

Management Implication Report

2004-3-1

July 2004



Office of Investigations

Office of Inspector General

United States Department of the Treasury

OIG MIR Number: 2004-3-1

Date of Report:

Overview of Systemic Issues:

This Management Implication Report (MIR) details a series of systemic deficiencies that, individually and/or collectively, contributed to the release of approximately 140 documents containing National Security and/or Sensitive But Unclassified (SBU) material, one of which was shown on national television. Specifically, management and internal controls related to creating and working with classified material and with the receipt, review and release of documents to former Treasury officials were either inadequate or not executed.

A. Synopsis:

The Office of Inspector General (OIG) initiated an investigation (File Number: 2004-0121) upon receipt of a referral from the Department of the Treasury (Treasury), Chief of Staff, Chris Smith, on January 12, 2004. The referral indicated that Treasury was uncertain whether any classified documents were released to former Treasury Secretary Paul H. O'Neill, and what, if any, document released to O'Neill was subsequently shown on national television.




On January 11, 2004, former Secretary O'Neill was interviewed on the CBS news program *60 Minutes*. During the interview, an image of a Treasury Department memorandum written to former Secretary O'Neill was displayed on television. This memorandum (hereafter referred to as the "60-Minute memorandum") contained the word "Secret" – an apparent reference to one or more classified documents contained in the attachments of the memorandum – and was not marked as classified. According to O'Neill, the attachments and no additional documents were shown during the interview.

DISTRIBUTION:



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The investigation revealed that on or about March 26, 2003, former Secretary O'Neill made a verbal request to Treasury's General Counsel for official records created during his tenure as Secretary. On or about April 2003, O'Neill received the requested records from Treasury, which had been electronically imaged on a single CD and two DVDs. The investigation confirmed that no Treasury employee reviewed the records contained on the CD and DVDs prior to their release to O'Neill as mandated by paragraph (e) (4) of Treasury Directive 80-05. Consequently, among the records Treasury released to O'Neill, were approximately 140 documents not marked classified even though these documents contained National Security and/or SBU information.

B. Description of Systemic Deficiencies Identified During the Investigation

1. Creating Classified Documents and Working with Classified Material

A Treasury employee created a memorandum containing classified material and the document was not properly marked as classified. Two supervisory levels of review cleared the memorandum and it was approved by the then Acting Assistant Secretary, Office of International Affairs (OIA).

(a) Policy, Practices, and Procedures:

The process by which the OIA creates and clears a document for release is as follows: 1) the document is initiated by a formal request for information from various Departmental Offices (i.e. Executive Secretary's Office); 2) the request is assigned to an appropriate Desk Officer; 3) the Desk Officer researches and gathers supporting information; 4) the Desk Officer creates the memorandum/document; 5) the completed memorandum/document, along with the Treasury Clearance Sheet,¹ is submitted for supervisory review (multi-level in some instances) prior to distribution; and 6) once the contents are properly classified and the memorandum/document cleared, it is submitted to the requestor/approving official in its completed form.

Treasury Directive (TD) 71-10 authorized the issuance of the Department of the Treasury Security Manual (Treasury Department Publication (TD P) 71-10).² Treasury's Office of Security published the "*Classified Information User Reference*," dated October 19, 2000,

¹ The Treasury Clearance Sheet is an internal document used by OIA to track the drafting and clearance of documents produced by their office. This Clearance Sheet is not a Treasury Directive Form and a Treasury Directive and current policy does not require its use.

² TD 71-10 4(a)(b) "provides uniform policies, standard and general procedures to be used by the bureaus to carry out their respective responsibilities in the areas of personnel, physical, telecommunications and information systems security..." It also "implements and supplements, where necessary, Executive Orders, National Security directives, and other Governmental regulations by providing guidance when such regulations are not sufficiently detailed, or details are left to Department discretion..."

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which was “based upon Executive Order 12958, Classified National Security Information.” This publication provides specific guidelines and instructions on classified information, including: “What is Classified Information?; Which Senior Officials Have Classification Authority?; Does Anyone Else Have Classification Authority?; How Should Classified Documents Be Handled?; and What Computer Can I Use to Process Classified Information?”. The “*Classified Information User Reference*” requires the use of a Transmittal Form, TD Form 71-01.5, to track the transfer/handling of a classified document for material at the Top Secret level, but the form is optional for Secret and below information.

For additional guidelines and instructions, Treasury also has at its disposal Executive Order 12958, Part 4, Section 4.1 (f), which, in part, states: “Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.”

