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DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington DC 20420

December 3, 2012

VIA Email

Mark Flatten
1015 15th Street, NW
Suite 500
Washington, DC 20005

Re: Freedom of Information Act (FOIA) Request No. 13-00370-FOIA

Dear Mr. Flatten:

This responds to your FOIA request for an Office of Inspector General document that was referenced in a previously issued report. As reflected in the enclosed memorandum, we have decided to grant your request in part.

FOIA generally directs federal agencies to disclose records and information unless the records or information may be withheld under any of the enumerated statutory exemptions. FOIA Exemptions 5 and 7(C) apply here. Under FOIA Exemption 5, an agency is not required to disclose inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. Exemption 5, which includes the deliberative process privilege, protects certain information contained in the original memorandum.

Exemption 7(C) protects from release to the public information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. In the interest of protecting certain individuals involved in the investigation from any unwarranted invasion of their privacy, we have withheld information concerning those individuals.

You may appeal this decision concerning your request for information. Please include your specific objection(s) and reference your FOIA case number. The address is: Office of Inspector General (50C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. You may also submit your signed appeal by fax at 202-495-5859 or email at VAOIGFOIA-Appeals@va.gov. You must submit any appeal within sixty (60) calendar days of the date of this decision.

Sincerely,

A handwritten signature in black ink, appearing to be "Darryl Joe", written over a horizontal line.

Darryl Joe
Chief, Information Release Office

Department of Veterans Affairs

Memorandum

Date: April 7, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Prohibited Personnel Practices, Other Improper Hiring Practices, and Conduct Prejudicial to the Government, Office of Human Resources and Administration, VACO (2011-00198-IQ-0002)

To: VA Chief of Staff

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that Mr. John Sepulveda, Assistant Secretary for Human Resources and Administration (HRA), engaged in prohibited personnel practices by giving a preference or advantage to five employees that he hired for his immediate staff. Mr. Sepulveda also allegedly used improper hiring practices and did not exercise due diligence and sound judgment when he hired the employees and then later nominated one of the five to a limited term Senior Executive Service (SES) position. To assess these allegations, we interviewed Mr. Sepulveda, the five employees, and other HRA staff. We also reviewed VA personnel and email records, as well as Federal laws, regulations, and VA policy. In addition, we reviewed personnel, disciplinary, and [REDACTED] from Federal agencies that previously employed four of the five employees. (b)(5)

2. Although we did not substantiate that Mr. Sepulveda engaged in a prohibited personnel practice, we concluded that he did not exercise sound judgment or due diligence, giving the appearance of preferential treatment, when he hired his immediate staff and later withheld key information when recommending that the VA Secretary appoint one staff member to a limited term SES position, contrary to Federal law and regulations, as the Executive Director of VA's Human Capital Investment Plan (HCIP) initiative. We found that four of the employees had misconduct or performance-related problems at Federal agencies previously employing them and pre-employment checks were not sufficiently completed or, in some cases, done at all. We found that Mr. Sepulveda had longstanding professional friendships with two of them, one of whom was his first nominee for the SES position, and that he had prior knowledge that these two former colleagues had previous Federal employment problems. [REDACTED] (b)(5)

[REDACTED] Further, we found that two of the employees falsified employment records when they failed to disclose that they had [REDACTED] the Federal Declaration of (b)(7)(c) Employment form (Optional Form 306) completed as part of their VA employment process. We are providing you this memorandum for your information and official use and whatever action you deem necessary. **No response is necessary.**

Standards

3. Federal law states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority discriminate for or against any employee or applicant for employment or grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment. 5 USC § 2302(b)(1) and (6). Federal regulations state that an employee shall not engage in conduct prejudicial to the Government. 5 CFR § 735.203. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b)(8) and (14).

