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INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Ms Katrina Campbell,
A: Ethics Office

DATE: 27 January 2014
REFERENCE: ID-

FROM: Peter A Gallo,
DE: OIOS Investigations Division

SUBJECT: **Follow-up from meeting & email 23 Jan.**
OBJET:

Thank you for your email.

As a general rule, I have nothing to hide and have no problem with your speaking to Mr. Stefanovic.

If you could clarify what aspects of the matter you wish to look at, I will be happy to provide you a comprehensive list of all the ID staff in New York and an indication of what they should be able to contribute.

I thought it might help if I summarised, and formalised in writing some of the matters we discussed last Monday.

On 23 July 2013, your office rejected a submission for Protection against Retaliation which I had submitted three working days earlier.

In seeking to determine whether or not I engaged in a 'protected activity', your office rejected my application on the basis of two technicalities which I believe to be erroneous and which I pointed out in my letter of 9 January 2014. If you wish me to expand on any of the arguments I put forward in that letter, I will be happy to do so.

The selective interpretation of 'evidence' to the total exclusion of 'information' under ST/SGB/2005/21 para 2.1(a) was, I believe, an insidious error on the part of your office. This is an important issue, and one that is very relevant for OIOS/ID; one of the manifestations of misconduct or corruption in any investigation agency can be the lack of justification for dismissing reports of wrongdoing. It is, after all, not the victim's responsibility to gather *evidence* of a crime, simple *information* is normally sufficient.

If there is to be a challenge under para 5.2(c)(i), I will also have to refer you to the decision of Office of the Secretary-General to accept my letter of complaint of 23 July 2013, which elevated my original complaint of 11 March 2013 to them. The Office of the Secretary-General accepted the complaint as valid and passed it to the Department of Management for action. That decision

was communicated to me by e-mail on 30 July; my letter of 11 March has been accepted as a bona fide complaint of misconduct (e-mail Patrick Carey/PAG, 300713-1728).

That my letter of was not a legitimate complaint of misconduct from the outset should not be in doubt. I may not have cited ST/SGB/2008/5 in the text, but given that it was addressed to the Director of the Investigations Division, I did not consider it necessary. The words "harassment" and "abuse of authority" appear in the very first sentence. I then went on to explain how the actions of the four named subjects of the complaint failed to meet the requirements in ST/AI/2010/5.

Moreover, under the heading of 'Renewal of Contract' on page 3, I describe a situation which fits the common definition of 'coercion', and I refer specifically to the e-mail that is evidence of that activity.

The complaint involved the attempts to enforce a PIP that I believe was undeserved, and was so oppressive in its terms as to be defamatory. The rules governing PIPs are contained in ST/AI/2010/5 para 10, and are predicated by any alleged performance shortcomings having been "identified." In my case, my FRO and SRO refused to identify what they actually alleged to be shortcomings.

This failure lies at the root of everything that happened since 28 February 2013.

Subsequent failures over the consultation aspect under ST/AI/2010/5 should therefore become moot. There were no real performance shortcomings identified in the first place, so logic dictates that the attempt to force the PIP on me could only have been legally flawed.

Even if, to play the devil's advocate for a moment, we assume that I *did* have some *performance shortcomings*; the very fact that I had to ask what they were should be a clear indication that they had not been properly identified. That itself ought to suggest there was something seriously wrong with the process, if not the content.

For my FRO and SRO to then refuse to explain why the PIP was warranted is, to me, both inexcusable and very poor management. That refusal must cast doubt on the content; were there, in fact, ever any *performance shortcomings* at all?

The PIP is more than just flawed on legal grounds; it is an egregious professional insult.

Disagreeing with my End of Cycle Appraisal, I involved the rebuttal procedure. In their Report, dated 23 September 2013, the Rebuttal Panel made reference to an e-mail dated 22 February 2013 I was hitherto unaware of. In it, the Director Mr. Stefanovic is quoted as stating that the staff member (that is me) "*has been improving his performance.*"

Curiously enough, in my Appraisal, Mr. Dzuro makes absolutely no reference to any improvement in my performance in the period from 23 August 2012 to 22 February 2013. To do so, of course, would further undermine any argument that the PIP was warranted.

As if that alone were not enough, there is the coercion aspect. I was also told, in writing, that I had to sign the PIP before I could renew my employment contract. Evidence of this was referred to in my letter of complaint.

I find it hard to accept that a complaint of harassment and abuse of authority was not justified.

As to whether or not my misconduct complaint should be considered a "protected activity" for the purposes of ST/SGB/2005/21, however, that is the matter on which I contend your office made an incorrect finding on 23 July 2013.

Your office determined (at para 9 of your letter of 23 July 2013), that my poor evaluation was attributable to "*prior, documented performance shortcomings*."

Given that (one) the entire dispute that arose out of the attempt to impose the PIP was due to my FRO & SRO's failure to identify what those alleged "performance shortcomings" actually were; (two) that the Integrated Rebuttal of my Appraisal which is dated 16 July 2013 challenges, from start to finish, the very validity of any argument that any alleged "performance shortcomings" actually existed, and (three) that the Ethics Office recommended (at para 10 of your letter of 23 July 2013) that I seek further mediation, notwithstanding that the failure of mediation was explained, at considerable length, from page 52 to page 55 of my Rebuttal; I have grounds to doubt not only whether your office carried out a proper analysis of the facts presented in support of my application but also whether anyone actually even read the documents that had been submitted.

Under 5.2(c)(ii) the Ethics Office has an obligation to determine whether or not there is a prima facie case that the protected activity was *a contributing factor* in causing the alleged retaliation. I interpret that as meaning one contributing factor, not the only factor.

If you read my Performance Evaluation document (attached) you will see that Mr. Dzuro first makes specific reference to the PIP on page 9 under the heading of 'Teamwork'. Then at the top of page 10, he states that: "*Following the receipt of the drafted PIP* (sic)*, I observed that Peter* (sic) *behaviour became belligerent.*"

While I may not necessarily agree with the word "belligerent", it does not matter. Mr. Dzuro states there was a change of behaviour on my part, contemporaneous with the PIP. I agree, though my explanation is that it was due not to the PIP itself as much as to the refusal to explain why it was necessary.

Under the heading of 'Teamwork' alone, Mr. Dzuro then goes on to spend two full pages describing how my reaction to the PIP is an example of my shortcomings – during which he manifestly fails to point out either my having failed to work satisfactorily with anyone else, or my having had any difficulty getting along with any of my colleagues, except for two, being himself and Roberta Baldini.

You will note that the draft PIP given to me for signature on 28 February says nothing about teamwork.

On the contrary, if you refer to Roberta Baldini's e-mail to me, copied to Vlad Dzuro, sent on the first working day after I was given the draft PIP (e-mail RMB-PAG 040313-1145), you will see that Ms. Baldini wrote there "*I would like to reiterate my belief that you are a valued team member.*"

Similarly, (included in the same document) Baldini's e-mail to me following the mid-point meeting in August 2012 (e-mail RMB-PAG 230812-1800) clearly stated "*I want to reiterate that you are a valuable team member.*"

Mr. Dzuro's own Mid-Point comments in Section 6 on page 14 of my End of Cycle Appraisal also merit repetition here; especially as they appear in gremio of the document I consider to be retaliatory: "*Peter, I believe that you are a valuable colleague with overall positive input in the work to this office and you are a good team player.*"

Nothing negative was ever said about any teamwork issues at any time prior to the End of Cycle Appraisal.

Instead, we have an admission that my behaviour changed after Dzuro and Baldini could not justify the PIP, the complaint was made about the PIP, and my End of Cycle Appraisal concentrates exclusively on what happened *after* the complaint. I see causation here.

Under ST/SGB/2005/21 para 5.2(c)(ii) the requirement is to establish whether my complaint of 11 March 2013 was *a contributing factor* in formulation of the End of Cycle Appraisal which I believe was retaliation. Ignoring all of the other areas in the Appraisal where my performance and reputation were similarly attacked – I suggest to you that the section on 'Teamwork' alone indicates retaliatory intent.

I could, if you wish, repeat that analysis for the Core Values of Integrity, or Professionalism or Respect for Diversity. I could also do it for the Core Competencies of Planning & Organising and for Accountability. Please let me know if you would like me to do so.

What I am unable to do - oddly enough - is correlate what was written in my End of Cycle Appraisal with the content of the draft PIP, or with the 38 questions I raised in response.

I provided those questions to Mr. Dzuro and Mr. Baldini on 11 March 2013 and they patently ignored them. If legitimate answers to those questions existed, I suggest to you that any competent manager would simply have provided them. Mr. Dzuro would not, because he *could* not.

Still, the requirement under 5.2(c)(ii) is for the Ethics Office to determine whether or not a prima facie case exists that the protected activity was only a contributing factor in causing the alleged retaliation.

I suggest to you that it was a very large contributing factor.

In fact, the marked paucity of documented complaints about my performance prior to 28 February 2013 makes it very difficult to accept many *other* factors.

Insofar as the 'knowledge' element is concerned; following what I hold to have been his bad faith attempt to pervert the mediation process, Mr. Dzuro was copied on a caustic e-mail I sent to Mr. Stefanovic on 13 May 2013 (e-mail PAG-Dir 130513-1618). In it, in addition to spelling out reasons why I believed he was in breach of his duties as an FRO, and why (particularly in paras 4 & 5) he should not be left to write my End of Cycle Appraisal, reference is made to Mr Dzuro being "*the subject of a disciplinary complaint arising out of his conduct as my FRO.*"

Furthermore, the Inspira Performance Document system is such that an FRO cannot initiate the process, the first requirement is for the staff member to input their End-of-Cycle Comments in Section 7. I made my comments on 16 May 2013. They reflect what was widely known in the office at that time anyway, but the point is that Mr. Dzuro would not even have been able to write a single word of my End of Cycle Appraisal without being reminded that a misconduct complaint had been made against him.

What I did not know, however, until Mr. Dzuro kindly disclosed the fact in my End of Cycle Appraisal (on page 19, in the fourth paragraph) was that the USG had simply disregarded my complaint and had actively sided with the parties against whom the complaint was made.

Please bear in mind that one of the four parties named in my complaint was Michael Dudley.

The full significance of the USG's partisan bias was not made clear to me until the disclosures in the Nguyen-Kropp and Postica hearings. There was evidence – which Counsel for the Respondents failed to challenge – that Mr. Dudley used *intimidation* in dealing with the previous USG, and then how Ms. Lapointe also appeared to change her mind after meeting Mr. Postica and Ms. Nguyen-Kropp on 2 May 2011, when she failed to give them timeous or satisfactory Clearance Letters.

PAG

For reasons that were never explained, and were certainly not apparent at the time, on 14 March 2013, the USG spoke to me on the telephone and informed me that I had been accused of saying that Florin Postica had told me that the PIP was intended to force me to resign my Regular Budget post.

This was simply not true. Florin Postica had said no such thing.

Still, as far as I am aware, that was the only action that the USG took on my complaint of 11 March 2103. She accepted the unsubstantiated and clearly malicious word of someone in ID, supported by no evidence whatever, and followed up with me only to try to find out if Florin Postica was involved.

I do not yet know who it was who gave the USG that information, but it is very unlikely to have been someone who did *not* have a private agenda of their own.

Not only did Ms. Lapointe fail to follow the procedures laid down in ST/SGB/2008/5, she then sided with the very parties against whom the complaint had been made. Given the unchallenged evidence about her role in the Nguyen-Kropp and Postica matter, the bias that she showed in failing to deal with my complaint has to be considered doubly suspicious, as does her willingness to accept subsequent petty complaints about me.

It is apparent now, of course, that when he was writing my Appraisal, Mr. Dzuro was not in the slightest bit concerned about there being a misconduct complaint pending against him because he already knew the USG was never going to pursue it.

In any event, I was forced to take stress-related medical leave for a month. During my absence, Mr. Dzuro worked on my Appraisal, going over absolutely everything I had done in miniscule detail, presenting a thoroughly misleading and prejudicial of my performance over the past year. He formally completed it on the morning that I returned to work; 26 June 2013.

That was also the day, incidentally, when I found that someone had physically damaged a picture of myself and my neice that had been left on my desk. It was in a perspex frame and the damage was right above my eye, I do not believe it can be explained as accidental.

Since that date, it has been very clear that anything I do, no matter how tiny or insignificant, will be cited as an example of my being "unprofessional" and my current Supervisor has received a string of complaints – some through the USG – about increasingly petty nonsense. This has achieved absolutely nothing other than confirming there is no de minimis rule in this office.

The most recent of these complaints against me was last week. Michael Dudley complained to the USG about my having changed some words on a whiteboard. This was true; I had clarified a satirical reference to the UNDT/2013/176 decision, which, as you will be only too well aware, is in the public domain and a matter which affects every staff member in OIOS.

Notwithstanding any illusory right to free speech or 'fair comment' - the USG actually took Mr. Dudleys complaint seriously enough to instruct the Director to look into the matter.

This is so juvenile that I have asked that it be pursued. I really am anxious to be charged with misconduct over the matter. The complaint itself is a joke, what is more sinister is that even *after* the Postica judgment, the USG is *still* facilitating Dudley's harassment of anyone he dislikes by following up on whatever nonsense he finds to complain about.

I am attaching the documents referred to in this letter which you may not already have.

If you could clarify what information you require from anyone other than Mr. Stefanovic, or if there are any other documents you may wish see to clarify anything, I will be happy to oblige.