TD 80-05, “*Records and Information Management Program*”, Paragraph 4, states: “It is the policy of the Department of the Treasury to manage records effectively and efficiently throughout their life cycle in order to facilitate accomplishment of the agency’s programmatic and administrative missions, to preserve official agency records in accordance with applicable statutory and regulatory requirements, and to ensure access to information by Treasury officials, and the public as appropriate. This is to be accomplished through adequate and proper documentation of all Treasury organizations, their functions, policy decisions, procedures, and essential transactions in a manner that promotes accountability, establishes a historical record, and protects the legal and financial rights of the Government and the privacy of individuals.”

(b) Observation:

Clearance Procedures Not Properly Executed

The investigation confirmed that the *60-Minute* memorandum contained classified material and was not marked as such. Upon reviewing the original memorandum with attachments and the attached Treasury Clearance Sheet, the author of the *60-Minute* memorandum stated that the document should have been marked as classified. He acknowledged making a mistake and stated that he and/or his reviewers should have noticed the error.

A review of the Treasury Clearance Sheet (attached to the *60-Minute* memorandum) and investigative interviews disclosed the following: 1) the *60-Minute* memorandum was created by OIA on behalf of the then Acting Assistant Secretary, OIA, to Secretary O'Neill concerning a pending meeting; 2) the author/initiator of the *60-Minute* memorandum did not have the authority to classify or clear the memorandum and, after creating the memorandum, forwarded it via unclassified email (without the classified attachments) to the initial reviewer; 3) the initial reviewer cleared the *60-Minute* memorandum as unclassified although the word "Secret" appeared twice in the document; 4) the second-level reviewer also cleared it as unclassified and hand-carried it, with classified attachments, to the Special Assistant to the Acting Assistant Secretary, OIA; 5) the Special Assistant telephonically notified the Acting Assistant Secretary (who was out of the country at the time) about the subject and content of the memorandum and its attachments over an unsecure line; 6) the Acting Assistant Secretary, OIA, approved (via telephone) the memorandum without seeing it or its classified attachments; and 7) the Acting Assistant Secretary, OIA, acknowledged that he was unfamiliar with classifying material, and as a result, he relied on the author/initiator of any such material for proper classification. According to the Special Assistant, while her conversation with the Acting Assistant Secretary occurred over an unsecure line, no classified information was discussed.

Insufficient Control Over Handling and Using Classified Material

During the investigation it was noted that an OIA Clearance Sheet was used in preparation of the *60-Minute* memorandum. Examination of the Clearance Sheet revealed that it solicits no information to consider whether National Security or SBU classification may be contained in the accompanying document. Additionally, no Transmittal Form, as referenced in the "*Classified Information User Reference*", was used to create the *60-Minute* memorandum because it was (and is presently) not required for Secret material. Therefore, no final check for improper use/markings of classified material was made.

(c) Effect:

Improper execution of clearance procedures and insufficient controls related to handling and using classified material at or below the Secret level, individually and/or collectively, contributed to the release of the *60-Minute* memorandum and other documents containing National Security information and/or SBU material to unauthorized persons. If the document had been properly cleared/reviewed and properly marked as classified, the risk of it being released to unauthorized persons would have been mitigated.

2. Request, Review, and Release of Records

Former Treasury Secretary O'Neill verbally requested records created during his tenure from the Treasury Office of General Counsel. Those records were released to O'Neill without Treasury's review and approximately 140 of the records contained National Security and/or SBU material.

(a) Policy, Practices, and Procedures:

TD 80-05 provides policies and assigns responsibilities for records management, forms management, and interagency reports management.³ TD 80-05 provides specific directions for the removal and review of Treasury records. TD 80-05 (e) (4) states, "ensure that nonrecord material being removed by a departing employee or official is examined by the bureau-reviewing official for the purpose of providing the appropriate protection for information that is privileged or restricted from release under the Privacy Act or other statutes, regulations or executive orders." TD 80-05, paragraph 5 (e) (7), further states, "develop procedures to ensure that classified or SBU materials are handled according to the requirements of the CIO and the Director, Office of Security, and that they are properly protected at all times."

The U.S. National Archives and Records Administration (NARA) Bulletin 2000-03, paragraph 7, provides further guidance on the removal of records. NARA's guidelines on records removal by departing employees states, "... a designated official of the agency should review the material and approve their removal."

(b) Observation:

Inadequate Procedures for Requesting Records

TD 80-05 does not specify that requests for records must be made in writing to a designated person. Former Secretary O'Neill made a verbal request to the General Counsel for the records of his tenure as Secretary. TD 80-05 does not specifically identify an individual or particular Treasury Office as being responsible for reviewing records to be released to departing employees or officials.

