



To: JoDee M. Hanson
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From: Paula Dinerstein, General Counsel, and Colleen Zimmerman, Staff Litigation and Policy Attorney, Public Employees for Environmental Responsibility (PEER), on behalf of Anthony Irish, Associate Solicitor for General Law, Office of the Solicitor, Department of the Interior

Date: May 2, 2025

As his legal representatives, on behalf of Anthony Irish, we submit his response to the Advance Written Notice of Proposed Removal dated April 4, 2025.

Summary

The Proposed Removal seeks to remove Anthony Irish (Irish), not only from his SES position of Associate Solicitor of General Law at the Department of the Interior (DOI), but also completely from Federal Service. Irish is a 20-year DOI employee with a flawless record and performance that merited “promot[ion] to the highest ranks of the Federal Government.” Proposed Removal at 11. His removal is proposed based solely on one charge with one specification, claiming that his efforts on behalf of the Solicitor’s Office (SOL) to ensure that granting unprecedented access to DOI systems would comply with applicable law, address security risks, and be consistent with DOI policy and industry best practices, amounted to subversion, obstruction and delay.

The Proposed Removal must be rescinded on four independent grounds.

1. The charged activity was not misconduct but the performance of Irish’s job duties.
2. The conduct is legally protected under the Whistleblower Protection Act.

3. The proposing and deciding officials lack authority to take the action.
4. The consideration of the Douglas factors does not support the ultimate penalty of removal from Federal Service.

In addition, the Proposed Removal was hastily and carelessly put together in order to reach a pre-determined conclusion. It is not consistent even as to what is being charged or what the proposed penalty is. It should be withdrawn.

Background

This matter involves requests for access to DOI Human Resources, Payroll and Credentialing Systems, including the Federal Personnel Payroll System (FPPS), by the following DOI officials: Acting Chief Human Capital Officer, Stephanie Holmes (Holmes); Advisor to the Secretary Katrine Trampe (Trampe); and then Senior Advisor to the Secretary exercising the delegated authority for the Assistant Secretary, Policy Management and Budget, Tyler Hassen (Hassen) (collectively, the requesters). Hassen is also the proposing official here. These individuals have had associations with the Department of Government Efficiency (DOGE), but with regard to the events at issue they were all acting as employees and officials of the DOI. The FPPS system contains detailed financial and personnel information for not just DOI but also 53 federal agencies, including the Supreme Court, and over a quarter million federal employees.

Irish did not have authority to approve or disapprove the requested access, but instead was acting as the Associate Solicitor for General Law, whose principal duty is to give legal advice to his sole client, the Secretary of the Interior, and to the Secretary through those with delegated authority from him, including authority over the DOI systems in question. At the time Irish became involved in the matter, the requesters had already been granted “viewing access” to FPPS by the Office of Human Capital. This allowed them the ability to see any actions processed within FPPS. Irish became involved when he learned that the requesters additionally sought further access, which was ultimately resolved by providing them a “requesting access” role that allowed them to initiate (but not execute) personnel actions across the Department. Irish’s involvement continued when the requesters later sought access to all capabilities within FPPS.

Irish’s involvement took place over a period of about one month, from late February to late March 2025. It included several communications by email and conference calls with the requesters and among the DOI officials responsible for the systems for which access was requested in the Office of Human Capital (OHC), Office of the Chief

Information Officer (OCIO), and the Interior Business Center (IBC). These discussions concerned the security risks that might be posed by the requests, means to mitigate those risks, as well as legal questions regarding the requests. Even in deciding to provide “requesting access,” Irish and the other DOI officials involved in the discussions were concerned that this access did not then exist within FPPS, that the security risks and legal authorities had not been analyzed, and that Trampe and Holmes had no delegated authority regarding personnel actions. Irish pulled together a team including the OCIO and the IBC to create a risk assessment for that access. A 16-page risk assessment memorandum was drafted to which Irish contributed.

Subsequently, in late March, Irish learned that the requesters continued to seek greater access, in fact to all capabilities within FPPS, as well as direct access to other systems, including the ability to create, suspend, and delete email accounts. Additional access requested in FPPS included the ability to approve as well as request personnel actions, i.e. the servicing personnel office (SPO) role. Normally, one person does not have both requesting office and SPO roles for the same organization. As a result of meetings with the requesters and among the DOI officials considering the request on March 27, 2025, it was decided among those considering the requests that because of the unprecedented nature of the access sought, which no single DOI official had ever had; the fact that the full access sought could not preclude access to data from the other 53 agencies covered by FPPS and not just DOI; and the high level of risk, including the fact that the officials seeking access did not have appropriate training to safeguard the material, the access must be approved at the Secretarial level. A Decision Memo would be prepared for the Secretary to apprise him of the risks and seek his approval for the access. Irish took part in drafting the Decision Memo (Attachment B to the Proposed Removal).

After the phone calls on March 27, Irish consulted with his supervisor, Greg Zerzan, who was exercising the delegated authority of the Solicitor. Zerzan did not object to this approach. While the Decision Memo as originally drafted stated that the requested access would violate the law and create unacceptable security risks, Irish edited it to delete these conclusions and simply outline the risks and provide a signature block for the Secretary to approve the access.

Irish left work early that day while his SOL colleague and Zerzan continued to work on the Decision Memo. Irish understood that they would potentially make further revisions and then show it to the requesters to solicit their input and then convey it to the Secretary. The next day, Friday, March 28, 2025, while Irish understood this process was playing out between Zerzan and the requesters, Irish as well as the Chief Information Officer (CIO) and the Chief Information Security Officer (CISO) were placed on investigative leave. Irish has not returned to the office or had access to his DOI files since March 28th. He does not know whether the Decision Memo was ever

finalized or transmitted to the Secretary. However, a copy of the Memo (unsigned) is appended to the Proposed Removal. Materials referenced in the Report of Investigation (Attachment A to the Proposed Removal, p. 3) and supporting emails show that SPO access was granted to Holmes, Trampe, and Hassen by Jennifer Ackerman, Director of the OHC, on Saturday, March 29, 2025.

