DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

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OCT 30 2008

Ms. Catherine McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, NW.
Washington, D.C. 20030-4505

Dear Ms. McMullen:

As promised in my letter of August 21, 2008, this letter provides supplemental information pertaining to your September 20, 2007 and January 8, 2008 referrals of whistleblower disclosures regarding Government property accountability at Indian Health Service (IHS). The enclosure documents administrative remedies and corrective actions taken or planned by the Department and the IHS.

If you have any questions, do not hesitate to contact me at marty.brown@hhs.gov or (202) 690-7195

Sincerely,

Martin J. Brown
Deputy Assistant Secretary
(Acquisition Management)

Enclosure

HHS and the Indian Health Service have taken, and continue to take, corrective actions and administrative remedies to strengthen the control, audit and reporting of accountable and sensitive property as follows:

- IHS Headquarters has implemented a policy requiring hand receipts for all blackberries and cell phones and will require each IHS Area to do the same.

- IHS has revised its receiving process for Information Technology (IT) equipment orders at IHS HQ.

- IHS will issue a Special General Memorandum from the IHS Director to all IHS employees regarding their personal responsibility and supervisory responsibility to physically secure and protect Government property.

- IHS will establish a receiving and inspection policy that ensures receiving reports are processed timely and all accountable property is recorded in the HHS Property Management Information System (PMIS).

- IHS will establish an inventory management policy that utilizes the PMIS to conduct physical inventories on an annual basis.

- IHS is developing a property disposal policy that utilizes the PMIS when disposing of accountable property.

- The IHS Report of Survey process will be updated to reduce the timeframes for completion, establish criteria for utilizing a Survey Officer versus an entire Board of Survey, and require the IHS Area Director to approve all Reports of Survey for that Area.

- Prior to removing accountable items from inventory, IHS will complete required investigations; IHS will hold employees financially liable for losses to the degree appropriate as determined by the Report of Survey process.

- IHS will strictly enforce the use of a clearance form for separating employees.

- IHS will ensure timely annual inventories at all IHS Areas.

- IHS Headquarters has implemented a policy to require the use of a "Property Pass" for property items being removed from buildings. Hand receipts will be issued to all employees for property that they use.

- IHS will continue to safeguard all property by ensuring that access to IHS spaces is limited to those who have obtained the proper security clearances for each office and/or storage location.

- IHS will continue to employ a number of management and technical measures to ensure a high degree of security for IT equipment; IHS will continue to require mandatory IT security training for all employees with access to IT equipment.

The Assistant Secretary for Administration and Management's Office of Acquisition Management and Policy (OAMP), Division of Logistics Policy (DLP) has identified additional actions that will further strengthen accountable property stewardship at the Department level as follows:

- The existing HHS policy regarding sensitive items is being revised.

- The HHS Report of Survey process is being enhanced to include a required timeline and to clarify when a Board of Survey is required.

- The Division of Logistics Policy will expand oversight reviews for all HHS Operating Divisions.

- DLP is completing a previously planned revision to the HHS Logistics Management Manual (LMM) to clarify property management policy and procedures.

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUN 18 2008

The Honorable Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW.
Washington, DC 20030-4505

Dear Mr. Bloch:

The purpose of this letter is to formally respond to your September 20, 2007 and January 8, 2008 referrals of the whistleblower disclosures that allege the Indian Health Service has failed to accurately account for a significant amount of government equipment.

In response to your referral, the Office of Inspector General (OIG) conducted a formal investigation. Enclosed with this letter is OIG's memorandum documenting their findings. This report details the efforts made by OIG during the investigation and fulfills the reporting requirement under 5 U.S.C. section 1213(d) that were outlined in your referral letter to me. A supplemental response addressing these findings, as well any corrective action taken, will be forthcoming from this Department.

In summary, at the conclusion of this investigation, no evidence of a violation of criminal law was found. The issues found, though significant in light of the associated loss, are best addressed through administrative remedies.

Thank you for referring this matter of mutual interest. If you have any questions, please contact Daniel R. Levinson, Inspector General, at 202-619-3148.

