



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**STATEMENT OF
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before the

**SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS**

on

**“THE NAVY YARD TRAGEDY: EXAMINING GOVERNMENT CLEARANCES AND
BACKGROUND CHECKS”**

October 31, 2013

Chairman Carper, Ranking Member Coburn, and Members of the Committee, thank you for asking me to be here today. The events of September 16, 2013 were horrifying to us all, and I share your commitment to identifying and addressing the root causes for this terrible tragedy.

To that end, this Committee and others have asked the Office of Personnel Management (OPM) questions about the background investigation it conducted on Aaron Alexis in 2007 and what role that background investigation had in the Navy’s decision to grant Mr. Alexis a security clearance. I appreciate the opportunity to discuss those issues with you today and to give you a better understanding of OPM’s role in the security clearance process generally.

1. Aaron Alexis Matter

First, let me begin with Mr. Alexis’ case. In 2007, at the request of the Navy, which was considering whether to grant Mr. Alexis a Secret level clearance in connection with his military service, OPM conducted a background investigation with support from a government contractor (USIS). The investigative standard for a Secret clearance in 2007 (as well as today) required a National Agency Check with Law and Credit (NACLC). The NACLC is a records based investigation – it consists of a questionnaire completed by the person being investigated and checks of Federal records, credit history records, and criminal history records. In addition to these records checks, which were completed in Mr. Alexis’ case, applicable policies required a subject interview to afford Mr. Alexis the opportunity to confirm, deny, or refute the information

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uncovered by the investigation that was discrepant from the personal history he provided on his security questionnaire.

It is important to understand the relatively limited nature of the investigation prescribed in the standards as they existed in 2007 for individuals like Mr. Alexis being considered for a Secret level clearance in connection with their military service. Those standards were records based, unlike the investigations for higher levels of clearance, and did not require that the investigator interview references. Each of the approximately 22,000 local law enforcement agencies in the U.S. have different policies and procedures; often their limitations are based on an inability to provide record access due to budget and staffing constraints rather than an unwillingness to comply with investigative requests. At the time of the Alexis investigation in 2007, OPM obtained the Seattle law enforcement records using the Washington Statewide database for District/Municipal Courts, as well as the King County Superior Court's database, as was standard practice at the time. The Washington courts database reported the Malicious Mischief offense, the date of offense, the dismissal of the case due to charges not being filed, and the disposition (dismissed). The database did not contain additional details regarding the offense itself.

Our quality control experts within OPM's Federal Investigative Standards division have since reviewed Mr. Alexis' file and have advised me that it complied with all applicable standards. I have also asked our office of Internal Oversight and Compliance to review the matter and make recommendations as appropriate. Finally, our Inspector General is currently examining the investigative record, and we look forward to hearing his views.

OPM's involvement with matters related to Mr. Alexis' security clearance ended when we submitted the case to the Department of Defense (DoD) for adjudication in December 2007.

2. The Security Clearance Program

There are a series of steps that must be taken to determine whether an individual should be granted a security clearance. The process begins when a Federal agency determines whether the duties of a particular Federal civilian position or position in the military will require the incumbent to have access to classified information, or that an employee of a contractor will require access to classified information in order to perform work under a Government contract. If such a determination is made, and if there is no prior eligibility determination that is sufficient, under applicable directives, to meet that need, the agency will need to determine such eligibility itself.

Once an agency determines that the subject will perform work that requires a demonstrated, foreseeable need for access to classified information, and that an investigation is required, the agency submits a request to OPM that it perform the background investigation. OPM performs

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the investigation on a reimbursable basis in accordance with established investigative standards and then delivers the report of investigation to the requesting agency.

I want to emphasize that OPM is not charged with deciding whether an individual should or will be found eligible for access to classified information or even with making any recommendation with respect to that decision. The decision that an individual should receive access to classified information is ultimately, pursuant to Executive Order 12968, the exclusive responsibility of the head of the agency employing the individual, or his or her designee, following a national security adjudication (either by that agency or by a central adjudicative facility working on its behalf). The agency for which the work is to be performed makes the decision to grant eligibility, based, in part, upon the background investigation, and, in part upon other information that may be available to the agency, such as a polygraph if required for the position. Further, the agency can reopen the investigation or order additional investigative work from OPM if it does not have enough information to make a determination.

The security clearance process must conform with government-wide rules that include investigative standards (which may vary, based on the level of classified information to which the individual will have access), adjudicative guidelines, and reciprocity mandates. The standards outline the required elements of the investigation. These elements include the completion of a questionnaire by the applicant and specified record and other checks to be performed by OPM depending on the level of clearance sought.

Background investigations are dependent on the voluntary cooperation of sources and of records providers, as well as the availability and accessibility of references and records. In some instances, essential personnel are not available for an interview (for example, when members of the Armed Forces are deployed in dangerous locations overseas); members of the public are unwilling to provide interviews to investigators or to complete inquiry forms; or records are not made available (for example, Federal, state, and local records may not be accessible to our investigators for a variety of reasons).