Irish's Proposed Removal is dated Friday April 4, 2025, but was not delivered to him until Tuesday, April 8. The Report of Investigation on which the Proposed Removal is ostensibly based is dated April 3, the day of Irish's investigative interview and the day before the date of the hastily assembled Proposed Removal.

The Proposed Removal Is Not Justified

I. THERE WAS NO MISCONDUCT. IRISH WAS SIMPLY DOING HIS JOB.

A. Irish's Job Duties Included the Legal Review and Analysis He Conducted to Assist Agency Officials and the Secretary.

As the Associate Solicitor for General Law, Irish's principal duty is to give legal advice to his sole client, the Secretary of the Interior and those exercising delegated authority from the Secretary, specifically including the Assistant Secretary for Policy, Management and Budget (AS-PMB) and the CIO. Position Description at 1 (Ex. A hereto)¹; *see also* Solicitor's Manual, Part II, Chapter 1. He is to assist leadership across the Department "in achieving programmatic goals in an effective and legally compliant matter." Ex. A. at 1. "Additionally, the Associate Solicitor ensures the timely identification of legal issues within the Division's purview across the Department's programs and operations and the appropriate provision of legal support to resolve such issues,..." *Id.* Legal work at the Department is delegated solely to the Solicitor's Office. 200 DM 1.6.C. Thus, it was Irish's job – and no one else's – to provide legal advice and support concerning the requested access, and ultimately the Secretary's decision whether to accept that advice.

In identifying legal issues and providing support in resolving the issues posed by the requested access, Irish was primarily responding to the concerns expressed about legal and security risks by the officials responsible for the systems for which access

¹ Exhibit A was included as part of "Background Material" provided to Irish on April 18, 2025 by Matthew Freed in response to Irish's request for materials to aid in the preparation of this Response, since Irish had lost access to his DOI files. The Position Description provided is not the most up-to-date version. Since that version, the Employment and Labor Law Unit has been moved outside of the Division of General Law. However, the portions of the Position Description quoted here remain the same.

was sought. These included the CIO, the CISO, and senior officials of the IBC, whom it was his job to advise. *See* Proposed Removal at 2 (Holmes believes that the CIO, CISO and IBC Senior Advisor Julie Bednar “collectively sought to obstruct and delay the process to provide access to FPPS”); *id.* at 6 (Lowe, the CISO, took the lead on drafting the memo to the Secretary); *id.* (officials in IBC, OCIO, CISO and OHC contributed to the first risk assessment memo); *id.* at 7 (the entire group on the March 27 call determined that a Decision Memo would need to be provided to the Secretary for approval of the SPO access); *id.* at 8 (Irish refined the draft of the Decision Memo to make it “less aggressive”). *See also* email from Julie Bednar to Holmes and Hassen, March 6, 2025 (Ex. B hereto) stating that the access sought across all of DOI to make personnel/payroll changes currently did not exist and the identified risks were significant enough to warrant higher level approval.

According to Bednar, the risks included “potential inadvertent disclosures, system vulnerabilities, and possible violations of applicable regulations and departmental policies. Given the sensitivity and potential impact of these risks, it is imperative to take a cautious and structured approach. Actions executed in FPPS require following established DOI processes. These processes are specifically designed to provide necessary safeguards, reduce the likelihood of errors, and uphold regulatory and policy compliance, thereby protecting both the integrity of the system and the department’s operational security.” *Id.*

It is far less credible that Irish was some sort of rogue actor trying to obstruct and delay when all of the officials with responsibility for the agency systems involved shared his concerns. He was merely doing his job to assist and advise them, as well as the Secretary.

B. The EO Does Not Authorize the Access that the Requesters Sought or Alter Irish’s Job Duties.

The only basis for concluding that Irish’s actions amounted to serious misconduct rather than performance of the due diligence that his position required is a contention that all of Irish’s efforts were unnecessary, and instead interposed to subvert, obstruct, and delay, because an Executive Order (EO) already authorized the requested access.² The claim that the EO authorized the access sought is untenable for several reasons.

² The EO in question is “*Establishing and Implementing the President’s ‘Department of Government Efficiency,’*” available at <https://www.whitehouse.gov/presidential-actions/2025/01/establishing-and-implementing-the-presidents-department-of-government-efficiency/>

1. Only Irish, not Holmes or Trampe, had the authority or expertise to interpret the EO.

The only support for a conclusion that the EO directed the access sought without any need for legal or risk analysis is the opinions of Holmes and Trampe. *See* Proposed Removal at 2 (Holmes stated that the request was the fulfillment of an Executive Order authorizing such systems access); *id.* at 3 (as Trampe “understood it, the Executive Order superseded any policy restrictions”); *id.* at 10 (Holmes’ perception was that the EO had “very clearly authorized her and the others to have the requested FPPS access.” Therefore, according to Holmes, all of Irish’s actions were in reality pretexts for “delay and obstructionist tactics”).

In contrast to the views of Holmes and Trampe, Irish took the position that the EO’s systems access provisions applied to the United States Digital Service (USDS), an independent entity established in the Executive Office of the President, and not the established DOGE teams within Interior (the Proposal misstates this at page 8). Moreover, even if the EO applied to agency DOGE teams, it was Irish’s understanding through independent discussions with one of the requesters relating to Freedom of Information Access requests that no such team had been established at the Department and none of the three requesters were considered DOGE officials. In addition, the EO could not supersede existing statutes such as the Privacy Act.

As noted above, only the Solicitor’s Office has the authority to make legal interpretations for the Department, not people outside the SOL like Holmes and Trampe. Moreover, neither of them had qualifications to interpret the EO. Holmes’ training and duties at DOI as the Acting Chief Human Capital Officer involve labor and employment law, not interpretations of EOs. Trampe, currently an Advisor to the Secretary, is not an attorney and thus has no qualifications to interpret the EO. It is Irish, as the Associate Solicitor for General Law, who has the training and authority to interpret the EO. Irish cannot be removed based on the opinions of Holmes and Trampe about the effect of the EO.

