

U.S. OFFICE OF
SPECIAL COUNSEL
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Malia S. Myers, Attorney
Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Comments, OSC File No. DI-06-0784

Dear Ms. Myers,

I received a copy of Inspector General Fine's report regarding my allegations of a violation of law and a substantial and specific danger to public safety arising out of United States Marshals Service actions on January 17, 2007. Accordingly, I respectfully submit the following comments to the report per 5 U.S.C. § 1213(e)(1).

While the investigation concluded that the USMS carried out the intent of the appropriators as indicated in the conference language, the numbers represented by the USMS simply do not reflect the practical reality of SOG's financial situation over the last three fiscal years. This fact is exemplified by the 2004 spending plan submitted to the Appropriations Committee. SOG personnel had no input in the drafting of this plan, as revealed by the unrealistic amount allocated for selection training (\$173,000 would never have sufficed for selection expenses, and the report notes that 2006 selection cost over \$313,000). Most importantly, selection, sustainment, and needed equipment purchases—all delineated in the USMS spending plan—never came to fruition. The spending plan did not receive any objection from Congress, but the USMS did not adhere to the plan they submitted. Thus, the conference language identifying funds for "training and equipment" was not implemented by the USMS. The OIG report on 2004 funding does not address whether the USMS actually obligated and expended funds in accordance with the plan sent to Congress. Furthermore, the spending plan submitted to Congress also stated that "management of these resources is the responsibility of the SOG Commander," when in fact the SOG Commander had virtually no control over the expenditure of funds. This again demonstrates the USMS' misrepresentation to Congress regarding SOG resources.

With regard to FY 2006 expenditures, it should be noted that SOG would not have ordinarily received the \$484,546 that was obligated for hurricane expenses—the hurricane occurred in late August, near the end of the fiscal year, and the money was obligated to meet hurricane needs. Otherwise, the fiscal year would have ended without SOG ever seeing this portion of its funding, as SOG was told before the hurricane that no further funding would be available. Further, the allocation of funds for body armor suddenly occurred after my TDY (and repeated questions about funding), and is the first substantial expenditure on equipment for SOG members that occurred over the past three fiscal years. Moreover, it is interesting to note that the USMS withheld \$500,000 of SOG's funding due to vacancies; however, an abundance of documentation will note that

SOG struggled to pay its basic operating costs and that USMS headquarters routinely stressed that there was no money available.

Additionally, the OIG report goes to great lengths to justify the fact that the USMS never transferred the \$200,000 in HRU equipment, travel, and training as it reported to Congress it had done. While the reports states that the new USMS Director was not interested in maintaining a SOG unit in the D.C. area, it is my understanding that SOG is currently paying for building space in the Northern Virginia area. Further, some former HRU members who supposedly "dispersed" throughout the agency were actually promoted non-competitively to SOG GS-13 positions, causing an outcry from legitimate SOG members denied the opportunity to compete for promotion (several of them are stationed in the D.C. area). These details erode at USMS excuses regarding why a financially-strapped SOG never received HRU assets. The investigation determined that the USMS did not intentionally mislead Congress with regard to the HRU transfer, yet it is hard to explain the variety of different explanations Senator Vitter and his staff received when they made inquiries into this matter, as well as the USMS delay in responding to the Senator's inquiries. In fact, the letter from the USMS Director to Senator Vitter answering his inquiries was factually inaccurate, as confirmed by OIG investigators. Even though consolidated appropriations bills often leave out conference report language, this does not negate the intent of the committee drafting the language. Therefore, it is interesting to note that the 2006 Senate language addressing HRU refers to the USMS' failure to properly transfer HRU both administratively and geographically.

Finally, the investigation concludes that because the USMS did not misappropriate funds in violation of law, there is no danger to public safety. This is patently incorrect. The USMS may have acted within its discretion when it chose to allocate SOG funds in the manner it did, but there is no denying the critical fact that SOG has not received sufficient training and equipment to ensure that its members are prepared for mission execution. This fact can be emphatically confirmed by SOG operators. The only explanation SOG ever received from the USMS regarding this lack of training and equipment was that there was no money available. By justifying SOG's lack of training on the grounds that the USMS acted within its discretion regarding funding, the investigation exonerates SOG members from liability for any mission-gone-wrong. The level of financial support received by SOG may have been a policy decision, but it is a poor decision woefully inadequate to maintain mission-ready standards. Unfortunately, the public will bear the brunt of this indiscretion.

Thank you,



Scott A. Flood

August 9, 2007

Malia S. Myers, Attorney
U.S. Office of Special Counsel
Disclosure Unit
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-06-0784

Dear Ms. Myers,

Per your letter of August 1, 2007, I would like to respectfully submit the following comments in response to the OIG supplemental report dated July 20, 2007.

Because of the Special Operations Group's unique position within the USMS, there are many SOG "Standard Operating Procedures" that are not considered official USMS policy. However, these procedures, which are written and on file at the Special Operations Group Tactical Center, are considered accepted pattern and practice within the USMS (appendix F of an internal USMS policy document authorized SOG to formulate SOG-specific policy and procedure). SOG policies involved specialty areas such as the SOG firing ranges, less-lethal weapons systems, precision marksmanship, waterborne operations, explosive breaching, evasive driving, and man-tracking, to name a few.

