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The Special Counsel

November 30, 1999

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-99-0923

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Roger C. Viadero, Inspector General, U.S. Department of Agriculture, sent to me pursuant to 5 U.S.C. §§ 1213(c) and (d). I transmitted the disclosure to the Honorable Daniel R. Glickman, Secretary of Agriculture. Secretary Glickman delegated authority to Mr. Viadero to review and sign the report.

The report sets forth the findings and conclusions of the Inspector General's review of disclosures of information allegedly evidencing a violation of law, rule, or regulation by officials of the Department of Agriculture (USDA), Denver Wildlife Research Center, Animal and Plant Health Inspection Service (APHIS), Denver, Colorado.

The whistleblower, Mr. Millard Graham, provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213 (e)(1), which I am also transmitting.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Graham's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency report contain all of the information required by statute.

Mr. Graham, who consented to the release of his name to the Agency, alleged that his signature was forged on his 1992 Performance Appraisal. He stated that he discovered this forgery when he received an Investigative Report in connection with a 1994 grievance that he filed. A copy of the alleged forged Performance Appraisal was attached as an exhibit to the Investigative Report, but was not the subject of that investigation. He stated that he has no idea who may have signed his name to the Performance Appraisal without his consent. He recalls writing "refused" in the employee signature block, and he believes, based on the appearance of the copy, that the original was altered when someone used correction fluid to delete the word "refused" and then signed his name. Mr. Graham alleged that these statements constitute false and

misleading representations for which a criminal penalty is imposed by virtue of 18 U.S.C. § 1001.

The documentation Mr. Graham provided included a copy of a letter from the Department of Agriculture, Office of the Inspector General (OIG). Mr. Graham advised the OSC that he filed a complaint with the OIG in 1997, alleging that his signature had been forged on the 1992 Performance Appraisal. The OIG letter states that the matter was referred to APHIS for inquiry, and that the OIG determined that APHIS adequately addressed Mr. Graham's allegations. Mr. Graham states that he has been unsuccessful in his attempts to obtain a copy of the OIG report and/or the APHIS response to the OIG.

The Inspector General limited his inquiry into the matter to a review of the 1997 OIG hotline complaint forwarded to APHIS for review. APHIS took testimony from Mr. Graham, and reviewed the EEO complaint in which Mr. Graham alleged he had observed the forged 1992 appraisal. APHIS determined that the EEO file did not include the alleged forged appraisal. When Mr. Graham was shown a copy of his 1992 performance appraisal, he identified it and stated that he *did* sign it. He also denied that the 1992 appraisal was the performance appraisal containing the alleged forgery. He then stated that it was possibly the 1994 appraisal that had been forged. APHIS reviewed the 1994 appraisal, and determined that the form contained the notation "Refused 11/2/94."

Based on its review of the 1997 APHIS inquiry, the OIG concluded that APHIS officials had appropriately addressed the allegation and no further involvement by OIG was warranted.

Mr. Graham responded to the OIG Report by denying that he has ever changed his mind about the forgery being in his 1992 performance appraisal. He believes that APHIS made every effort to destroy all copies of his 1992 performance appraisal, and continues to assert that the copy of the 1992 appraisal in the EEO case file is the only one in existence. He believes that this copy clearly shows that the word "REFUSED" was "whited out" and that his signature was traced or forged. He states that when giving the testimony referenced above, in connection with the 1997 APHIS inquiry, he was quite confused as he filled in the answers because at that time he did not have his copy of the EEO report. He continues to assert that the EEO report contained a copy of the 1992 appraisal. He maintains that he explained to the investigator that it was definitely his 1992 performance appraisal that had been forged.

The investigation of this matter is inadequate to resolve the still outstanding question of the altered document. The OIG's report provided no explanation for the facts that: (1) the document appears, on its face, to have been altered; (2) no effort appears to have been made to obtain the original of the document in question, and; (3) Mr. Graham clarified his answers to the investigator during the 1997 APHIS inquiry,

a fact which was acknowledged in prior correspondence from the OIG. *See* Memorandum dated December 10, 1998, from William R. Busby, Acting Special Agent-in-Charge, OIG, to Brenda Kindrat, Management Analyst, USDA (Memorandum).

In the Memorandum, the OIG concluded that because the statute of limitations had expired with respect to any forgery that may have occurred in 1992, the OIG would not pursue the matter further. The OIG further deferred the matter to Mr. Graham's pending EEO case. With respect to this Memorandum, it should be noted that it was dated *after* APHIS made its final response to the OIG in October 1998. Despite Mr. Graham's subsequent attempt to clarify the time frame surrounding his allegations, the OIG declined to reopen the matter or request further inquiry by APHIS. Indeed, Mr. Graham was motivated to file a complaint with the OSC in large part because he felt that the APHIS and OIG conclusions were based on erroneous information.

In addition to the above, information about the APHIS inquiry indicates that Mr. Graham's immediate supervisor, a signatory on the document in question, was not questioned because he was recovering from a serious illness at the time. The OIG report does not indicate that any individuals were questioned in response to the OSC transmittal. Neither does it indicate whether any of the potential subject employees are currently available for questioning.

I have determined, pursuant to section 1213(e)(2), that the agency's report contains the information required under section 1213(d). As required by section 1213(e)(3), I have sent a copy of the report and Mr. Graham's comments to the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, and the Chairman of the House Committee on Agriculture. We have also filed a copy of the report in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures