

September 18, 2014

The Honorable Ernest Moniz
Secretary
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Via email: The.Secretary@hq.doe.gov

The Honorable Gregory Friedman
Inspector General
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Via facsimile: (202) 586-4902

Dear Secretary Moniz and Inspector General Friedman:

The undersigned organizations and individuals are concerned that the Department of Energy (DOE) is improperly using classification as a retaliatory measure against contractors expressing opinions contrary to those of the DOE and using contractor layoffs to deter whistleblowers from coming forward. Coupled with the recent reports that the DOE is using nondisclosure agreements to curb whistleblowing among contract employees, this most recent set of events paints a disturbing picture. We are disappointed that the DOE chose not to review these problems when presented with Dr. James Doyle's Petition for Secretarial Review.

On July 31, 2014, the Center for Public Integrity (CPI) reported that Los Alamos National Laboratory (LANL) retroactively classified an article authored by Dr. Doyle after it had been formally approved for public release by a classification analyst.

Los Alamos National Security, LLC (LANS) manages LANL, where Dr. Doyle was employed for almost two decades. In his article, Dr. Doyle criticized the political theory of nuclear deterrence, or the theory that the threat of nuclear retaliation will curb aggressors from waging an initial nuclear attack. CPI's article revealed that Dr. Doyle's supervisors expressed to him that his opinion was unpopular within LANL when he asked them to review the article before publication. During this review, however, Dr. Doyle received no indication that the article contained classified information. Additionally, the article in question was reviewed by the LANS classification office and was authorized for unlimited public release.

After Dr. Doyle's article was published, he was approached by members of LANL's Security Inquiries Team, who alleged that it contained classified information. During the ensuing post-publication classification review, three derivative classifiers at LANL determined that the article contained no classified information. Approval from derivative classifiers is generally all that is required for clearance when an article is written by a

LANL staff member on his own time and disclaimed to reflect only the author's opinions, as was the case with Dr. Doyle's article. However, LANL's chief classification officer, Daniel Gerth, surprisingly overruled the three classification analysts. The DOE Office of Classification and the Department of State subsequently upheld the decision to retroactively classify Dr. Doyle's article.

After this convoluted string of decisions, Dr. Doyle challenged Mr. Gerth's classification of the article. Dr. Doyle asserts Mr. Gerth's determination was not a proper classification, but rather a deliberate and biased misclassification in response to the content of the article and in violation of Executive Order 13526. He further asserts that Mr. Gerth did not use proper classification guidance in his minority, though overruling, decision. Following Dr. Doyle's persistent internal and external challenges of the classification decision, he experienced a series of retaliatory measures, including loss of his access to Sensitive Compartmented Information (SCI). Dr. Doyle filed a complaint with the National Nuclear Security Administration's whistleblower protection office, asserting that the disciplinary actions were in response to his objection to Mr. Gerth's retroactive classification. Eventually, he was terminated from his position with LANS at LANL.

Los Alamos officials claim that Dr. Doyle's layoff was due to "unavailable funding" and "unrelated to his publications or professional writings," and that the loss of his access to SCI was "routine." However, given that hundreds of other LANS employees who are underfunded were not terminated, this explanation is suspect.

Furthermore, an internal report issued September 26, 2013, which does not mention Dr. Doyle by name but appears to discuss his case in depth, criticizes the classification procedures of LANL as well as the treatment of this specific case. The author of the report concluded that the classification guidance LANL used on "the employee's" retroactively classified article was "vague and confusing," and urged changes to the policy to avoid similar situations in the future. The report, made public on CPI's website, states that the employee in question "acted in good faith [and] followed the relevant rules" regarding publishing personal projects. Finally, and perhaps most telling, the report pointed out that LANL applied its classification procedures with a "lack of consistency and transparency" in this specific case.

The DOE's Contractor Employee Protection Program encourages contractor employees to expose fraudulent, wasteful, or abusive practices within the DOE and provides such employees with protection against retaliation. However, Dr. Doyle was provided no such protection. Instead, his termination after his formal filing of a whistleblower complaint and the dismissal of that complaint at two administrative levels within your Department points to a breakdown of that program.

At best, this situation highlights the inefficiencies and ambiguities of the DOE's classification procedures and the breakdown of the DOE's Contractor Employee Protection Program. At worst, it illustrates that DOE (and to the extent it is involved, the State Department) is using classification procedures to silence contrary opinions of its staff and prohibited retaliatory measures to keep this practice from coming to light.

Still seeking justice, Dr. Doyle filed a Petition for Secretarial Review (Petition) last month, asserting that exposing retaliatory classification determinations constituted a disclosure of a potential violation of law and abuse of authority and as such, entitled him to whistleblower protections. This Petition was denied earlier this week.

Now the task of investigating Dr. Doyle's termination rests with you, Inspector General Friedman. We urge you to carefully investigate this case since the facts present a compelling narrative that does not support the official DOE explanation. Additionally, we urge you to look at Dr. Doyle's underlying allegations that DOE is using classification procedures to stifle dissent among its contractors.

Thank you for your consideration of the matter. If we can be of assistance, please contact Liz Hempowicz at ehempowicz@pogo.org or (202) 347-1122.

Sincerely,

Alliance for Nuclear Accountability
Barry Blechman, Co-founder, Stimson Center*
Center for Arms Control and Non-Proliferation
Center for Effective Government
Council for a Livable World
Friends Committee on National Legislation
Government Accountability Project
Liberty Coalition
Nuclear Age Peace Foundation
Nuclear Watch New Mexico
Peace Action
Peace Action West
Ploughshares Fund
Project On Government Oversight (POGO)
Public Citizen
The Peace Farm
Tri-Valley CAREs
Women's Action for New Directions

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