Accepted SOG Standard Operating Procedure was to conduct sustainment training at least two but ideally four times a year. In fact, during my personal policy discussions with then-Deputy Director Donald Gambatesa and then-Assistant Director of Operations Support Division Arthur Roderick, I was instructed to increase SOG's sustainment training from bi-annual to quarterly training in order to mimic agencies such as the Secret Service. While there was no official USMS policy directive finalized in this vein, my understanding as Commander of SOG was that sustainment training was to be held at least twice a year, and ideally, four times a year if funds allowed. Furthermore, the USMS consistently included in their budget requests to Congress a request for funding of bi-annual SOG training.

As the supplemental report noted, SOG went three years without *any* sustainment training. One of the key goals of sustainment training is unit cohesiveness—this cannot be achieved through ad hoc, inconsistent, and disjointed training in USMS districts and hurried preparation for SOG missions. SOG is intended to be the tactical arm of the USMS and the national response team subject to the direction of the Attorney General. Substandard training should never be accepted or excused, and certainly not due to the USMS' lack of formalization of long-practiced SOG procedures. There is also no doubt in my mind that, were something to have gone wrong on a SOG mission, I would have been held accountable for the lack of preparedness and training of the SOG unit.

Specifically with regard to body armor, the explanation in the supplemental report is insufficient. First, the report notes that SOG only recently acquired a need for heavy duty vests, but then goes on to say that a need for vests arose after September 11, 2001 and the start of the Iraq war in 2003. Thus, SOG has had a need for heavy duty vests for at least four to six years. However, for one to two years of this period, many of SOG's vests were expired, as noted in the report. The 30 vests purchased by the State Department in 2003 were specifically for use in Iraq, and these vests were not available for use on other SOG missions where heavier body armor would have been necessary, such as the Walton Seizure mission in Montana in 2006. Furthermore, while the report notes that no SOG member was sent on a mission with expired equipment (which, of course, is not verifiable fact), this simply means that in some cases, SOG members were sent on missions *without* the necessary equipment altogether or with improper equipment. It is certainly a relief that SOG is *now* being provided with the opportunity to equip itself properly by customizing standard-issue vests, but that does not justify the years during which SOG members were ill-equipped.

Additionally, it must be noted that the majority of SOG's weapons were acquired as excess from other agencies which had purchased newer weapons systems. SOG accepted these weapons systems out of necessity because we were unable to purchase new systems ourselves. While many of these hand-me-down weapons were still usable, they were certainly not the most updated weapons systems available, since other federal agencies were scrapping them in favor of newer, better systems. Also, the report notes that SOG is currently in the process of purchasing new weapons, another indicator that the weapons stockpile was not up to par during my command.

The report's explanation of the under-staffing of SOG missions is another example where substandard performance has been accepted in lieu of excellence, *indeed* jeopardizing public safety. The report justifies the admitted under-staffing of SOG teams by explaining that USMS district personnel and local law enforcement were utilized to supplement SOG numerical deficiencies. This is not an acceptable justification. SOG is called out on a mission precisely because the unit is uniquely trained and prepared to handle high-profile, high-threat, national situations. USMS district personnel and local law enforcement do not possess this same level of training and preparedness. The twelve member team should be made up of twelve *SOG* deputies, and anything less does risk the safety of the public—otherwise, why request SOG in the first place?

Finally, it is understandable that Assistant Director Roderick chose not to fill the three SOG administrative vacancies because of pending allegations brought against me by certain administrative personnel formerly employed at SOG. Assistant Director Roderick only visited the Special Operations Group Tactical Center a maximum of three times in five years, and his visits were confined to escorting high-ranking officials and did not include extended exposure to the daily workings of the office and the unit. Assistant Director Roderick's unfortunate disconnect from the day-to-day operational reality of SOG is the only possible explanation for his belief that denying SOG its *key administrative positions* necessary to *run the facilities* was the appropriate response to pending allegations against me. The unproven complaints of a select few employees

could in no way justify depriving SOG of its ability to function administratively, but such deprivation was certainly a convenient way to cripple my ability to command the unit effectively and further fuel allegations that SOG violated administrative procedures under my command.

It is a relief to find that SOG is beginning to make progress in the areas which I brought to the Office of Special Counsel's attention. However, my concerns for the unit during my time as Commander were founded in the factual reality of our daily situation and were motivated by concern for the safety of SOG members and the public, as well as the knowledge that I was ultimately held accountable for the unit's performance. Many of the concerns that I voiced to the Office of Special Counsel were stimulated by the complaints of numerous SOG cadre members and deputies in the field, to include some of those interviewed for purposes of the OIG supplemental report. I am sure that SOG will continue to make important progress, especially in light of the arrival of a new Assistant Director of Operations Support Division and the exposure afforded to these important issues by the OIG investigation and inquiries of U.S. Congressmen.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Flood", written over the word "Sincerely,".

Scott A. Flood