



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

December 15, 2003

The President
The White House
Washington, DC 20500

Re: OSC File Nos. DI-01-0606 and DI-01-0608

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report provided to me pursuant to 5 U.S.C. § 1213(c) and (d) by Ms. Aurene Martin, Principal Deputy Assistant Secretary-Indian Affairs, Department of the Interior. The Honorable Gale A. Norton, Secretary of the Interior, delegated authority to Ms. Martin to review and sign the report. The report sets forth the findings and conclusions of the agency upon investigation of disclosures of information allegedly evidencing a violation of law, rule, or regulation arising out of actions by employees at the Department of the Interior (DOI), Bureau of Indian Affairs (BIA), Bemidji, Minnesota. As discussed below, I find the report statutorily deficient.

The whistleblowers, Ms. Carmel Headbird and Mr. Roy Grandbois, former probate clerks, consented to the release of their names. Ms. Headbird provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting. Mr. Grandbois declined to comment.

I have carefully examined the original disclosures and reviewed the agency's response and Ms. Headbird's comments. This matter does not involve a significant amount of government property. It does, however, deal with an alleged violation of federal property management regulations. We thought it would be a simple matter for the agency to resolve. However, the agency appears to have shown minimal interest in its proper resolution. I find the agency's report deficient because it failed to describe the conduct of the investigation and failed to interview the whistleblowers regarding their allegations. Therefore, I have determined that the agency's report does not contain the information required and its findings do not appear reasonable under 5 U.S.C. § 1213(e)(2). A summary of the whistleblowers' allegations and the agency's response is provided below.

The Whistleblowers' Disclosures

Ms. Headbird and Mr. Grandbois alleged that their supervisor, Ms. Janis Zschokke Rock, violated Section 102-36 of the Federal Management Regulations, which pertains to the disposal of government property, by giving an office desk to an employee for personal ownership. This desk, made of cherry wood, was used by Mr. Grandbois until his employment with the BIA ended on September 29, 2000. He alleged that the desk was in good condition at the time he left the agency. Shortly after Mr. Grandbois' employment ended, Ms. Headbird overheard a conversation between Ms. Rock and co-worker Ms. Shawna Premo, in which Ms. Premo asked Ms. Rock for the desk. According to Ms. Headbird, Ms. Rock replied that the desk would first have to be offered to the tribes. Ms. Headbird states that on October 18, 2000, Ms. Premo remained at work after Ms. Headbird and their other co-workers had left for the day. On October 19, 2000, the desk was missing.

The following day, October 20, 2002, Ms. Rock called a meeting with Ms. Headbird regarding the desk and informed her that, because the desk was broken, she gave it to Ms. Premo. Ms. Headbird did not recall the desk being broken earlier that day. Moreover, even if the desk was broken, such a fact would not excuse compliance with established procedures for excessing government property.

The Department of Interior Investigation and Report

On December 18, 2002, our office referred Ms. Headbird's and Mr. Grandbois' allegations to the Honorable Earl E. Devaney, Inspector General, DOI, requesting information related to this allegation. DOI requested and was granted additional time for its investigation. Nevertheless, no information was received. The Office of Inspector General informed this office that the BIA had failed to respond to their inquiry. Accordingly, on May 22, 2003, this office referred the matter to Secretary Norton for an investigation.

The agency's report substantiated the whistleblowers' allegation that a violation of law, rule, or regulation had occurred. In a one-page response, the agency stated that the issue had been referred to the Agency Superintendent, Minnesota Agency. The Superintendent's review found that, although the desk had not been disposed of properly, it was broken and the cost of recovery would have exceeded the value of the desk. However, the report did not identify Ms. Rock as the person responsible for the violation. The Superintendent identified the responsible party as the Acting Agency Superintendent, who was not identified by name. The report stated that this person is no longer an employee of the Bureau. Finally, the report stated that the Superintendent would ensure that agency personnel received appropriate training in property management and disposition of government property. The agency did not provide information as to the type or scope of training planned or whether any training had been completed.

The Whistleblower's Comments

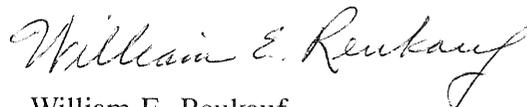
Ms. Headbird criticized the scope of the agency's investigation and pointed out that factual discrepancies exist between the allegations disclosed and the agency report. In particular, Ms. Headbird reiterated that she did not believe the desk was broken at the time it was given away. In addition, Ms. Headbird stated that the person charged by the agency with responsibility for violating the regulation, the Acting Agency Superintendent, is Joel Smith. She alleges that Mr. Smith was in the position of Superintendent at the time the events occurred. She believes he is still an employee of the Bureau, but is presently employed in Albuquerque, New Mexico. Ms. Headbird states that, had the agency investigated her allegations, she had witnesses who would have further supported her allegations. She questioned how the agency is able to discern the truth of the matter if only one side of an issue is investigated.

Comments and Conclusion

The report provided to me by Ms. Aurene Martin, Principal Deputy Assistant Secretary-Indian Affairs, on this matter has glaring deficiencies. In particular, the only description of the conduct of the investigation was that the allegations were referred to a regional manager. There is no description of the conduct of the investigation, including what persons were interviewed or whether any search for documentation related to the desk was made as required by 5 U.S.C. § 1213(d). Moreover, I believe that the failure of the agency to interview the whistleblowers is a significant deficiency, particularly where there are obvious factual discrepancies between the whistleblowers' allegations and the agency report.

For these reasons, I have determined, pursuant to 5 U.S.C. § 1213(e)(2), that the agency's report is deficient. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of the report and Ms. Headbird's comments to the Chairman of the Senate Committee on Indian Affairs and to the Chairman of the House Committee on Resources. We have also filed a copy of the report and Ms. Headbird's comments in our public file and closed the matter.

Respectfully,



William E. Reukauf
Acting Special Counsel

Enclosures