2. The EO does not override existing law such as the Privacy Act and cybersecurity laws and regulations.

Irish’s interpretation of the EO is also consistent with its plain language and governing law. It is basic constitutional law that Congress makes laws and the President “take[s] care that the laws be faithfully executed.” U.S. Constitution, Article II. Thus, executive orders cannot override laws enacted by Congress. The seminal case on the limits of executive orders is *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), which invalidated an EO seizing control of most of the country’s steel mills, because the President could only lawfully act to execute Congress’ laws or

carry out the constitutional duties of the executive. EOs that are not authorized by congressional enactments are unconstitutional. *See City & Cty. of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018). *See also AFL-CIO v. Kahn*, 618 F.2d 784, 798 (D.C. Cir. 1979)(MacKinnon, dissenting) (EOs must direct that congressional policy be executed in a manner directed by Congress, not that presidential policy be executed in a manner prescribed by the President). Courts have more recently reaffirmed this principle in relation to other EOs of the current administration. *PFLAG, Inc. v. Trump*, No. 25-337-BAH, 2025 U.S. Dist. LEXIS 38036, *64-71 (D. Md. Mar. 4, 2025) (granting preliminary injunction based on strong likelihood of success on the merits of claim that portions of EOs conflict with statutory law); *Pacito v. Trump*, No. 2:25-cv-255-JNW, 2025 U.S. Dist. LEXIS 36606 (W.D. Wash. Feb. 28, 2025) (granting preliminary injunction of an EO because it nullified a congressionally established program).

Section 4(b) of the EO recognizes this, providing that: “Agency Heads shall take all necessary steps, in coordination with the USDS [United States Digital Service] Administrator and *to the maximum extent consistent with law*, to ensure USDS has full and prompt access to all unclassified agency records, software systems, and IT systems. USDS shall adhere to rigorous data protection standards” (emphasis added). *See also* EO at 5(b) “(This order shall be implemented consistent with applicable law and subject to the availability of appropriations.)” Thus, the EO is clear, as is required under the Constitution, that access to agency records is to be provided “consistent with law,” i.e. subject to existing law such as the Privacy Act, the Federal Information Security Modernization Act (FISMA), 44 U.S.C. § 3551 *et seq.* and other authorities.

The Privacy Act establishes statutory prohibitions on the disclosure of records contained in systems of records, such as FPPS, unless one of twelve permitted conditions are met. 5 U.S.C. § 552a(b). FISMA meanwhile requires the head of each agency, at DOI the Secretary, to “provid[e] information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of [information and information systems],” 44 U.S.C. § 3553(a)(2) and to comply with information security standards established various executive branch entities. 44 U.S.C. § 3553(a)(1). Irish also correctly interpreted the requirement for consistency with existing law to include the proper application of that law, including evaluation of security and other risks.

3. The EO does not apply here.

Equally important, the EO cannot possibly require provision of the access that the requesters sought or override Irish’s professional obligation to explore legal issues and security risks, because, as Irish stated in his discussions with the requesters, the

EO does not even apply here. The EO is explicitly made applicable to access by the USDS, but the requesters were acting in their capacity as DOI officials and were not part of the USDS. *See* EO at 4(b) (Agency Heads shall take all necessary steps to ensure that *USDS* has access). Even assuming the EO applied to DOGE teams, Irish understood that the agency's position is that there were no such teams at DOI and the requesters were not acting as DOGE officials.

The EO also does not apply here because it applies to "access" to all agency unclassified information, not the ability to take the actions within agency systems without counter-signatures that the requesters sought. The requesters already had "viewing access" to all systems before Irish got involved. They sought access not addressed by the EO to purportedly be able to initiate and execute personnel actions, make payroll changes, and create and deactivate email accounts. That the EO does not apply to these types of operational abilities is evidenced by the fact that its stated purpose is to "improve the quality and efficiency of governmentwide software, network infrastructure, and information technology (IT) systems. Among other things, the USDS Administrator shall work with Agency Heads to promote interoperability between agency networks and systems, ensure data integrity, and facilitate responsible data collection and synchronization." EP Sec 4(a). Gaining access to be able to unilaterally take personnel, payroll, and credentialing actions is another story entirely.

In sum, it was not Irish who was using unwarranted concerns about legal compliance and security risks as a pretext to subvert, obstruct, and delay legitimate access requests. Instead, it is the proposing official who is using a false claim that the access was mandated by the EO as a pretext to rid the agency of an official perceived as not sufficiently cooperative with certain officials' desires to take action without regard to legal impediments or security risks.

C. Irish was Being Constructive, Not Obstructive

As outlined above, Irish's performance of his job duties regarding the requested access was actually constructive, not obstructive. In a series of meetings and communications, Irish outlined options to facilitate the access requests. He suggested training, credentialing, and other steps, as well as the evaluation of risks and how they could be mitigated. These interim steps were intended to reduce legal and operational risks, as a prudent professional would advise. He also sought to obtain approval for the access at the appropriate level – the Secretary – given its unprecedented and high-risk nature. It was Irish who edited the Decision Memo to delete any conclusions that the access would violate laws or pose unacceptable risks, but rather to provide an assessment of risks to assist the Secretary in his decision.

The Proposal appears to be rooted more in the impatience and inexperience of the requesters than in any dilatory actions by Irish.

II. IRISH'S COMMUNICATIONS WITH AGENCY OFFICIALS AND IN THE DECISION MEMO ARE PROTECTED UNDER THE WHISTLEBLOWER PROTECTION ACT

Irish's discussions with agency officials and in the Decision Memo for the Secretary disclosed potential violations of law and gross mismanagement and thus were protected under the Whistleblower Protection Act. Discipline based on them is a prohibited personnel practice. *See* 5 U.S.C. 2302(b)(8) (providing that personnel actions may not be taken because of disclosures of violations of law, rule or regulation or gross mismanagement). "Discipline may not be based on a disclosure protected by the WPA." *Chambers v. Dep't of Interior* 602 F.3d 1370, 1379 (Fed. Cir. 2010).

