



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

**Analysis of Disclosures, Agency Investigation and Reports,
and Comments of the Special Counsel**

OSC File No. DI-05-1173

Summary

The disclosures in this matter were made by an anonymous whistleblower, a Federal Air Marshal in Las Vegas, Nevada. In this capacity, the whistleblower had the opportunity to review a report generated by the FAMS computer system, and discovered the misrepresentations that formed the basis of these disclosures.

The whistleblower disclosed that a computer generated report summarizing the activity of Air Marshals in December 2004, misrepresented the number of flights covered by FAMS. This report, the whistleblower alleged, showed that Air Marshals flew on a different number of flights as actually covered by the agency. According to the whistleblower, current staffing levels and existing operating procedures would make it impossible for Air Marshals to cover the number of flights represented in the report s/he reviewed. As a result, the report overstated the number of flights covered. The whistleblower also alleged that the inflated statistics factored in the bonuses awarded to FAMS Special Agents in Charge (SACs).

The Secretary, DHS, asked the Office of the Inspector General (OIG), DHS, to investigate the whistleblower's allegations. The OIG found no evidence to substantiate the allegations that FAMS inflated their flight coverage statistics in an internal report or a subsequent report to Congress, or that inflated statistics were used to justify bonuses.

OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosures

The anonymous whistleblower alleged that the erroneous report s/he reviewed was designed to overstate the number of flights covered. The whistleblower further stated that the report s/he reviewed was generated using the agency's Crystal Reports software (CRS), and that such reports are generated on a regular basis. As a result, other reports would also contain the same misrepresentations. According to the whistleblower, then-current staffing levels and existing operating procedures would make it impossible for FAMS to cover the number of flights represented in the report s/he reviewed.

The whistleblower expressed concern that when the overstatement was brought to the attention of FAMS headquarters, management reacted by depriving first-line supervisors of access to CRS. First-line supervisors had previously relied on information contained in some of the reports generated by CRS to oversee the activities of subordinate Federal Air Marshals. For example, first-line supervisors could track Air Marshals flying into the airports they supervised, so that they could meet those Air Marshals at the airport and monitor their compliance with agency policy. The reports were also used to facilitate coordination with local law enforcement in cases involving in-flight disturbances. The whistleblower alleged that rather than remedying the defects discovered in agency reports, FAMS management sought to conceal those defects, in part, by depriving first-line supervisors of a valuable tool they used on a regular basis.

According to the whistleblower, statistics collected by CRS are a significant factor in determining the bonuses awarded to SACs, who oversee the operations of FAMS on a regional level. Bonuses for SACs are largely dependent on the number of flights covered in the regions they supervise. Because the number of flights are overstated, the report the whistleblower reviewed, and others like it, had the effect of artificially inflating the bonuses that FAMS awards.

Finally, the whistleblower alleged that the inflated statistics in FAMS reports are provided to Congress to make it appear that the agency has met congressionally mandated staffing levels. According to the whistleblower, the number of flights represented in the report s/he reviewed corresponds to the number of flights that FAMS would be able to cover if it were staffed at the level mandated by Congress. Thus, the whistleblower alleged that the statistics collected in the report s/he reviewed created the impression that FAMS is satisfactorily discharging its mandate.

FAMS Report

The OIG conducted the investigation of the whistleblower's allegations. The investigation found no evidence to substantiate the allegations that FAMS had inflated their flight coverage statistics in an internal report or a subsequent report to Congress. The OIG found no evidence to suggest that FAMS used inflated flight coverage statistics to justify bonuses for their SACs. Although the investigation confirmed that FAMS began limiting access to their internal database to supervisory personnel and those with an official "need to know" after they learned of an apparent improper disclosure, nothing precluded them from taking appropriate measures to increase their information security by limiting access to the database and the sensitive information it contained.

The agency report contained a summary of the information resulting from the investigation, which addressed the three specific issues involved in the allegations. These included whether 1) a report generated by FAMS CRS summarizing Air Marshal activity in December 2004 overstated the number of flights actually covered by the agency; 2) FAMS used inflated flight coverage statistics as the significant factor in justifying the bonuses awarded to SACs; and 3) when FAMS headquarters became aware of reports that flight coverage statistics were being inflated, they reacted by depriving first-line supervisors of access to CRS.

With regard to the first allegation, the report stated that the primary FAMS database is called "Sabre." Sabre contains the statistical information on which essentially all FAMS queries and reports are based. FAMS employees can access Sabre either directly through Sabre, or indirectly through CRS (a generic database reporting system that runs pre-designed queries through the Sabre database to produce various reports.) Direct access to the Sabre database is limited to approximately five employees, who are each authorized to input data into the system. CRS users, conversely, are only permitted to run queries and generate reports, not to input data.

There are two modes of access to CRS. Approximately 300 users have "regular" access to CRS. This is designed for use by the Field Office Operation Division and SACs to have information readily available in case of a crisis, and to accommodate Air Marshal schedule changes. CRS permits users to access information about flights on which Air Marshals are currently traveling, cities in which Air Marshals are remaining overnight, and specific airports through which Air Marshals are transiting. Approximately nine upper management users in Headquarters and the Missions Operations Section have "management" access to CRS. This is used to determine the number of missions and hours flown for quality control at the Systems Operation Control Division, and also provides trend analysis of specific Field Office flight statistics. This system also maintains statistics for management to determine awards given out to Air Marshals for most missions and hours flown.

Based on its review of the CRS for the date December 12, 2004, the agency's report concluded that the CRS report did not overstate the number of flights covered by FAMS. Rather, the whistleblower confused the number of flights with the number of Air Marshals, and concluded that the numbers were misrepresented. The basis for the agency's conclusion that the CRS data was not misrepresented or otherwise inflated is more completely explained in the attached report, which is classified.

Moreover, the OIG interviewed an employee of Congressional Affairs, FAMS, ICE, who stated that Congress does not mandate the staffing requirements of FAMS. The only staffing guidelines ever received were those in a November 14, 2001 Memorandum from then Deputy Secretary of Transportation, Michael P. Jackson, directing FAMS to train a certain number of Air Marshals by July 1, 2002. FAMS does not have a "mandated" or "authorized" strength level; therefore, they rely on the November 2001, Memorandum for staffing guidance. As such, the CRS reports were not inflated to meet Congressional staffing requirements.

The report also stated that FAMS has a Recognition Program Directive, OMS 1140, which was established on June 30, 2004, by Thomas Quinn, then Director, FAMS. Pursuant to that directive, Air Marshals who fly a superior number of missions each calendar year are recognized. This directive does not apply to supervisors such as FAMS SACs. According to the report, FAMS flight statistics are not used to evaluate SACs for awards or bonuses.

With regard to the allegation that first-line supervisors were deprived of access to CRS, the report acknowledges that around March 2005, approximately 30 non-supervisory employees were restricted from access to CRS. This occurred after an article appeared in the Washington Times that appeared to contain sensitive FAMS information apparently obtained from CRS.

FAMS then determined how many Air Marshals had access to CRS, and that only office supervisors and Air Marshals assigned to the operations desk at the Field Office require such access. The list of users for CRS is constantly changing because of continuous reassignments of Air Marshals in and out of Field Office operations sections. No first-line supervisors were denied access to CRS.

The Whistleblower's Comments

The Whistleblower did not comment on the agency's report.

Conclusion

Based on my review of the original disclosures and the agency's report, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.