4. VA policy requires that in all appointments where the applicant has been or is now employed in the Federal government, appointing officials will obtain verification of employment and satisfy themselves that employment of the applicant is consistent with VA requirements. VA Handbook 5005/12, Part II, Chapter 2, Section A, Paragraph 5(d)(2). VA policy states that the verification of employment and suitability can be made by FL 5-127, Inquiry Concerning Applicant for Employment, letter, telephone, or personal visit, and that documents generated will become a part of the employment investigation records with telephone calls and personal visits summarized for the record. Upon employment, such records will accompany the SF-85, Questionnaire for Non-Sensitive Positions (or SF-86, Questionnaire for National Security Positions) and SF-87, OPM Fingerprinting Chart, when they are submitted to OPM. *Id.*, at Paragraph 5(d)(3).

Background

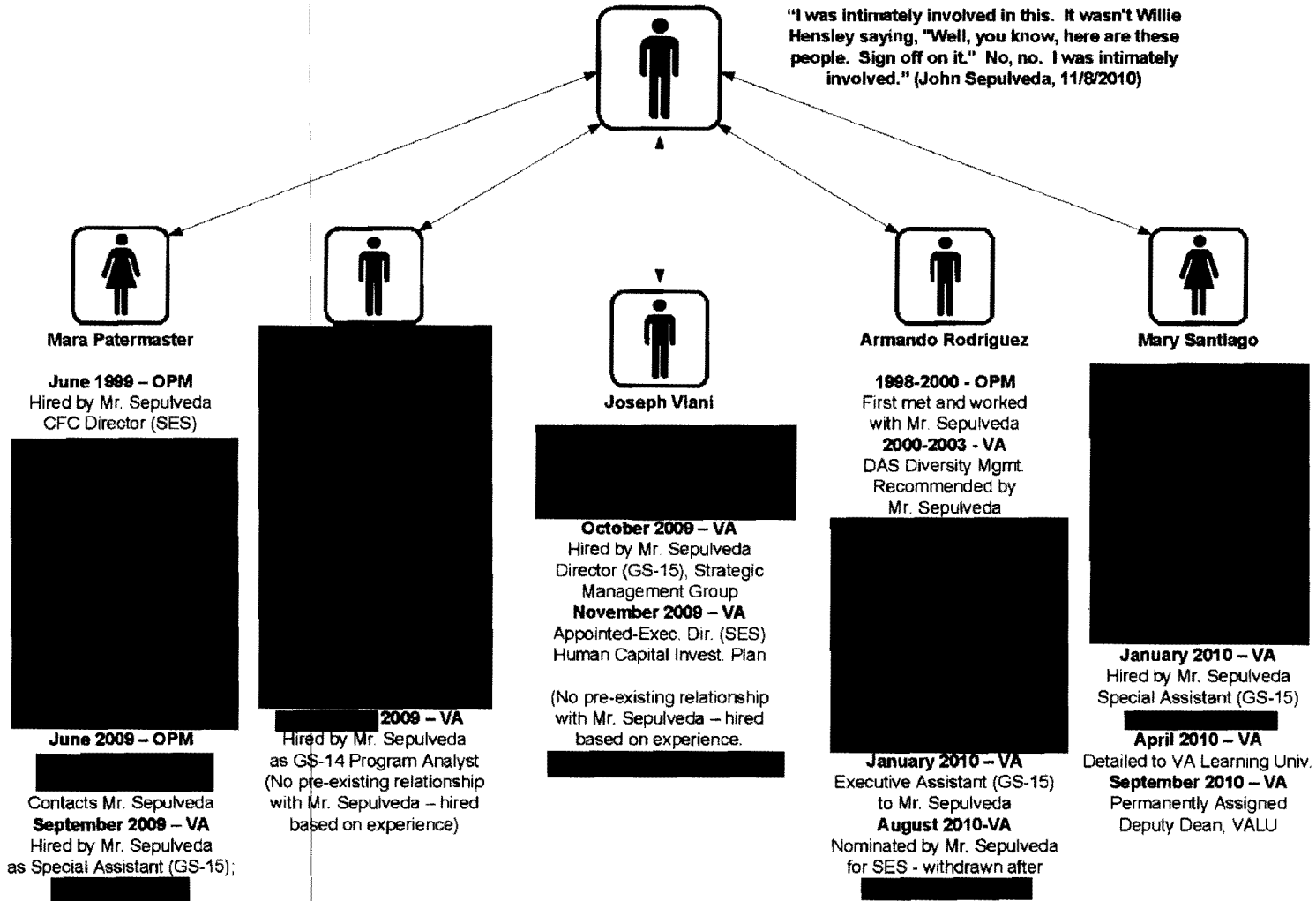
5. The U.S. Senate Committee on Veterans' Affairs confirmed Mr. Sepulveda as the VA Assistant Secretary for HRA in May 2009. At the Committee Hearing, Mr. Sepulveda told the Committee, "We must make sure that we have the right people doing the right job at the right place at the right time, at all times." As Assistant Secretary and VA's Chief Human Capital Officer, Mr. Sepulveda serves as principal advisor to the Secretary, his executive staff, and the Department's human resources managers and practitioners on matters pertaining to human resources, labor-management relations, diversity management and equal employment opportunity, resolution management, employee health and safety, workers' compensation, and Central Office administration.