In the telephone meetings as well as the Decision Memo that are the basis of the Proposed Removal, Irish disclosed potential violations of the Privacy Act and FISMA. Such disclosures are protected whistleblower disclosures. *See e.g. Reid v. MSPB*, 508 F.3d 674 (Fed. Cir. 2007) (jurisdiction established where employee had a reasonable belief that a violation of law could occur even where the violation never actually occurred). "The government is far better served by having the opportunity to prevent illegal, wasteful, and abusive conduct than by notice that it may only act to reduce the adverse consequences from such conduct that has already occurred." *Id.* at 678.

A. Privacy Act

As noted above, the FPPS system contains financial and personnel data protected by the Privacy Act for about a quarter of a million federal employees in the DOI and 53 other agencies. The Decision Memo disclosed that the requested access "relates to systems containing highly sensitive personally identifiable information subject to the Privacy Act and other applicable authorities, the violation of which may carry criminal penalties." Irish made similar disclosures of potential violations of law in the discussions with DOI officials and the requesters. *See* Proposed Removal at 8 (In the March 27 phone call with the requesters and DOI officials, Irish expressed his view that the Executive Order cannot supersede existing statutes, such as the Privacy Act). In these discussions, Irish noted that under the Privacy Act, disclosure of protected information without the consent of the subjects of the records, even to agency employees, is limited "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." 5 U.S.C. § 552a(b)(1). *See AFT v. Bessent*, No. DLB-25-0430, 2025 U.S. Dist. LEXIS 53268. * 88-89, 97-98 (D. Md. Mar. 24, 2025) (finding likelihood of a Privacy Act violation

warranting a preliminary injunction where DOGE affiliates seeking access to records did not succeed in establishing a “need to know”). Despite repeated efforts, Irish was unable to ascertain from the requesters what their need for records was. He therefore disclosed his reasonable belief that the access sought had the potential to violate the Privacy Act.

With regard to records of agencies other than DOI contained in FPPS, the Privacy Act forbids disclosure without prior written consent of the individual to whom the record pertains, except for a “routine use,” 5 U.S.C. §552a(b)(3), meaning “for a purpose which is compatible with the purpose for which it was collected.” 5 U.S.C. § 552a(a)(7). Irish also expressed a concern that this requirement had not been met regarding access to data of non-DOI agencies, thus disclosing another potential violation of the Privacy Act.

B. Cybersecurity Laws and Publications

FISMA requires the Secretary, to “provid[e] information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of [information and information systems]” and to comply with information security standards established by various entities, including the Office of Management and Budget (OMB) and the National Institute of Standards and Technology (NIST). 44 U.S.C. § 3554(a)(1) and (a)(2). OMB Circular A-130 (“Managing Information as a Strategic Resource”) and NIST Special Publication 800-53 (“Security and Privacy Controls for Information Systems and Organizations”) are among the standards FISMA requires agencies to consider for relevant information technology systems. For systems containing Controlled Unclassified Information, OMB A-130 requires agencies to implement policies of least privilege so that users have role-based access to only the information and resources that are necessary for a legitimate purpose, and policies of separation of duties to reduce the risk of malicious activity without collusion. NIST SP 800-53 recommends specific controls in furtherance of these policy standards.

The discussions and the memos in which Irish participated principally concerned how to best provide information security protections commensurate with the risk reflected by the requesters’ desired access to FPPS and other systems. Not only are such considerations required by FISMA, but it could be considered arbitrary and capricious under the Administrative Procedure Act for DOI to have granted the extraordinary access requested. Once again, Irish’s conduct disclosed potential violations of relevant law.

C. Gross Mismanagement

Irish also raised potential gross mismanagement in the discussions and in the Decision Memo, as well as the prior 16-page risk assessment memo. The Whistleblower Protection Act does not define “gross mismanagement,” but the Merit Systems Protection Board, which implements that Act, has defined it as “a management action or inaction that creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission.” *Embree v. Dep't of the Treasury*, 70 M.S.P.R. 79, 85 (1996).

On March 27, Irish, the CISO, and other officials discussed with Trampe and Holmes several potential outcomes of the requested access that would amount to gross mismanagement, involving the potential for inadvertent release of information as well as increased vulnerability of these systems to being penetrated by hostile governmental or non-governmental actors. Regardless of the cause, the breach of the information system containing the most sensitive information for more than 50 agencies and more than a quarter million employees – including employees working for the U.S. Supreme Court – would be a catastrophe of a magnitude that would easily meet the definition of gross mismanagement.

The Decision Memo (Attachment B to the Proposed Removal) codifies the concerns of Irish and other career officials and puts these risks into five categories:

1. Internal Control Standards: The requested access does not conform to the separation of duties NIST standards, potentially resulting in inadvertent incorrect manipulation of systems and the introduction of unauthorized actions, such as with respect to payment recipients.

2. Interdependency and System Integrity: Because HR, Payroll and Credentialing Systems are interdependent, there is a potential risk that inadvertent unauthorized or improper changes in one system “could impact payroll accuracy, tax withholdings, benefits distributions, and other critical functions, leading to improper payments, financial discrepancies, and compliance failures.”

3. Cybersecurity Insider Threat and Malicious Actor Concerns. Because full administrative/root access enables individuals to initiate and modify personnel and payroll actions, it could potentially lock out other authorized users. Additionally, personnel with elevated privileges across multiple systems could become prime targets for credential compromise by nation-state adversaries and other malicious actors.

4. Internal Control and Fraud: Unchecked administrative/root access increases fraud risk, particularly as a result of credential loss or spoofing.

5. Skillset Risks: Finally, the Decision Memo warned that without training and certification, the persons gaining access could cause significant failure in systems due to operator error.

All of these risks and other cybersecurity issues are discussed in greater detail in the earlier 16-page memo prepared by Irish with the officials in the OCIO and IBC. Irish asked for a copy of this memo to assist in preparation of this Response (since his placement on administrative leave, he has had no access to any DOI files), but it was not provided. When obtained, it will add to the account of Irish's protected disclosures.

