Inspector General”; therefore, to prove retaliation, “the OIG must prove that [REDACTED] took or failed to take a personnel action against the employee.” Similarly, [REDACTED] stated that FBI Offense Code 5.16 “defines retaliation as taking a personnel action.” Although [REDACTED] correctly characterizes the WPA and the FBI offense code, we did not base our retaliation finding on either. Rather, we based it on an FBI policy, Policy Directive 0727D, which does not require an actual or threatened personnel action. A violation of policy can constitute misconduct.





## VI. Conclusion

(b)(6); (b)(7)(C) violated Policy Directive 0727D when she made statements about getting back at (b)(6); (b)(7)(C) for their OIG testimony and about suing (b)(6); (b)(7)(C) employees who she believed had provided negative information about her to the OIG in the earlier investigation. (b)(6); (b)(7)(C) violated FBI Offense Code 5.22 by engaging in unprofessional conduct on duty when she made these statements and when she spoke to (b)(6); (b)(7)(C) employees about their testimony in the earlier OIG investigation in ways that made them feel uncomfortable, when she made (b)(6); (b)(7)(C) employees aware of her access to documents related to the earlier investigation, and when she asked a (b)(6); (b)(7)(C) staff member to print and deliver to her a copy of a document describing (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) in connection with the OIG's finding of misconduct in the earlier investigation. We have provided a copy of this report to the FBI for any action it deems appropriate.