6. Between September 2009 and January 2010, he approved the appointment of five (b)(7)(c) individuals to his immediate staff: Ms. Mara Paternoster, Mr. Armando Rodriguez, Ms. Mary Santiago, [REDACTED] and Mr. Joseph Viani. Mr. Sepulveda told us that he was "intimately involved" in appointing all of these individuals. Of the five, Mr. Viani was the only one for which we found no evidence of prior employment issues. Personnel records reflected that his initial and later SES appointments were proper, and we do not discuss Mr. Viani further in this memorandum. See **figure 1** for a summary.

**Non-Competitive Appointments Authorized by
The Assistant Secretary for HRA**

(September 2009 to January 2010)

"I was intimately involved in this. It wasn't Willie Hensley saying, "Well, you know, here are these people. Sign off on it." No, no. I was intimately involved." (John Sepulveda, 11/8/2010)



3

(b)(7)(c)

Figure 1

Ms. Patermaster's Appointment

7. Personnel records reflected that Mr. Sepulveda authorized Ms. Patermaster's VA appointment, effective September 13, 2009, as a GS-15, step 10, Special Assistant. Mr. Sepulveda told us that he first met Ms. Patermaster during the Clinton Administration when he (Mr. Sepulveda) was the Deputy Director (Presidentially-Appointed Senate confirmed) of the U.S. Office of Personnel Management (OPM) and that he hired her to be the Director (SES) of the Combined Federal Campaign (CFC). He said that he left OPM at the end of the Clinton Administration but that Ms. Patermaster continued working there. He further said that they occasionally had lunch together and exchanged emails, and he said that their relationship was that of "professional friends." He told us that with the exception of occasional lunch meetings, they did not socialize with one another on a personal level; however, he said that because they were both Puerto Rican and because the Puerto Rican community in Washington, DC, was small, they knew some of the same people.

8.

[REDACTED]

(b)(7)(c)

9.

[REDACTED]

Mr. Sepulveda further said that after the 2008 Presidential election, he was considered for positions at both OPM and VA and that it was around that same time that Ms. Patermaster, [REDACTED] contacted him again expressing her desire to work for him. He said that he told Ms. Patermaster that he could not promise her anything, because at that time, he was unsure what was going to happen. He said that he told her that if there was a job opening, she would need to apply for it and go through the hiring process.

10. Personnel records reflected that in July 2009, Ms. Patermaster applied for a newly created Special Assistant to the Assistant Secretary for HRA position. Although her resume reflected her OPM employment, it listed her grade as a GS-15 and not as an SES, and it listed Mr. Sepulveda as a professional reference. On August 31, 2009, Mr. Willie Hensley, a subordinate to Mr. Sepulveda and the former Principal Deputy Assistant Secretary for HRA, approved Ms. Patermaster's VA appointment as a Special

Assistant to Mr. Sepulveda; however, Mr. Sepulveda told us that he authorized this personnel action.

11. Mr. Sepulveda told us that prior to hiring Ms. Patermaster, he did not contact anyone at OPM to ask them about her OPM employment, because he said that he did not know who to contact. He said that his decision to hire her was, in part, based on his own positive experience of when she worked for him years earlier at OPM and that he, himself, was Ms. Patermaster's job reference.

