

Contacts by Former Senior Officers Or Employees Seeking Information or Other Assistance

SAGC-EF
May 13, 2013

Introduction

Periodically, Army employees seek the advice of their Ethics Counselors because a former officer or employee has contacted them and is seeking information or other assistance. Many times, this contact comes from a former senior Army official who may have been the employee's commander or supervisor before he or she left Government service. As a result, they may be compelled or pressured to respond as if that former senior official was still in Government service.

Agency employees who are contacted by a former officer or employee, such as a retired General Officer, for information or other assistance, need to ask and answer two questions:

- (1) Does this contact violate any of the post-Government employment restrictions?
- (2) Is it appropriate to provide the information or other assistance as requested?

Part I - Basic Restrictions on Contacts

Your first concern should be whether the former official should be making the contact at all. There are criminal restrictions on certain types of contacts by former Government personnel. The most relevant are as follows:

(1) For one (1) year after leaving Government service, all former General Officers, and civilian personnel whose basic rate of pay is at or above 86.5% of the basic rate for Executive Schedule Level II (at or above \$142,898 in 2006, which amount will be adjusted annually as pay rates change), and other former senior officials are prohibited from making any contact with or appearance before any official of the Government agency in which they served in their last year, to attempt to influence any official action on behalf of someone else. If the senior official was paid at Level I of the Executive Schedule, the restriction is even broader.

(2) All former officers and employees, regardless of their rank, are prohibited forever from "switching sides" and representing someone else to attempt to influence official Government action concerning any particular matter involving a specific party in which they participate personally and substantially as a Government officer or employee. The prohibition lasts for only two (2) years if they did not participate in this particular matter, but they were supervising the action, i.e., it was under their official responsibility.

A former officer or employee contacting you to merely seek information, even information that relates to particular matter with which he/she was involved as an Army officer or employee, might not violate the strict letter of the law. You might, however, want to discourage such contacts to avoid inappropriate appearances. Contacts like these, especially those by former senior officers and employees during their first year after leaving the Government, could result in embarrassment or worse, such as Inspector General or criminal investigations, contract protests or suspension and debarment actions, and adverse litigation.

Ethics attorneys routinely advise former senior personnel, for the first year after leaving the Army and government service, not to attend symposia and similar gatherings where active duty Army personnel are likely to congregate. We also suggest that they generally avoid most other contacts with Army personnel during this first year; but, if they must, they need to ensure that the circumstances that make the contact legally correct are clear. Some legal contacts are: purely social activities; dealings to help conclude an official matter that may have been pending upon departure; or an overture to suggest that the former senior employee, in his or her personal capacity, be put on contract (here, the former employee representing him or herself, not someone else).

Part II - Former Employees Seeking Information

One value of former Army officials to their new employers is their knowledge of the Army: its systems and processes, its personnel, and how to obtain and interpret information. Former Government officials are required, however, to protect and not exploit classified, proprietary, contractor bid or proposal, and other “inside information” (i.e., information obtained as part of his Government position which the Army would not release to the public under the Freedom of Information Act (FOIA)). Beyond that, they are free to market and use this valued experience for their own benefit and that of their new employers.

But one of the capabilities that former Army officials may not, or should not, attempt to market to their new employers is access! As a practical matter, retired senior officers or former officials certainly do have access to former colleagues and offices. As retired officers, they have access to military installations and organizations. Retired General Officers have even more access to current officials and information, even briefings, so that they are prepared to work with and assist the Army in the event of an emergency. Notwithstanding this legitimate access, it is illegal for former Army officials to use, exploit or market this access to their civilian employer.

What if former officials use their former positions to gain access to current Army officials and information that would not otherwise have been available to the public? Unless they do something illegal, such as violating the procurement integrity law, they are not subject to personal sanction. But the current Army officials they approach and from whom they receive preferential treatment are subject to adverse action. The former Government employee puts the current employee at risk of being disciplined.

Army officials' liability for giving preferential treatment by providing information to former officials include the following possible violations:

- Not adhering to basic obligations of public service as set out in Executive Order 12674.
- Use of public office for the private gain of friends or others with whom the employee is affiliated, or inducing others, such as subordinates, to provide some benefit to persons with whom the official is affiliated in a private capacity.
- Use of nonpublic information to further someone else's private interest, whether through advice or recommendation, or by knowing unauthorized disclosure.
- Unauthorized release of information protected by the Procurement Integrity law.

When a former officer or employee wishes to meet with you or asks you for information, it is your responsibility to ensure that honoring the request will not violate law or regulation. In addition, you should also ensure that those who work for you, especially those who might be intimidated by a request, which sounds like a demand, from a former high-ranking official, understand that it is not only permissible, but expected of them to question the validity of responding to the request if they have any doubt. They should be encouraged to seek the advice of their supervisor, commander and Ethics Counselor.

Summary

Providing information or assistance is appropriate if, at the time of the request, you would readily release this information to any other member of the public, or there is some other official Army reason that the former official is entitled to the information. It is inappropriate to release information or provide assistance if the only reason is that the requester is a former colleague or senior official (the operative term here is "former"). Even if it is appropriate to release the information, it is inappropriate to provide an analysis, create additional information, or do projections if you would not do the same for others; the requester may have been entitled to your research and analysis as his or her former subordinate or colleague, but not just because he or she is a former senior officer or employee. In addition to the various possible violations of law and regulation, such favoritism creates terrible appearances and impugns the integrity of Army operations.

When you receive a contact and request for official information or other action from a former Army official, if you have any doubt as to the appropriateness of the contact or how you should respond, seek the advice of your Ethics Counselor.