

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO ADJUTANT GENERAL'S DEPARTMENT
FILE ID NO.: 2014-CA00038
DATE OF REPORT: AUGUST 4, 2015

The Office of the Ohio Inspector General ... The State Watchdog

“Safeguarding integrity in state government”

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Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

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The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2014-CA00038

SUBJECT NAME: James Sims II

POSITION: Deputy Director 5

AGENCY: Ohio Adjutant General's Department

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Failure to Comply with State or Department Rules,
Procedures or Policies;
Misuse or Abuse of State Property or Equipment

INITIATED: August 19, 2014

DATE OF REPORT: August 4, 2015

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On May 8, 2014, the Office of the Ohio Inspector General received a complaint regarding the actions of James Sims II, deputy director 5, an employee of the Ohio Adjutant General's Department. Specifically, the complaint alleged Sims had not taken the appropriate leave while out of the office, and conducted business related to his position as an adjunct faculty member at Franklin University using State of Ohio time and using state resources.

A preliminary inquiry was opened on May 13, 2014, to review the allegations presented. During the course of the inquiry, it was determined Sims had taken the appropriate amount of leave hours during the week in question. However, information obtained during the inquiry led to the opening of a full investigation on August 19, 2014, regarding Sims' alleged misuse of state equipment for personal purposes related to his position at Franklin University.

BACKGROUND

Ohio Adjutant General

The Ohio Adjutant General's Department "... provides military organization for the Ohio National Guard, Ohio Naval Militia and Ohio Military Reserve." The Ohio National Guard serves as the organized military for the state, except when it is ordered into federal service, and may be ordered by the governor to protect persons and property from disasters. The governor, who also serves as the commander-in-chief of the state militia, appoints the adjutant general and assistant adjutants general. Headquarters for the department is located at the MG Robert S. Beightler Armory located in Columbus, Ohio.¹

INVESTIGATIVE SUMMARY

During the preliminary inquiry, the Office of the Ohio Inspector General determined that Ohio Adjutant General's Department employee James Sims was also an adjunct faculty member of Franklin University, teaching marketing classes. The Office of the Ohio Inspector General received information from Franklin University, via a subpoena, regarding Sims' teaching schedule for 2013 and 2014 and a list of when he accessed an online portal called "myFranklin." This portal allows access to course scheduling information, grades, email, and materials needed

¹ Source: Ohio National Guard, Adjutant General's Department, 2014 annual report.

to complete coursework. An analysis was also conducted on the computer assigned to Sims and his work-related email account to look for documents, emails, and/or Internet accesses related to his employment at Franklin University.

Internet History

A review of Sims' Internet history identified several websites associated with Franklin University. These websites include myfranklin.edu, turnitin.com, mypearson.com, and Microsoft Office 365.² During the time period reviewed, September 2013 – September 2014, the analysis identified the following instances that occurred on days Sims was at work for the State of Ohio:

- 90 days when Sims logged into or accessed myfranklin.edu or turnitin.com;
- 19 days when Sims logged into or accessed mypearson.com; and
- 84 days when Sims logged into or accessed Microsoft Office 365 through an account provided by Franklin University.

Removing duplicates where multiple websites were accessed in a given day, investigators identified 91 unique dates under Sims' user profile on the adjutant general computer assigned to him.

Franklin University was able to provide IP addresses³ and domain information for numerous instances when Sims' Franklin account accessed the university's websites. This information identified Sims' account as logging-in from a computer using an Internet connection from the Ohio Adjutant General's Department domain, ending in "army.mil."

Document Analysis

The computer analysis reviewed documents within Sims' user profile that were saved in the My Documents folder, saved to the computer's desktop, stored in temporary files, or deleted and moved to the Recycling Bin. The analysis also reviewed the recent activity file history for

² Educators can use turnitin.com to upload student papers and check for potential plagiarism electronically. Pearson appeared to be the company whose curriculum was used in Sims' marketing classes. Microsoft Office 365 allows users to access Microsoft applications (including Word, Excel and PowerPoint) online.

³ IP, or Internet Protocol, is a unique string of numbers separated by periods that identify a specific computer attached to a network.

Adobe Acrobat, Word, Excel, and PowerPoint. The analysis identified the following that appeared to be related to Sims' teaching position at Franklin University:

- Approximately 100 files in the My Documents, Desktop, Temporary Files, and Recycling Bin folders; and
- Approximately 300 unique files that were accessed by Sims from the various applications.

The recent file access history list showed documents accessed by Sims' user profile. Adobe Acrobat listed the 18 most recently viewed files, while the Microsoft Office applications show the last 50 viewed files.

Files identified by investigators included student papers, class handouts, and PowerPoint presentations that appeared to be intended for use in Sims' classes. The properties for some of the handouts and PowerPoint presentations appear to indicate they were created using the applications on the adjutant general's computer assigned to Sims. Based on the analysis, investigators were unable to determine when these documents were created.