[REDACTED]

(b)(7)(c)

12. [REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

(b)(7)(c)

Mr. Rodriguez's Appointment

14. Personnel records reflected that Mr. Rodriguez's most recent VA employment began January 17, 2010, as a GS-15, step 10, Executive Assistant to Mr. Sepulveda. Mr. Sepulveda told us that he first met and worked with Mr. Rodriguez at OPM and that they stayed in touch with one another over the years, occasionally meeting for breakfast or lunch. He said that Mr. Rodriguez recommended him (Mr. Sepulveda) to a former CIA Director to be part of a diversity advisory group within the intelligence community. He characterized their relationship as that of professional friends, and he said, "It's a friendship that really is steeped in us having worked together, both at OPM and also working together at—when I was part of the staff at the intelligence community diversity advisory group."

15. Mr. Sepulveda told us that after he became the Assistant Secretary for HRA, he began recruitment efforts to find an executive assistant. He said that he did not want the individual to function in a traditional administrative role because of the numerous department-wide transformational initiatives that were ongoing as part of the Human Capital Investment Plan. He said that he needed someone with a background in human resources. Mr. Sepulveda also said that he considered the position to be a "confidential" one that required the individual to have his trust and confidence. He told us that after announcing the position and interviewing several candidates, he was unable to find anyone that he felt was the right fit for the job. Mr. Sepulveda said that while at OPM, Mr. Rodriguez did a very good job for him and for OPM and that he had a "solid reputation." He said that he (Mr. Sepulveda) needed someone with Mr. Rodriguez's extensive background in human resources, so he contacted Mr. Rodriguez, who, at the time, was in a GS-15 position at the Department of Energy. Mr. Sepulveda said that he asked Mr. Rodriguez to transfer to VA and to become his executive assistant.

16. [REDACTED]

(b)(7)(c)

[REDACTED]

[REDACTED]

(b)(7)(c)

17. [REDACTED]

18. Mr. Sepulveda told us that when he selected Mr. Rodriguez as his Executive Assistant, he did not contact, nor did he instruct anyone on his staff to contact, any of Mr. Rodriguez's past employers as a pre-employment check. [REDACTED]

[REDACTED] He further said that he never asked Mr. Rodriguez if he had any issues with any previous employers and that he based his decision to hire Mr. Rodriguez on his past experience in working with him at OPM, which was 10 years ago.

19. Mr. Sepulveda told us that the VA Deputy Secretary mandated senior management positions be created and filled with people who would take ownership of the various transformational initiatives and that in keeping with that mandate, Mr. Sepulveda created the position of Executive Director, HCIP, a limited term SES position. Mr. Sepulveda said that Mr. Rodriguez as his Executive Assistant had a broad understanding of all the initiatives and was HRA's principal liaison with VA's Office of Policy and Planning (OPP), which had charge of 16 initiatives through the Operations Management Review (OMR). Mr. Sepulveda said that the position of Executive Director of HCIP had the primary role of interfacing with OPP and OMR and since Mr. Rodriguez already filled that role, he nominated him (Mr. Rodriguez) for the limited term SES position.

20. Mr. Sepulveda acknowledged that at the time he recommended to the VA Secretary that Mr. Rodriguez be given the SES Executive Director position, he failed to tell the VA Chief of Staff, the approving official, [REDACTED]

[REDACTED] In an undated memorandum, he also failed to disclose it to the VA Secretary when he wrote, "Mr. Rodriguez served for 5.5 years as an SES in the Federal government and is already OPM certified. He can be appointed to the [e-PMO] position as a limited term SES employee without OPM approval."

21. [REDACTED]

[REDACTED] Federal law states that a former career appointee may be reinstated to any SES position for which the appointee is qualified if the appointee left the SES for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance. 5 USC § 3593(a)(2). Federal regulations state that to be eligible for SES reinstatement, an individual's separation from his last SES career appointment cannot be the result of a removal for misconduct, neglect of duty, malfeasance, or a resignation after receipt of a notice proposing or directing removal. 5 CFR § 317.702 (a)(2). Mr. Sepulveda told us that his failure to tell the Chief of Staff of [REDACTED] was an oversight and that he did not purposely withhold the information. He said that he now realized that he was wrong for not disclosing it to the Chief of Staff.