In sum, the Proposed Removal is largely, if not entirely, based on disclosures that are protected under the Whistleblower Protection Act and cannot be the basis for discipline.

III. THE PROPOSING AND DECIDING OFFICIALS ARE NOT AUTHORIZED OR QUALIFIED TO TAKE DISCIPLINARY ACTION AGAINST IRISH. HIS SUPERVISOR WAS AWARE OF AND MADE NO OBJECTIONS TO THE CHARGED CONDUCT.

The Departmental Manual, 370 DM 752 1.6.D, regarding discipline and adverse actions provides that adverse actions are to be taken by supervisory/management officials, and generally the deciding official should be a management official at a higher organizational level within the same Bureau/Office as the proposing official. Here, however, the proposing official, Tyler Hassen, is now the Principal Deputy Assistant Secretary for Policy, Management and Budget (PMB) exercising the delegated authority of the Assistant Secretary, PMB; and the deciding official, JoDee M. Hanson, is a Senior Advisor to the Secretary and acting Chief of Staff. Both are in different Offices from Irish and neither is his supervisor or any management official in his chain of command. The deciding official is not in the same Bureau or Office as the proposing official.

According to the Departmental Manual, if there is no higher-level official within the Bureau/Office of the proposing official, another management official within the Department may be delegated the decision-making authority. But decisions regarding that delegation of decision-making authority must be approved by the Bureau/Office Head with concurrence of the Director, OHR. *Id.* There is no indication that was done here.

Regardless of whether the proposing and deciding officials have the authority to act in those capacities here, the fact that neither of them is a supervisor of Irish or in his chain of command or even in the same Office means that they have little if any actual knowledge about his conduct and performance and little basis to make a decision as to whether there has been misconduct, and if so, what the penalty should be.

Not only do the proposing and deciding officials lack knowledge and authority, but the person who did have that knowledge and authority, Irish's actual supervisor, Greg Zerzan, exercising the delegated authority of the Solicitor, has not made or concurred in any claims of misconduct. Zerzan in fact did not object to and instead facilitated Irish's plan to prepare a Memo and seek Secretarial approval for the requesters to receive full administrative rights – the very conduct now claimed to support removal. Zerzan was entirely bypassed in this process in favor of Hassen, who was one of the requesters and harbored animus toward Irish for not immediately responding to the access request without consideration of potential legal violations and security risks. The proposing official who was inserted in place of Irish's supervisor is not qualified to judge Irish's conduct and is biased.

IV. THE DOUGLAS FACTORS WERE MISAPPLIED AND CANNOT SUPPORT REMOVAL FROM FEDERAL SERVICE

The proposing official's bias and lack of knowledge about Irish's job duties and performance infected the Douglas factors analysis and resulted in an unsupportable proposal to remove him, not only from his position as Associate Solicitor, but entirely from Federal Service. On its face, it is simply not credible that no lesser sanction could suffice and no other role at the Department could be found for a 20-year employee with a spotless record who had recently been promoted to a top SES position in the Solicitor's Office.

At most, if the allegations in the proposal are taken as true – which they are not – Irish took part in an improper delay of a few weeks in granting access to DOI systems and in preparing an unnecessary Decision Memo for the Secretary. The penalty is grossly disproportionate to the offense. As the Departmental Manual directs, most adverse actions such as removal, suspensions of more than 14 days, or reduction in pay or grade “are based on instances of egregious and/or repeated misconduct”. 370 DM 752 1.7C(1). This was neither.

Because Irish did not disobey or ignore an order or direction by anyone in authority to provide immediate and complete access to the FPPS, the Proposed Removal cannot claim recognized misconduct such as insubordination. It instead relies on a vague and illogical claim of misconduct premised on not granting requested systems access quickly and without question or performance of due diligence to ensure legal

compliance and address security risks. That is why, as admitted in the Douglas factor analysis, there is no similar offense in DOI's Table of Penalties (Douglas Factor # 7), or any other employees who had "done quite what you have done." Douglas Factor # 6.

The justifications for considering this novel type of misconduct serious and deserving of the ultimate sanction of removal are illogical and contrary to the facts. Regarding the seriousness of the offense (Douglas Factor # 1), the Proposed Removal attempts to transform the consideration of risks and legal implications from the grant of access to all capabilities of agency systems into "subver[sion], obstruct[ion] and delay." The support for this conclusion is based solely on the perceptions of Holmes, who did not identify any actual recognizable misconduct or support her perceptions with any logic or evidence. See Douglas factor 1 (relying on what Holmes "perceived as delay and obstructionist tactics" and her opinion that the Decision Memo was "unnecessary and more evidence of obstruction.") As explained above, Holmes' opinion that the Decision Memo was unnecessary because the EO already authorized the access was not an interpretation she was authorized or qualified to make and was inconsistent with controlling law and the language of the EO itself.

Regarding Douglas Factor # 2, considering the employee's job level and type of employment, the proposing official concludes that the conduct was "egregious" in light of Irish's position in the SES, and that Irish's conduct "damaged the trust bestowed upon [his] position" by his chain of command. However, no concerns were raised by his chain of command and there is no evidence that their trust was damaged.

Hassen also justified the penalty of removal based on *his* loss of trust and confidence in Irish. (Douglas Factor 5). This Douglas factor concerning the effect of the offense upon the employee's ability to perform at a satisfactory level, specifically refers to "*the supervisor's* confidence," while, of course, Hassen was not Irish's supervisor. Loss of trust on the part of someone not in Irish's chain of command and in a different Office has little relevance to whether Irish is able to continue to perform his duties.

Regarding Douglas Factor # 9, Hassen makes the unintelligible claim that "The wrongfulness of your actions should have been clear to you either due to advanced notice that your actions were wrongful [of which there is no claim] or because any reasonable person should know that such behavior is wrongful." He does not specify which applied here – advanced notice or what a reasonable person should know. The "reasonable person" claim is based on the unsupported conclusion that any "reasonable person" would agree with the opinions of Holmes and Trampe that the conduct was "subversive, obstructionist and causing delay," even though, as shown above, the facts do not support that conclusion.