Emails

Investigators reviewed Sims' adjutant general work-assigned email account and identified 20 emails from Sims' work account to his Franklin University email address. Also located were three emails where Sims' asked other adjutant general employees to print and bind documents related to his Franklin University classes, including instructor manuals. A total of 314 pages were printed from the three documents attached to the emails. ([Exhibit 1](#))

The Office of the Ohio Inspector General requested copies of the Ohio Adjutant General Department's policies and procedures regarding secondary employment and computer/equipment usage. Officials with the Ohio Adjutant General's Department informed investigators that they did not have a written policy governing secondary employment. Employees were allowed second jobs with the understanding the employment could not occur during scheduled work hours. In regard to computer/equipment usage policies, the Office of the Ohio Inspector General

was provided a copy of the Ohio Adjutant General's Department document entitled "State Employee Procedure Letter #22 and State Employee Discipline and Work Rules."

Included in the policy was "Progressive Disciplinary Guidelines" with a narrative stating:

The following is a list of specific infractions which constitute unacceptable behavior or inefficient service for employees of the Adjutant General's Department. These infractions are violations of departmental policy, the Ohio Revised Code, the Ohio Administrative Code, or other laws governing civil service employees and/or citizens of the State of Ohio... **This list is not all inclusive nor are the recommended actions herein absolutely mandated.** They will serve as guidelines only. (original emphasis)

Under the section entitled dishonesty, the first infraction states, "Using state or federal time/resources for personal reasons; for non work [sic] matters; or misuse of state/federal property." This infraction can result in a written reprimand, suspension, or removal according to the guidelines. ([Exhibit 2](#))

Sims signed a form stating he had received and read the Ohio Adjutant General's Department "State Employee Procedure Letter #22 and State Employee Discipline and Work Rules" on August 29, 2011.

On December 4, 2014, the Office of the Ohio Inspector General interviewed Sims regarding the findings made during the analysis of the state-issued computer assigned to him and the information provided by Franklin University. Sims declined to answer any questions at this meeting but did ask to make a statement. Sims stated he had been an adjunct professor at Franklin University for 12 years and taught one to four classes a year during that time. In regard to his computer, Sims stated it was a federally issued computer and pursuant to federal requirements, he was instructed to leave the computer on at all times to allow for network updates. Sims said he would also leave multiple browsers and other folders open during the day and was not sure how the Office of the Ohio Inspector General counted the times they were opened. Sims stated he wanted to speak to the Ohio Adjutant General regarding his options and the interview ended shortly thereafter.

CONCLUSION

The Office of the Ohio Inspector General received a complaint regarding James Sims' alleged misuse of the computer assigned to him as an employee of the Ohio Adjutant General's Department. The complainant stated Sims was using the computer and other adjutant general IT resources for personal purposes related to his position as an adjunct faculty member at Franklin University. A review of the adjutant general computer assigned to Sims found:

- Internet history showed Sims accessing various Franklin University websites on more than 90 unique dates over a 12-month time period. This was confirmed in a subpoena response from Franklin University, which provided information regarding the network that was used to connect to the university websites with Sims' account name. The information showed the adjutant general's network was used on numerous occasions.
- More than 300 documents were located in various folders on the computer assigned to Sims that appeared to be related to the classes he was assigned to teach at Franklin University.
- Emails show Sims forwarded documents to his Franklin University email account from his adjutant general work account.
- Sims asked other adjutant general employees to print and bind materials related to his Franklin University classes.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in these instances.

During the investigation, the Office of the Ohio Inspector General determined the Ohio Adjutant General's Department did not have a policy governing secondary employment. When asked if employees needed to seek permission before engaging in secondary employment, officials at the Adjutant General's Department stated that employees did not, and it was understood that adjutant general employees could not use department resources in furtherance of their outside employment.

The Office of the Ohio Inspector General also determined that while the Ohio Adjutant General's Department "State Employee Procedure Letter #22 and State Employee Discipline and Work

Rules” contained a brief section stating the misuse of state and federal resources for personal purposes was subject to potential discipline, the policy did not detail what constituted a misuse of the resources. While the policy obliquely references that state employees are “... responsible for complying with and adhering to all work rules, policies, procedures and directives of the Adjutant General’s Department and/or laws of the State of Ohio,” it does not reference the Ohio Department of Administrative Services’ (ODAS) IT policies. Specifically, ODAS policy ITP-E.8, “Use of Internet, E-mail and Other IT Resources,” states agencies “... shall establish an Internet, e-mail and IT resources use policy in compliance with this state policy and ensure that public servants adhere to that policy.” ([Exhibit 3](#))

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the major general of the Ohio Adjutant General’s Department to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Adjutant General’s Department should:

- 1) Review the actions of James Sims as outlined in this report and determine if administrative action or additional training is warranted.
- 2) Create a secondary employment policy that requires employees to seek approval for secondary employment, complete a secondary employment notification form that is maintained with their personnel records, and outline the expectations and prohibited activities while an employee is engaged in any secondary employment.
- 3) Revise the Ohio Adjutant General’s Department “State Employee Procedure Letter #22 and State Employee Discipline and Work Rules,” or implement a separate policy explicitly referencing the Ohio Department of Administrative Services IT Policy ITP-E.8, “Use of Internet, E-mail and Other IT Resources.”

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



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NAME OF REPORT: Ohio Adjutant General's Department

FILE ID #: 2014-CA00038

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
August 4, 2015

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