Sincerely,

Michael O. Leavitt

Enclosure

TO: Daniel R. Levinson
Inspector General

FROM: Timothy J. Menke
Deputy Inspector General for Investigations

SUBJECT: Report on referral by the Office of Special Counsel regarding the Indian Health Service, Rockville, Maryland
OI File Numbers 3-07-0-0346-4 and 3-07-1-0346-4
OSC File Numbers DI-07-2657 and DI-08-0595

Summary

The Office of Investigations received two referrals from the Office of Special Counsel (OSC) and one Hotline complaint related to the Indian Health Service's Government property management. Our investigation did not identify evidence of criminal activity, but did identify several weaknesses in how the Indian Health Service manages assigned property. Based upon our findings and the requirements of the OSC, we recommend referring the matter to the Department for administrative action.

Details

1. Referrals

An initial complaint was received by the Bethesda Field Office on August 28, 2007 from the Department of Health and Human Services (HHS) TIPS hotline. The complainant, a Federal employee, alleged that the Indian Health Service (IHS) conducted a government property inventory in April 2007, the results of which indicated nearly $1.9 million worth of Government equipment was missing. The complainant further alleged that nearly $1.8 million worth of Government equipment was unaccounted for in a 2003 inventory. The missing equipment identified in the 2003 inventory was written off in four Reports of Survey in 2004 because the equipment could not be located. No inventory of equipment was conducted in either 2005 or 2006. The case was opened by the Office of Investigations (OI) on September 9, 2007 to investigate the following allegations outlined in the complaint:

- Possible failure of the IHS to establish a system of accurate accounting and inventory control;
- possible violation of law, rule, or regulation; and
- mismanagement and waste of funds.
-

On October 3, 2007, the Bethesda Field Office received a referral from the OSC regarding allegations of fraud, waste and abuse. The hotline complaint and the OSC referral involved the same complainant and the same allegations.

In addition to submitting a complaint to the HHS Hotline and the OSC, the complainant submitted a similar complaint to the Government Accountability Office (GAO). GAO has been authorized by both the House Committee on Oversight and Government Reform and the House Committee on Natural Resources to investigate the allegations of waste, fraud, and abuse within the IHS. This case was worked jointly with the GAO.

On January 25, 2008, the Bethesda Field Office received a second referral from OSC regarding the above issue from a separate complainant. Due to the similarities between the complaints, OSC indicated that both referrals may be addressed in a single report.

2. Conduct of the investigation

Interviews of both complainants were conducted by OI. In addition to the complainants, OI interviewed members of the IHS Headquarters-East (HQE) upper management, employees of the IHS HQE Property and Supply Management Branch (PSMB), employees of the HHS Program Support Center, and employees of the HHS Office of Acquisition Management and Policy. A physical inventory of IHS HQE was conducted by GAO auditors from October 4, 2007 to November 5, 2007. Numerous documents were obtained and reviewed by the investigating OI Special Agent.

3. Evidence obtained in the investigation

Ernst & Young Report on Internal Control

Ernst & Young audited the financial statements of the IHS as of September 30, 2002, and issued a report thereon dated March 16, 2003. In their report, Ernst & Young recommended that "IHS perform annual inventories of its personal property, real property, leases, and construction in progress. IHS should reconcile its inventory to subsidiary and general ledger activity to ensure subsidiary files are updated timely, research and resolve differences, and update subsidiary and general ledgers."

2004 Reports of Survey

Boards of Survey are used to investigate losses, damage, and destruction and to review and make recommendations. This includes relief from accountability to the Determining Official on Reports of Survey when an impartial third party opinion will provide benefit to the survey process or give additional authority to recommendations (HHS Logistics Management Manual 103-27.5702-3).

Four Reports of Survey were obtained for an inventory conducted in the IHS HQE in September 2003. On August 20, 2004, the Determining Authority agreed with the recommendations of the Board of Survey and authorized that "an inventory adjustment be made and these items valued be dropped from accountability." The total value of the 878 items

which could not be located was $1,859,409. A review of the inventory reports attached to the Reports of Survey indicated that the missing equipment was mostly office equipment, predominantly desktop and laptop computers.

One of the recommendations provided by the Board stated, "[t]hat the establishment and continuous enforcement of necessary administrative measures are in place to ensure that proper documentation, utilization, inventory control, accountability, and disposition of Government property under the jurisdiction of those in charge whether administrative or supervisory is accomplished in accordance and compliance with applicable statutory requirements."