Finally, Hassen concludes that no alternative sanction would be acceptable because it would lead others to believe he condoned the conduct, and that “I refuse to employ you in any capacity as part of the Department,” (Douglas Factor 12) as if *he* were employing Irish. Hassen offers no other reason why he did not select an alternate placement in the Department or other lesser sanction.

There is no legitimate support for the penalty of removal from Federal Service and it cannot stand.

V. THE PROPOSAL WAS HASTILY COMPOSED AND CONTAINS SERIOUS INACCURACIES THAT UNDERMINE ITS VALIDITY.

Lastly, the Proposed Removal was completed only eight days after Irish was placed on investigative leave and one day after Irish was interviewed and the Report of Investigation was provided. It merely repeats material from the interviews conducted by the investigator without explaining how that material supports the charge of misconduct. It did not consider any materials other than the Report of Investigation itself, such as communications among the career officials that would elucidate Irish’s role in the consideration of the access request.³ As explained above, the facts do not support a claim of misconduct.

The proposal also contains serious misstatements and inaccuracies that point to the proposing official’s lack of knowledge of the actual facts and considerations supporting the action. The implication is that the proposal was hastily and carelessly put together, perhaps cutting and pasting from unrelated proposals, in order to swiftly reach a pre-determined conclusion. For example, the proposal supports the penalty of removal by reference to the seriousness of “all these specifications of misconduct together,” and states that the “offenses charged cumulatively support the penalty of removal,” Proposed Removal at 10, even though there was only one charged offense and one specification. There is no claim or support for imposing the ultimate sanction of removal based on one charge and specification alone.

The proposal also asserts that “Irish later provided Holmes a hard copy of the [Decision] Memo for her to transmit to the Secretary[.]” Proposal at 2, however he did no such thing. To the extent the memo was provided to Holmes, it was by someone else.

³ The “Background Materials” supplied by Freed to Irish and the deciding official did not contain most of the materials relevant to the proposal that Irish had requested, and were not entirely accurate. As noted above, they contained an outdated Position Description for Irish.

The Proposed Removal further states (at 16) that Irish is not to communicate with any individuals in his official capacity as a DOI employee “except in connection with responding to this Proposed Indefinite Suspension ...”.

The proposing official appears not to know even what charges were asserted or what discipline he is proposing.

Conclusion

For all the reasons set out here, the Proposed Removal should be withdrawn and Irish returned to his position.

Respectfully submitted on May 2, 2025,

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Attorneys for Anthony Irish

Senior Executive Service Position Description
Office of the Solicitor
Associate Solicitor for General Law
ES-0905

The Associate Solicitor for General Law leads the Division of General Law, which is responsible for administrative and general legal matters including acquisition, information law, tort claims, insular areas, employment and labor law, legislative and appropriations issues, and intellectual property. The Division provides primary legal assistance and counsel to the Assistant Secretary for Policy, Management and Budget and to the Chief Information Officer. The Division has four components: The General Legal Services Branch, supervised by an Assistant Solicitor; the Acquisitions and Intellectual Property Branch, supervised by an Assistant Solicitor; the Torts Practice Branch, supervised by an Assistant Solicitor; and the Employment and Labor Law Unit (ELLU), supervised by a Director. The head of each of these components reports directly to the Associate Solicitor. In addition, the Associate Solicitor has three other direct reports in senior positions: the Senior Counselor to the Associate Solicitor, who is responsible for providing expert advice on general administrative law issues; the FOIA and Privacy Act Appeals Officer, who decides Freedom of Information Act and Privacy Act appeals for the Department; and the Department's Senior Counsel for Law Enforcement Policy and Litigation, who advises and supports the Office of Law Enforcement and Security.

Major Duties and Responsibilities

The Associate Solicitor is a close advisor to the Solicitor, Principal Deputy Solicitor, and Deputy Solicitor for General Law, and provides legal advice and service to the Secretary, Deputy Secretary, Assistant Secretaries, and the leadership of the Department's bureaus and offices. The incumbent implements and applies the legal policies, procedures, decisions, and practices prescribed by the Solicitor; manages and directs all attorneys and other personnel of the Division; and has responsibility for budget, personnel, and other general administrative matters for the Division. The Associate Solicitor is responsible for exercising the highest degree of sound judgment, informed legal advice, and focused support to leadership across the Department to assist them in achieving programmatic goals in an effective and legally compliant manner. The Associate Solicitor is also responsible for delivering prompt and effective legal support for senior leader counterparts within the Solicitor's Office in delivering appropriate legal services to their clients. Additionally, the Associate Solicitor ensures the timely identification of legal issues within the Division's purview across the Department's programs and operations and the appropriate provision of legal support to resolve such issues, including developing legal assignments for the Division as necessary. The Associate Solicitor must continually evaluate the present and upcoming legal support needs of the Department, the available Division resources to meet those needs, and engage in strategic planning to ensure close alignment between those two.

The Associate Solicitor is responsible for the oversight of the Division's four subcomponents:

Branch of Acquisitions and Intellectual Property. Through the Assistant Solicitor, the incumbent is responsible for all Departmental procurement matters and represents the Secretariat, the Solicitor, the Department and its bureaus on legal matters related to Interior acquisition functions, including all related claims, litigation, and bid protests; use of revolving and franchise funds; interagency agreements, grants and cooperative agreements; patents, copyrights, trademarks, rights in data, and other forms of intellectual property; legal support of high-priority contracting and assistance actions, such as information technology and supporting secretarial priorities; and support of Indian education and law enforcement programs and priorities. Responsibilities include executive oversight in: 1) developing government-wide procurement procedures and regulations; 2) assisting in drafting and preparing appropriate Departmental regulations; 3) reviewing proposed awards of contracts for all Departmental programs; and 4) assisting in contract negotiation and drafting. The Division must determine initial errors in bid protests submitted to the Department and the General Accountability Office, address contractor claims and disputes, and represent the Department in matters of appeals and litigation related thereto. The incumbent exercises the authority of the Solicitor when designating Department counsel to represent the Government in all cases brought before the Board of Contract Appeals.