³ As cited previously, TD 80-05, paragraph 4, states, "It is the policy of the Department of the Treasury to manage records effectively and efficiently throughout their life cycle in order to facilitate accomplishment of the agency's programmatic and administrative missions, to preserve official agency records in accordance with applicable statutory and regulatory requirements, and to ensure access to information by Treasury official, and the public as appropriate. This is to be accomplished through adequate and proper documentation of all Treasury organizations, their functions, policy decisions, procedures, and essential transactions in a manner that promotes accountability, establishes a historical record, and protects the legal and financial rights of the Government and the privacy of individuals."

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Inadequate Procedures and Improper Execution of Policy for Reviewing and Releasing Records

During the investigation, it was noted that Treasury's Assistant General Counsel for General Law and Ethics, provided guidance (albeit a draft memorandum) to the General Counsel regarding records to be removed by O'Neill⁴. In part, this guidance stated, "In the past, the Executive Secretary, in conjunction with the General Counsel, have (sic) acted as the approving officials with respect to determining what records may be provided to a departing Secretary."⁵ When interviewed, the Assistant General Counsel stated that the General Counsel's office had no defined process for reviewing the records prior to their release, although, as mentioned previously, the standard practice was for the Executive Secretary and the General Counsel to act as approving officials when determining what records could be provided to a departing official.

The General Counsel stated (in an email message) he would conduct a "sampling" of the records prior to their release; however, when interviewed, he acknowledged that he did not review the records prior their release.⁶ The General Counsel did not follow the advice of the Assistant General Counsel and the records were released without a review.

The investigation also revealed that the Executive Secretary was unaware of existing policy, specifically TD 80-05, which required a review of the records prior to releasing them to a departing official.

Ultimately, Treasury produced the records requested by O'Neill. Approximately 140 documents contained National Security and/or SBU material and were subsequently provided to O'Neill.

(c) Effect:

In addition to dealing with the consequences of *inadequate policy and procedures used to request, review, and release documents* in response to inquiries made by former Departmental officials, comes the equally challenging task of overcoming the effects of otherwise well-intended governmental personnel who *failed to properly execute very sound policies and procedures*. Combined, such shortcomings suggest, **in order to**

⁴ Draft Memorandum from Assistant General Counsel (GLE) to General Counsel, dated 12/20/02, attached to this report.

⁵ Ibid.

⁶ Email from General Counsel to Executive Secretary, dated April 1, 2003, attached to this report.

properly safeguard information, Treasury personnel be afforded adequate security training – designed to enhance not only one's overall security awareness, but to increase certain levels of critical proficiencies (i.e., appropriate use of the classified and unclassified automated systems).

- *Requests* - Presently, it is not a requirement that requests for records made by a departing employee or official be submitted in writing. As such, the O'Neill request for documents was not made in writing, the Department was unable to provide the exact date of the O'Neill request, and no independent verification of the request existed.
- *Review* – While a review of documents prior to their release to former officials is mandated, this requirement was simply not followed. The investigation confirmed a reference to a draft policy, dated December 20, 2002, on this matter and communication between OGC senior staff and the former General Counsel affirming the need to perform a pre-release review. Despite the aforementioned, the review was never conducted and the draft policy has not been implemented.
- *Release* – Existing TD 80-05 fails to formally identify by position and/or departmental office, responsibility for managing the release of records to departing employees. As a result, the OGC and the Office of the Executive Secretary, while focused on performing their individual duty, clearly were not aware of who had the ultimate responsibility for insuring the project was properly vetted. Additionally, the investigation was left with accepting the totality of the weight associated with the reconstructed record which suggests, in the end, National Security and/or SBU information was released to the former Secretary; however, it could not be readily determined what shipping method was used.

Collectively speaking, these shortcomings have led to the improper protection, and eventually, improper release of classified and/or sensitive information to former Secretary O'Neill. Ultimately, this information was released into the public domain; placing at risk, the sensitive sources, methods or activities of the federal government – if not the international community.

C. Other Observations

(a) Policy, Practices, and Procedures:

The Office of Management and Budget (OMB) "Management Accountability and Control," Circular Number A-123, dated June 21, 1995, provides general guidance to

Executive Departments. Treasury Internal Management Control Program, TD 40-04, defines internal control as the first line of defense in safeguarding assets and preventing and detecting errors and fraud. TD 40-04, paragraph (3) also states that systems of internal control should provide reasonable assurance that the following objectives are being achieved:

- 1) Effectiveness and efficiency of operations, including using agency resources in a manner consistent with the agency mission and objectives, and safeguarding agency assets from waste, fraud and mismanagement;
- 2) Reliability of financial reporting, including reports on budget execution and financial statements; and
- 3) Compliance with applicable laws and regulations.