Potential for Theft of Items

"When theft is known or suspected, U.S. Department of Justice and local law enforcement authorities shall be informed and their assistance enlisted toward recovery of the property" Indian Health Manual 5-12.8G(1)(c). Neither the Department of Justice nor local law enforcement was informed of the missing equipment in either 2003 or 2007. OI became aware of the missing IHS equipment when the complaint was submitted. Based on interviews conducted of individuals involved with both the 2003 inventory and the 2004 Reports of Survey, IHS personnel believe that theft of the items had not occurred.

Record Keeping

The missing items were believed to be from multiple years when no inventory was taken. The shortages were attributed to poor record keeping and not to actual equipment loss. Personnel believed that because the items could not be located, the items must have been surplused, but never properly entered into the property management system.

Attitude Towards Missing Assets

The purpose of a Report of Survey "is to determine responsibility and establish the extent of liability of employees for the loss (including destruction and inventory shortages), damage, destruction, and deterioration (beyond normal wear and tear) of Government controlled personal property; or to provide relief from responsibility, liability and/or accountability for such property…" (Indian Health Manual 5-12.8B).

When the complainant associated with OSC referral DI-08-0595 assumed a position of management, the complainant was asked by a member of the PSMB to sign for the equipment located within the complainant's department. The complainant refused, stating that responsibility would only be assumed after having completed an inventory to ensure that all the equipment was accounted for. The complainant was told by the PSMB staff member that an inventory was unnecessary because if there were any missing equipment, a Report of Survey would be written up and the missing equipment would be removed from the inventory.

In the Reports of Survey associated with the 2003 inventory, one of the Board's recommendations was that, "No one individual or group of individuals should be held responsible for the loss, however, a concentrated effort be undertaken to prevent the turn in, transfer, donation of equipment without the proper property documentation being completed."

Office of Audit Services

Pursuant to Office of Management and Budget Circular A-50, section 8.a(2), and other authorities, IHS is responsible for resolving Federal and non-Federal audit report recommendations related to its activities, grantees, and contractors within 6 months after formal receipt of the reports. The Office of Inspector General, Office of Audit Services Report # A-07-06-03077 made the following findings:

> As of December 31, 2005, IHS had not resolved 6,653 audit recommendations, of which 94 percent were past due for resolution. During calendar years 2003-2005, IHS resolved 2,840 of the 9,493 audit recommendations that were outstanding during this period. However, it did not resolve 2,727 of the 2,840 recommendations within the required 6-month period.
>
> IHS did not resolve all audit recommendations in a timely manner because it did not follow departmental policies and procedures. As a result, IHS did not have reasonable assurance that it was exercising proper stewardship over Federal dollars. Based on the backlog of outstanding audit recommendations, it appears that IHS will not resolve future recommendations in a timely manner.

Physical Inventories

No physical inventories were completed at IHS HQE for 2004, 2005, and 2006. Based on interviews with IHS senior management, the reason inventories were not conducted was HHS Office of Acquisition and Management Policy wanted the IHS migration of property data into the Property Management Information System "Sunflower" to take priority.

2007 Physical Inventory

A physical inventory concluded in April 2007 showed that IHS HQE was missing 1,181 property items valued at $1,891,805. A review of the Inventory Shortage Reports for the inventory shows that the missing items are office equipment, predominantly desktop and laptop computers. The shortages from this inventory have not been completely reconciled, no Board of Survey has been convened, nor has a Report of Survey for the inventory been created.

From October 4, 2007 to November 5, 2007, GAO performed its own inventory of IHS HQE. The IHS claimed to have found 1,974 items in its Spring 2007 inventory. The GAO was unable to locate 253 of these items, valued at $460,000. Of the 1,181 items alleged to be missing in the complaint, GAO identified 900 items as still missing at a value of $1,500,000. The results of the October 2007 inventory performed by GAO show that $1,960,000 worth of assets are missing from IHS HQE. Bar coded and non-bar coded items not recorded in the inventory list were documented by GAO. GAO found a total of 561 unaccounted-for items. Of the 561 items found by GAO, 106 items had no bar code.

Personal Property and Supply Management Program Self-Assessment Report

Federal Managers' Financial Integrity Act of 1982 (FMFIA) requires IHS to provide reasonable assurances that funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation. In an effort to meet FMFIA requirements, IHS HQE conducts yearly self-assessments of the Property and Supply Management Program.

These reports are used in support of the IHS Director's annual Assurance Statement to the Secretary of HHS.

Personal Property and Supply Management Program Self-Assessment Reports, with attached Self-Assessment questionnaires were requested from IHS HQE for the past 10 years. Due to their record retention requirements, IHS HQE provided statements from 2002 through 2007. Question number eight on the Self-Assessment questionnaire asks, "Are procedures in place for the performance of annual physical inventories of accountable property which includes the reconciliation for all overages, shortages and adjustments?" For the years 2004 through 2007, the response was "yes." No questionnaires were attached to years 2002 and 2003. Although there may have been procedures in place, no inventory was conducted in 2004, 2005, and 2006. There has yet to be a finalized reconciliation for the inventory conducted in 2007. There is no indication on the Self-Assessment Reports that an inventory had not been conducted.

Excess Assigned Property

During the October 2007 inventory performed by GAO, auditors noted that many employees at headquarters, including administrative assistants, were assigned a minimum of two computer monitors, a printer and scanner, a Blackberry, and multiple laptops in addition to their desktop. For the most part, these employees claimed to rarely use all this equipment and most could not remember the passwords for their laptops.

As part of the inventory, GAO took pictures of IHS employee offices. One employee had three computer monitors and three handheld devices. Another employee had his/her own printer, scanner, and subwoofer. Excess computer equipment was found in unused and unlocked offices, common areas, and unlocked closets. These pictures were included in the GAO briefing to the House Committee on Natural Resources, Office of Indian Affairs.

Property Management Information System

The Property Management Information System (PMIS) consolidates all HHS personal property asset management systems into a single system. The PMIS is designed to achieve full integration with the HHS financial system and Federal asset management systems. The "One HHS" property management system is called Sunflower. This system will be used by all HHS Operating Divisions (OPDIV). The "go-live" date for IHS's use of Sunflower was October 18, 2007. This is to be the only asset monitoring tool in use by IHS. One of the HHS strategic objectives in using Sunflower is to eliminate redundant and outdated property systems. However, IHS continues to utilize the FoxPro system in addition to Excel spreadsheets to manage assets. All capitalized items, non-capitalized items and items deemed sensitive were to be input into the Sunflower system. No other assets are to be listed, as there are costs associated with using the system: $36 per month for capitalized items and $0.43 per month for non-capitalized items and sensitive items.

Sensitive Items

Based on interviews of PSMB personnel, ambiguity exists as to what items the HHS considers sensitive. Specifically, some members of the PSMB consider computer monitors sensitive, others do not.

On January 17, 2008, GAO and Office of Inspector General requested from the HHS Office of Acquisition Management and Policy a current listing of items considered sensitive by the Department. The list we received, annotated as a "draft interim policy," was dated November 30, 2005. We believed that this list was the most recent in existence. However, subsequent investigation revealed that IHS had received a draft interim policy from the Department dated March 6, 2007.

Although "Computer Desktop" is included on the list, the monitor itself is not. When we requested clarification from the Office of Acquisition Management and Policy, we received a "[d]iscussion regarding Computer monitors." HHS considers a desktop computer as sensitive. Since the monitor is considered a component of the computer, it is also considered sensitive. Replacement monitors are not considered sensitive.

The ambiguity of this issue is cited as causing confusion at the IHS and one reason for the delayed migration of asset data into the Sunflower system.

Property Management Manuals

Part 5, Chapter 12 of the Indian Health Manual (IHM), Management Services was last updated on April 29, 1992. Whereas the HHS Logistics Management Manual (LMM) "is an on-going updated process." Consequently, property personnel at IHS HQE rely on multiple sources and corporate knowledge when managing IHS assets.

Designated Receiving Agent

No one person is assigned, or designated in writing, to sign for property received in IHS HQE. The task is accomplished frequently by an Office Automation Clerk and at other times by an Inventory Management Specialist.

Property Custodial Officers

Property Custodial Officers (PCO) have not been formally designated within the IHS HQE. Ideally, when property is received by IHS, the PCO would sign a hand receipt accepting responsibility for the property. The PCO would then have the employee who will ultimately be assigned the property sign a hand receipt. This allocation of responsibility is to ensure that items are cared for and accounted for by more than just the PSMB. IHS management claims the PSMB is understaffed, yet no Property Custodial Officers have been assigned to share the workload and responsibility of property management throughout IHS HQE.