Each OPM investigator who has performed work on the investigation prepares a report of investigation that details all work attempted and all work completed. These reports of investigation are combined with the results of records checks that OPM conducts of record repositories specified in the investigative standards. Further, OPM uses “issue codes” to alert the sponsoring agency of areas of potential adjudicative concern. Once the investigator completes his or her work, OPM reviews the results package for completeness (and, when efforts to complete items were unsuccessful, reporting those efforts) and delivers it to the customer agency. The delivery is generally accomplished by electronic means to support electronic adjudication processes in place at Federal agencies.

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Once OPM has completed its work and transmitted the final investigation file to the customer agency, OPM's role in the investigation concludes.

3. Staffing and Oversight of Investigations

Adapting to change within the background investigation program is not new to the investigative community. For example, during the Clinton Administration, the decision was made to move large amounts of the background investigations work performed by OPM to a contractor workforce. The decision was made that OPM should absorb a background investigations function performed by DoD (with a Federal workforce) into the OPM workforce, leaving OPM with a blended workforce of investigators. Today, OPM continues to use a combination of Federal employees and contractors to complete background investigations. The background investigation workforce has dealt with factors that have driven down the need for background investigations – for example, declines in the size of the Federal workforce that have limited hiring, and thus the need for new background investigations to factors that have dramatically driven up the need for background investigations – for example, background investigation security needs following September 11, 2001. OPM and its partners in the background investigation community are aware of shifting demands for the investigation workforce, and working with a blend of contractors and Federal employees allows OPM to adjust its needs according to the demands of its customers.

OPM is vigilant about the potential for fraud and falsification both by Government employees and by employees of contractors. OPM has taken affirmative steps to detect and root out abuses. When instances of fraud or falsification are found, OPM takes all appropriate steps to address them. We also work closely with our Inspector General and the Department of Justice to cooperate with any subsequent investigations. We have taken steps in recent years to prevent and detect fraud and falsification both through improved workforce training and through additional levels of reviews to ensure the integrity of background security clearance investigations.

The agencies for which work is being performed control who has access to their buildings and systems, not OPM, and if an agency has concerns relating to a particular employee of a contractor, there are avenues available for that agency to take action. The agency may revoke the individual's credential and, if appropriate, direct the contractor to remove that individual from work on the contract. The agency also may request that OPM conduct a reimbursable investigation. And, of course, there are avenues for agencies to alert oversight or other law enforcement entities if there are potential criminal conduct concerns.

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4. Steps Going Forward

During the last five years, the Office of Management and Budget (OMB), OPM, DoD, and the Office of the Director of National Intelligence (ODNI) have worked together on a reform effort to ensure that there is an efficient, aligned system for assessing suitability or fitness for Federal employment, eligibility for logical and physical access to Federal systems and facilities, eligibility for access to classified information, or fitness to perform work under a Federal contract (where required by the contract) through background investigations and appropriate adjudications. At the direction of Executive Order 13467, the Performance Accountability Council (PAC), including OPM, OMB, and ODNI, was established to ensure that the work of security clearance reform be accomplished in this context and throughout the Executive Branch.

Pursuant to Executive Order 13467, the Director of National Intelligence, as the Security Executive Agent, provides guidance and oversight of the process that government agencies use to make determinations of eligibility for access to classified information and may amend the current adjudicative criteria (established by the President) if the need arises. In addition, the Security Executive Agent is responsible for establishing the criteria governing the conduct of background investigations related to determinations of eligibility for access to classified information.

OPM, DoD, and ODNI co-chair the interagency working group chartered with establishing the first Federal standards for assessing the quality of national security and suitability background investigations government-wide. The proposed standards are currently under department and agency review with a pilot exercise to be initiated in autumn 2013 to validate ease and consistency in application of the standards.

At the President's direction, under the leadership of the Director of OMB, OPM is working with its colleagues on the PAC to review the oversight, nature and implementation of national security, credentialing, and fitness standards for individuals working at Federal facilities. Our review will focus on steps that can be taken to strengthen these processes and implementation of solutions identified during the course of recent reform efforts. In particular, we recognize that evolution of the security clearance process must include the ability to obtain and easily share relevant information on a more frequent or real-time basis.

5. Conclusion

The tragic events at the Navy Yard highlight the need to be ever-vigilant in ensuring that individuals entrusted with access to classified information, and, more generally, other individuals with logical and physical access to Federal facilities and information do not present either a national security risk or a personal security risk. OPM stands ready to do its part to help reduce

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these risks within the scope of the matters committed to its authority, in collaboration with our colleagues on the PAC.

Thank you for this opportunity to testify, and I would be happy to answer any questions you may have.