Further, the directive requires that Bureaus establish, maintain, evaluate, improve and report on their systems of program and operations controls and assure their effectiveness and adequacy. TD 40-04, paragraph (6) (c), directs certain minimum categories of control activities that should be established and maintained. Among the categories are:

- 1) Controls over information processing - examples of these control activities include edit checks of data entered, accounting for transactions in numerical sequences, comparing file totals with control accounts and controlling access to data, files, and programs;
- 2) Appropriate documentation of transactions and internal controls - internal controls, all transactions, and other significant events should be clearly documented. The documentation should be readily available for examination.

TD 40-04, paragraph (6) (d), directs Departmental management and staff to ensure that each bureau has relevant, reliable, and timely communications relating to internal as well as external events. Pertinent information should be identified, captured and distributed in a form and time frame that permits people to perform their duties efficiently.

(b) Effect:

1) Contamination of Treasury Computer Systems

The deficiencies described in section B. 1 and B. 2 of this report contributed to the improper processing and population of National Security and/or SBU material on the unclassified Treasury Local Area Network (LAN) and the Treasury Assignment and Correspondence Tracking (TACT) system.

After determining that the *60-Minute* memorandum was not marked with its proper security classification and was then located on the TACT system, Treasury's Office of General Counsel was tasked with conducting a review of the records released to former Secretary O'Neill. This review revealed that approximately 140 of these documents were not marked classified or sensitive even though they contained National Security and/or SBU material. Further, the investigation affirmed that the *60-Minute* memorandum, as well as approximately 140 additional documents containing National Security and/or SBU material, were produced and processed using the Treasury Departmental Offices' (DO) unclassified LAN and TACT systems. Classified material should have been processed on the Treasury Secure Data Network (TSDN), designated as the DO accredited network for processing of classified information up to the Secret level. Additionally, the *60-Minute* memorandum was transmitted via Treasury's unclassified email system.

2) Insufficient or Inadequate Internal Controls

During the investigation it was learned that the General Counsel and Executive Secretary's offices did not maintain any records/logs of outgoing correspondence and packages. Due to lack of shipping documentation and sparse information developed during investigative interviews, it could not be readily determined what shipping method (i.e. regular mail, Federal Express, United Parcel Service, courier, etc.) was used to deliver the records to O'Neill. Had such logs been maintained, the two offices would have immediately known what, when, and by whom the records were released to former Secretary O'Neill. A lack of shipping records may also hinder Treasury management's ability to accurately distinguish between official and unofficial (potentially misuse) shipments that were billed to Treasury shipping accounts.

D. Corrective Recommendations

1. Ensure Proper Training For Employees and Supervisors Regarding Handling and Safeguarding of Classified Information

- a. All Departmental Office employees having access to classified and sensitive information should receive proper training and refresher courses regarding the proper classification, handling, and safeguarding of classified and/or sensitive documents.
- b. Implement a security training tracking system to appropriately document employee training and identify those requiring training.
- c. Request and/or allocate proper resources based on the need demonstrated.

2. Ensure the Process for the Request, Review, and Release of Records is Properly Administered

- a. Consider a complete review and revision to TD 80-05 that includes:
 - 1) Require requests for records made by a departing employee or official to be submitted in writing;
 - 2) Specifically identify a position or particular Departmental Office as being responsible and accountable for the review of records prior to their release to departing employees or officials;
 - 3) Strengthen the language to require and define a timely review of all records or files being removed by departing employees or officials prior to the records being released; and
 - 4) Designate the General Counsel's office as the final check-off/sign-off authority for records being released to departing officials.
- b. Ensure classified and/or SBU documents and materials are properly reviewed prior to their release by considering the implementation of the following:
 - 1) Modify the Treasury Clearance Sheet and require its use to assist in the creation, review, and release of classified and SBU documents; and/or

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- 2) Combine the Clearance Sheet and the Classified Document Record of Transmittal Form (Treasury Directive Form 71-01.5) thereby having one form for proper clearance, accountability and transmittal of the material/information.
 - 3) Require the use of the Classified Document Record of Transmittal Form (Treasury Directive Form 71-01.5) when transmitting all forms of classified correspondence, to include Secret (and below) and SBU information.
- c. The revised Clearance Sheet/Transmittal Form could serve as the final check-off/sign-off document to ensure all material of importance is properly released.
 - d. Request and/or allocate proper resources based on the need demonstrated.
- 3. Ensure the Control Environment is Appropriately Evaluated/Considered and Sufficient Internal Controls Exist within the General Counsel and Executive Secretary offices.**
- a. Task senior managers of the General Counsel and Executive Secretary offices to review their operations and programs ensuring that sound internal controls are in place as outlined in TD 40-04 and OMB Circular No. A-123.
 - b. Report the results of the aforementioned activity to the Internal Control Officer and the OIG.
 - c. Implement, as required, policy and procedures (or revisions) that require offices to maintain a record/log of all parcels and packages sent to and from their offices.
 - d. Enhance the TACT system to track, at a minimum, outgoing correspondence.
 - e. Request and/or allocate proper resources based on the need demonstrated.