In addition, the Associate Solicitor is responsible for all legal policy decisions as they relate to procurement. When the decision is made to contract for support services in these areas as well as others of a critical Department-wide nature, responsibility resides with the Associate Solicitor to ensure that necessary timely actions are accomplished. The legal policy decisional role also includes determinations of when to file or request the institution of lawsuits or administrative hearings in the area of procurement and decisions as to the nature of the Department's defense to actions filed by contractors or other interested parties such as subcontractors and sureties.

The Associate Solicitor is sometimes assigned to represent the interest of the Secretary in the most complex and involved contracts of the Department. This involves resolving difficult issues that have not been resolved by other officials of the Department, including the Office of the Solicitor, with attorneys for contractors, Indian tribes, and landowners, as well as with other members of the Administration, the Office of Management and Budget, and interested members of Congress and their staffs. The resolution of the issues presented in these matters involves the highest ability to quickly assimilate complex factual situations and legal arguments and considerations, to design and apply innovative solutions, and to negotiate and communicate persuasively with senior officials from industry and Government.

The Associate Solicitor is responsible for all legal matters of concern to the Secretariat, the Solicitor and the Department and its bureaus related to inventions, patents, copyrights, trademarks, and rights and data, and other forms of intellectual property created by Government employees performing assignments or contracts and grants with, in whole or in part, involve research and development. The incumbent represents the Secretariat and the Department, including its bureaus in: 1) developing and applying government-wide patent procedures and regulations; 2) drafting and promulgating appropriate Departmental regulations; 3) preparing patent and copyright clauses for research and developing contracts and grants; 4) reviewing proposed contracts and grants on an individual basis, with special treatment of patents and copyrights as required. The incumbent is responsible for the disposition of employee, contractor, and grantee claims to inventions, and represents the

Department in matters of patent prosecution before the Patent Office.

Branch of General Legal Services. Through the Assistant Solicitor for General Legal Services, the Associate Solicitor provides legal advice to the Secretariat, Solicitor, and the Department and its bureaus on legal matters pertaining to the internal administration, budget and appropriations, financial management, FOIA litigation, FOIA appeals, Privacy Act appeals, records management, electronic data management/e-discovery, partnerships, the Federal Advisory Committee Act, the Privacy Act, and the Administrative Procedure Act. It addresses internal delegations of authority, Departmental law enforcement policies, insular areas, information technology, scientific integrity, rulemaking, Congressional oversight, and all other related and general matters which do not come within the initial responsibility of any other Office of the Solicitor component. This work involves the more difficult and complex problems of general law with extreme variety in scope and includes drafting, reviewing and interpreting regulations concerning legal practice; training of employees; committee management; testimony of employees before courts or administrative bodies; the availability of, or authority to, expend appropriations for particular purposes; legislative jurisdiction; the employment of experts, consultants, and advisers; the scope and effect of reorganization plans and executive orders; opinions of the Attorney General and Decisions of the Comptroller General; and matters relating to third party claims.

The Associate Solicitor is responsible for providing support to the Departmental FOIA Office and bureau FOIA officials regarding FOIA policy and request issues. In addition, the Associate Solicitor personally advises other members of the Secretariat on handling and disposition of extremely sensitive requests and demand for data and information from members of Congress and Congressional committees. The Associate Solicitor takes responsibility for preparing documents for release to Congress and seeing that all legal conditions of release are met.

The Associate Solicitor may also be called upon to testify before Congressional Committees, as the Department or Administration's witness on facts within the incumbent's knowledge or the position of the Department or Administration on bills pending before the committee or subcommittee. In this role, the Associate Solicitor is required to digest complex factual and legal situations and positions within a minimum amount of time, prepare statements accurately expressing the views of the Department and Administration and be ready to respond to questions posed by the Members or staff. In other instances, the incumbent works closely with the chief witnesses in preparing the positions and accompanies the witness as an attorney.

Being responsible for legal assistance related to the broad, complicated, and technical programs conducted by the Department in four U.S. territories (American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and U.S. Virgin Islands), the incumbent provides legal support to the Office of Insular Affairs in their interactions with these territories. Specific legal issues related to such activities include the implementation of the 1975 Covenant between the United States and CNMI, questions arising from the American Samoa Constitution and Executive Order 10264, and the interpretation of the potential application of federal laws in

the territories.

The incumbent is also responsible for providing legal assistance to the Department through the Office of Insular Affairs in the execution of the 2023 Amended Compacts with three foreign nations: the Republic of Marshall Islands; Federated States of Micronesia; and Republic of Palau ("Freely Associated States").

The Branch of Tort Practice. Through the Assistant Solicitor, the Associate Solicitor provides counseling and advice to the Secretariat, Solicitor, and the Department and its bureaus in handling all Federal Torts Claims Act (FTCA) and the Military Personnel and Civilian Employees Claims Act administrative matters filed against Department of the Interior and its bureaus. The branch also supports the Department of Justice in all federal judicial litigation involving tort claims filed against the United States involving the Department or its bureaus, handles all suits for monetary damages alleging negligent or wrongful acts including, and handles claims related to injury and damage to Government property.