(b)(7)(c)

Ms. Santiago's Appointment

22. On January 31, 2010, Ms. Santiago was appointed as a GS-15, step 10, Special Assistant to Mr. Sepulveda. She is currently the Deputy Dean of VA Learning University. Mr. Sepulveda told us that he did not know Ms. Santiago prior to interviewing her for the position or whether [REDACTED]. The resume that Ms. Santiago submitted for the VA position reflected that she was previously employed at a private sector company and prior to that employed at the U.S. Department of Treasury, Office of Thrift Supervision (OTS) in an SES position as Chief, Human Capital Officer. Her resume reflected that while at OTS, she had an annual salary of \$201,000, and that after leaving [REDACTED]

(b)(7)(c)

23. Mr. Sepulveda told us that people leave jobs for many different reasons; however, he said that during Ms. Santiago's interview, he asked her why she left OTS. He said [REDACTED]

[REDACTED] Mr. Sepulveda told us that after hearing Ms. Santiago's story, he did not question her further about her previous employment. [REDACTED]

Mr. Sepulveda said that Ms. Santiago's story "resonated" with him and that as a Hispanic-

American he said to himself, "Okay. I understand. I don't need to go any further than that." However, Mr. Sepulveda also said that he did not hire Ms. Santiago because she was Hispanic but that he did so because she was the best person for the job. Further, he said that before he hired Ms. Santiago, he asked Ms. Paternaster to call Ms. Santiago's job references, and he said that when he later followed up with Ms. Paternaster, she told him that "everything is fine."

24. As part of her VA employment application, Ms. Santiago twice signed and submitted to VA an Optional Form 306, answering "no" both times to question number 12, which in part asked if [REDACTED]

[REDACTED] Although she answered "no" to the question, her personnel records contained a Request for Personnel Action, Standard Form 52, dated March 7, 2008, [REDACTED]

(b)(7)(c)

25. Ms. Santiago told us that when she applied for the VA position, she answered all the questions on the Optional Form 306 truthfully. She said that after she took a 2-year break from OTS, she decided that it was time for her to go back into Federal Service, so she said that she began applying for various Federal jobs through USAJOBS. She told us that she left OTS, because she said that she discovered a pattern of discrimination and other improper practices taking place against minorities. She said that after she [REDACTED] she decided to resign.

26. When asked about the Standard Form 52 reflecting [REDACTED]

[REDACTED] told us that [REDACTED]
however, [REDACTED] later said that [REDACTED]

27. [REDACTED]

(b)(7)(c)

28. Ms. Santiago continually told us that she truthfully answered all questions on her Optional Form 306. [REDACTED]

However, Ms. Santiago said that after being employed at VA for several months, she told

Mr. Sepulveda and Mr. Rodriguez

(b)(7)(c)

29.

Appointment

30. Personnel records reflected that [REDACTED] began [REDACTED] VA employment on September [REDACTED] 2009, as a GS-14 Program Analyst (Strategic Planner) in HRA. [REDACTED] told us that [REDACTED]

[REDACTED] said that before [REDACTED] was interviewed, the former Director of Central Office Human Resources Service (COHRS) called and told [REDACTED] that they were not considering [REDACTED] for the GS-15 position but that [REDACTED] was being considered for a different position. [REDACTED] said that Mr. Sepulveda and [REDACTED] interviewed [REDACTED] and that during the interview they told [REDACTED] that [REDACTED] was not a "top runner" for the GS-15 position but that based on [REDACTED] skills and background, they wanted to hire [REDACTED] for a newly created position.