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4. Determine and Mitigate the Harm Caused by the Release of Approximately 140 Documents Containing National Security and/or SBU Information.

- a. Review the work done by the Office of General Counsel concerning the exact number of documents released to former Secretary O'Neill containing National Security and/or SBU information.
- b. Monitor the success of the Office of General Counsel to have the documents in question returned to Treasury.⁷
- c. Review the assessment of Treasury's unclassified computer systems in connection with those systems being populated with classified and SBU information and the actions taken to remove and prevent such information from unclassified systems.⁸
- d. Provide the results of the aforementioned reviews to the OIG.

E. Conclusion

The OIG acknowledges the corrective measures already being taken by Treasury as outlined in Deputy Secretary Samuel Bodman's memorandum to Inspector General Jeffrey Rush, dated March 22, 2004, which is attached to this report. Among the measures are additional security training and counseling, completion of a risk-based review of the automated systems, digital media and related process to identify classified material, and scheduling a comprehensive security review conducted by a third party.

We also look forward to working with the Department, in an oversight role, to overcome the difficulties mentioned and in implementing recommendations offered in this report.

⁷ The Office of General Counsel identified approximately 140 documents containing National Security and/or SBU information that were released to former Secretary O'Neill and to O'Neill's editor. The General Counsel had taken initial steps to effect the return of the referenced documents or limit their use and exposure to the public.

⁸ Treasury and/or an external party were to assess the extent to which Treasury's unclassified computer systems had been populated with National Security and/or SBU information. Subsequent remediation steps were to be taken, such as taking the TACT system off-line and examining the contents of certain computers.

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DRAFT LEGAL MEMO
FOIA Exemption 5

DRAFT LEGAL MEMO
FOIA Exemption 5

Training10

From: Kupfer, Jeffrey
Sent: Tuesday, April 01, 2003 3:45 PM
To: [REDACTED]; [REDACTED]
Subject: FW: PHON request for electronic version of his records

x6

let's pass these to David

-----Original Message-----

From: [REDACTED] **On Behalf Of** Aufhauser, David
Sent: Tuesday, April 01, 2003 3:18 PM
To: Kupfer, Jeffrey
Subject: PHON request for electronic version of his records

x6

Jeff,

Please give me the CDs. I will do a statistical sampling and let the Secretary know about the implications of producing the documents.

- David



THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

DIG _____
AIG/I _____

March 22, 2004

jd 3/29
MEMORANDUM FOR JEFFREY RUSH, JR.
INSPECTOR GENERAL

FROM: SAMUEL W. BODMAN *Sub*
DEPUTY SECRETARY

SUBJECT: *Report of Investigation Relating to Records Disclosed to
Former Secretary O'Neill*

Thank you for your continuing efforts in response to Chief of Staff Chris Smith's referral regarding the disclosure of certain records to former Secretary Paul H. O'Neill. I have reviewed your Report of Investigation dated March 17. Your report confirms a troubling conclusion in your earlier report under Section 5(d) of the Inspector General Act of 1978: the records were not properly reviewed before their disclosure to Mr. O'Neill. However, I am pleased to see that the Justice Department has determined that there is no evidence of any criminal wrongdoing.

Secretary Snow is sending a letter to the same Members of Congress who were notified of your earlier report to inform them of your March 17 report and to bring them up to date on the Department's efforts to address these issues. A copy of his letter is enclosed.

Over the past several weeks, Treasury officials have kept you apprised of a variety of corrective actions we have undertaken in response to the disclosure. Some of these actions are highlighted in the enclosed letter. As to the individuals specifically named in your report, the Department has begun a process of providing additional training and counseling as appropriate. Secretary Snow and I are committed to leading this effort, and we will arrange among other things to undertake additional security training ourselves. In the longer term, I would like to establish a permanent program to ensure that the Department's management team, now and in future Administrations, is provided appropriate training with respect to document handling and security.

I look forward to your forthcoming report on the management implications of this matter.

Enclosure