Employment and Labor Law Unit. Through the Director of the Employment and Labor Law Unit (ELLU), the Associate Solicitor provides legal advice to the Secretariat, Solicitor, the Department and its bureaus, and the Director, Office of Equal Opportunity, concerning civil rights and equal opportunity, including review of disciplinary and performance-based actions under Chapters 43 and 75 of Title 5 of the U.S. Code, and defense of the agency against claims brought under 75 of Title 5 of the U.S. Code, Title VII and Title VI of the Equal Employment Opportunity Act, Rehabilitation Act, Age Discrimination in Employment Act, Veterans Employment Opportunity Act, Uniformed Services Employment and Reemployment Rights Act, Whistleblower Protection Act, the Family Medical Leave Act, and the Fair Labor Standards Act. The incumbent is responsible for 1) solving highly complex, factual and legal problems created by the diversified operations of programs pertaining to civil rights and equal employment opportunity; 2) developing new and novel legal procedures and documents with respect to the civil rights and equal opportunity programs of the of Department, its bureaus and offices; 3) negotiating equal employment program compliance with union representatives by arbitration and conciliation; 4) initiating and procuring legal proceedings before appropriate administrative tribunals to cancel Federal contracts and grants or withhold federal funds from companies not in compliance with these programs; and, 5) preparing and reviewing, for legal sufficiency, substantive and procedural rules, manual provisions, letters, memoranda, and opinions for the interpretation and application of statutes, executive orders, and regulations governing civil rights, and equal employment.

This requires meetings with groups having widely disparate views of how the program should be functioning, including representatives of other Government agencies and unions. The Associate Solicitor must balance pressures placed upon the Department by these groups and make extremely sensitive decisions and recommendations in order for the program to progress.

With respect to labor management relations matters, the Associate Solicitor counsels the Secretariat, Solicitor, and the Department and provides representation for the bureaus or offices involved in hearings before the Department of Labor on petitions by labor organizations for exclusive recognition of a designated unit to the employees. Such

representation includes participating in preparing conferences, the preparation and filing of

briefs, the examination of witnesses and the presentation of arguments in support of the position of the bureau or office involved. The incumbent represents management during union contact negotiations and provides legal advice to the Department regarding the development of labor relations policy.

Knowledge Required

The incumbent exercises significant initiative in ensuring that the Division's attorneys provide appropriate and accurate legal counsel for their clients. The Associate ensures delivery of outstanding, definitive, and promptly rendered legal advice as necessary within the Division's widespread responsibilities, particularly when the need for legal advice is great. The Associate must exercise broad knowledge of the numerous fields of law addressed by the Division and a strong familiarity with the programs and operations of the Department. The incumbent must be tactful, responsible, possess the ability to analyze and interpret legal issues of great importance in a manner that is objective and protects the public interest, and provide unbiased opinions and determinations. The incumbent must maintain the full trust and confidence of the Secretary, the Solicitor, and other senior leaders across the Department.

The incumbent must be a graduate from a law school accredited by the American Bar Association and be a member in good standing of a state, territory of the United States, District of Columbia, or Commonwealth of Puerto Rico bar.

Supervision Exercised

The Associate Solicitor acts on behalf of the Solicitor, Principal Deputy Solicitor, and Deputy Solicitor for General Law in directing and managing the subcomponents of the Division. The Associate Solicitor develops and maintains effective procedures for operating the Division and in providing technical and administrative guidance and expertise to Division attorneys and support personnel. The incumbent determines workloads; reviews and determines personnel requirements; and determines the impact of new programs and projects and reviews budgetary demands involved in Division operations. In addition to supervision and oversight of the Division's subcomponents, the incumbent supervises and directs the work of the Senior Counselor to the Associate Solicitor, FOIA & Privacy Act Appeals Officer, Senior Counsel for Law Enforcement Policy and Litigation, and administrative staff.

Supervision Received

The Associate Solicitor reports to the Deputy Solicitor for General Law. Subject to broad policy direction from the Solicitor, Principal Deputy Solicitor, and Deputy Solicitor, the Associate Solicitor operates with considerable independence, having substantial responsibility for developing legal advice, policies, and procedures in areas within the Division's jurisdiction.

Other. The incumbent provides positive direction and implementation of Departmental EEO objectives. The Associate Solicitor advises subordinate supervisors of the expectations for affirmative action with respect to EEO objectives and goals, their specific EEO responsibilities, and that their progress in achieving results in being evaluated. The incumbent ensures fair and unprejudiced employment practice in the recruitment and selection of candidates for appointment to positions under the incumbent's supervision and ensures equal opportunity in the selection of employees for training, promotion, awards, and recognition, and other career development opportunities.

A background investigation and security clearance is required for this position. Continued employment will be subject to the applicant's successful completion of a background security investigation and favorable adjudication. This is a drug testing designated position.

The duties of this position are suitable for telework with supervisor approval.

Technical Qualifications (Mandatory)

1. Expert knowledge of, and competency in, the application of the full range of laws and regulations related to most of the following areas: Administrative and general legal matters, including acquisition, information law, tort claims, insular areas, legislative and appropriations issues, and intellectual property.
2. Demonstrated executive level ability to manage a legal program with diverse activities, including experience developing, implementing, monitoring and reviewing policies, procedures, and operations.
3. Demonstrated executive level ability to coordinate and oversee both litigation and administrative proceedings.

From: Bednar, Julie P <JULIE_P_BEDNAR@IBC.DOI.GOV>

Sent: Thursday, March 6, 2025 3:30 PM

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Subject: Interim Response re: FPPS Access

Hello, Stephanie and Tyler,

Thank you for the conversation this afternoon.

Currently the access profile requested (i.e., full access across all of DOI to make personnel/payroll changes) does not exist and I am investigating now whether this profile can be created.

We have granted you access in a role that exists and that we are authorized to provide (i.e. view access across all of DOI's federal employee HR and payroll data), however to better support the goals of the requested access while ensuring compliance and risk mitigation, the identified risks are significant enough to warrant higher level approval. These risks include potential inadvertent disclosures, system vulnerabilities, and possible violations of applicable regulations and departmental policies. Given the sensitivity and potential impact of these risks, it is imperative to take a cautious and structured approach. Actions executed in FPPS require following established DOI processes. These processes are specifically designed to provide necessary safeguards, reduce the likelihood of errors, and uphold regulatory and policy compliance, thereby protecting both the integrity of the system and the department's operational security.

Thank you for the added context in our meeting today to understand your needs, and so we can explore the feasibility of creating a new role that has never existed previously in this system. We will get back with you by tomorrow with an update.

Julie Bednar (she/her/hers)
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www.doi.gov/ibc