31. [REDACTED] told us that [REDACTED]

(b)(7)(c)

32. Personnel records reflected that [REDACTED] was a GS-14 at [REDACTED] and that [REDACTED] told us that when [REDACTED] submitted [REDACTED] Optional Form 306 as part of the VA hiring process, [REDACTED] answered all the questions truthfully; however, when specifically asked about question 12 on the form, [REDACTED] admitted that [REDACTED]

[REDACTED] said that [REDACTED] answered "no" to [REDACTED]

question 12 on the Optional Form 306, because [REDACTED] said that [REDACTED]
[REDACTED]

33. [REDACTED]

(b)(7)(c)

34. [REDACTED]

35. Mr. Sepulveda told us that he did not know [REDACTED] before [REDACTED] job interview. He said that he and Mr. Hensley interviewed [REDACTED] and that they thought [REDACTED] was a good candidate for a newly created position within the Strategic Management Group, a newly created organization. He said that [REDACTED] appeared to have considerable experience in the area of contracting which was what he (Mr. Sepulveda) wanted in terms of the new position. He recalled that during [REDACTED] interview, as they went over [REDACTED] resume, Mr. Hensley recognized the name of a reference listed on the resume as someone he also knew. Mr. Sepulveda said that he asked Mr. Hensley to call the reference and that Mr. Hensley later told him that the reference, who was also [REDACTED] former [REDACTED] supervisor, said that [REDACTED] was a good employee.

36. Mr. Sepulveda told us that during [REDACTED] interview, [REDACTED] never said a thing about [REDACTED] and that [REDACTED] gave a reasonable explanation as to why [REDACTED] left that employment, recalling that it had something to do with [REDACTED] Mr. Sepulveda said that he was comfortable with [REDACTED]

explanation and that there was nothing [REDACTED] said about [REDACTED] employment at [REDACTED] that caused him to question it further.

37. Mr. Sepulveda told us that these individuals were all good VA employees, and he said that "there is no law, there's no regulation, there's no policy prohibiting the hiring of people who have been [REDACTED]. He said that "we have people who served in prisons for murder working at VA. There is no violation in that regard." Mr. Sepulveda told us that he heard this from a third party and could not provide any specifics when asked about this prison comment.

Conclusion

38. Although we did not substantiate that Mr. Sepulveda engaged in a prohibited personnel practice, we concluded that he did not exercise sound judgment or due diligence, giving the appearance of preferential treatment, when he hired his immediate staff and later withheld key information when recommending that the VA Secretary appoint one of them, Mr. Rodriguez, to a limited term SES position contrary to Federal law and regulations. We found that four of the employees had misconduct or performance-related problems at Federal agencies previously employing them and that a pre-employment check was not sufficiently completed or, in some cases, done at all. We found that Mr. Sepulveda had long-standing professional friendships with two of them, one of whom was his first nominee for the SES position, and that he had prior knowledge that these two former colleagues had previous Federal employment problems.

We recognize that in the hiring process, on rare occasions, an applicant may have prior employment issues that go undetected; however, Mr. Sepulveda appointed four individuals to his immediate staff, professional confidants, who were either removed or left Federal service as the result of conduct or performance issues. He knew the backgrounds of two and his failure to take the necessary steps to develop essential information concerning the other two establishes a pattern of questionable judgment on his part. Other Federal agencies accused these individuals of misconduct or actions that are incompatible with service as a senior member of HRA management, to include prohibited personnel practices in the form of nepotism, abuse of subordinates, hostile work environment, and poor performance. Mr. Sepulveda's selection of these individuals may not be in the best interest of VA.

39. [REDACTED]

(b)(7)(c)

[REDACTED] Further, we found that Ms. Paternoster and Ms. Santiago falsified employment records when they failed to disclose that they had [REDACTED] on the Optional Form 306 each completed as part of the VA employment process.

40. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. **No response is necessary.** It is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a). You may discuss the contents of this memorandum with Mr. Sepulveda, within the bounds of the Privacy Act; however, it may not be released to him. No response is necessary. If you have any questions, please contact Ms. Linda Fournier, Director, Administrative Investigations Division, at (b)(7)(c)

[REDACTED]

A handwritten signature in cursive script that reads "James J. O'Neill". The signature is written in black ink and is positioned above the printed name.

JAMES J. O'NEILL