Hand Receipts

Hand receipts are not commonly used at IHS HQE. A hand receipt is also known as a Personal Custody Property Record or HHS-439. When an item designated as personal custody property is issued for the personal use of an individual or a unit, a Personal Custody Property Record shall be prepared and the employee to whom the property is issued shall acknowledge receipt of the property by signing a Personal Custody Property Record. A "Statement of Responsibility" is included on the hand receipt:

> I have received the item(s) listed below on the date indicated. I accept personal responsibility and will surrender it upon demand, transfer, or separation from the

> Government. I further understand that failure on my part to exercise responsibility for the care and protection of the item(s) listed below could result in pecuniary liability established in accordance with HHS Material Management Manual § 103-1.5008(b).

When the form is used, the misconception is that it is only to be used when property is taken from the IHS HQE building. The correct form for this purpose would be a property pass (HHS Form 679).

According to one individual within the PSMB, the use of hand receipts would be too difficult, as "it would take one person working full time to manage these receipts." If PCO's were assigned in IHS HQE, this would not be the case.

In the Reports of Survey associated with the 2003 inventory, one of the Board's recommendations was, "That employees are made aware that they are obligated to properly care for, handle, and use Government property, whether such property has been issued to, or specifically assigned for the employee's personal use or is used by the employee only occasionally." Employees would be aware of this recommendation if hand receipts were used.

No Evidence of Theft

No evidence has been obtained thus far to indicate that one individual or group of individuals is responsible for theft of IHS property. Poor record keeping, unclear policies and the Department-wide push to implement the Sunflower system are commonly blamed for any shortages discovered during an inventory.

Within IHS HQE, no individual is assigned to receive property. No PCOs are assigned responsibility for equipment within their designated areas. Since hand receipts are not used, individuals are not held responsible for individually assigned pieces of equipment. IHS acquiescence in this area makes it unlikely that any one individual could be held responsible.

Property and Supply Monetary Awards

Although annual inventories are not performed, hand receipts are not used, and poor record keeping is cited as the reason for the recurring loss of assets experienced by the IHS HQE, personnel within the PSMB received a total of $42,952 in monetary awards from 2003 to 2007.

GAO Audit of the Phoenix, Albuquerque and Navajo Areas

GAO audits of the property management branches for the Navajo, Tucson, and Phoenix regions indicate property mismanagement is a systemic problem within the IHS and warrants OPDIV-wide scrutiny.

4. A listing of any violations or apparent violations of any law, rule or regulation

Violations of policy as found in HHS LMM and the IHM, Part 5, Chapter 12.

LMM 103-27.5207-1 SIGNATURE AUTHORITY:

> All property acquired by an HHS activity shall be signed for by an individual designated to receive property for the activity. Each component shall establish procedures to designate in writing the individual(s) authorized to receive them."

IHM 5-12.10 B RECEIVING

> (1) All property acquired by an IHS activity shall be receipted for by a designated Receiving Agent for that specific location.
> (2) Each Area will designate a Receiving Agent(s). A copy of the designation shall be provided to the Area PMO, the Area Financial management Officer and copies provided to other concerned offices. These designated Receiving Agent(s) will be responsible for the proper receiving of equipment/supplies for their specific activity.

No one person is assigned, nor designated in writing, to sign for property received in IHS HQE. The task is accomplished frequently by an Office Automation Clerk and at other times by an Inventory Management Specialist.

Based on our interviews, personnel are aware that there is a policy in place that requires that all purchases made by the IHS must be received through the Property and Supply Management Branch. However, credit card purchases are often times delivered directly to the ordering office, circumventing the property management process.

LMM 103-27-5208 MARKING PROPERTY:

> All personal property that may be subject to loss or theft shall be marked to identify it as "Property of the U.S. HHS" and the name of the HHS component except for property of such low value that making the property would not be cost beneficial…

IHM 5-12.10 B (3)d. IDENTIFICATION

> After inspection and acceptance of personal property, each Area will ensure that a Government identification label or a bar-code decal will be affixed to the property…

During a physical inventory conducted by GAO from October 4, 2007 to November 5, 2007, 106 items were found to have no bar code.

LMM 103-27.5210-2 RECORD AND RECEIPT:

> When an item designated as personal custody property is issued for the personal use of an individual or a unit, a Personal Custody Property Record shall be prepared and the employee to whom the property is issued shall acknowledge receipt of the property by signing a Personal Custody Property Record.

IHM 5-12.1H PERSONAL CUSTODY PROPERTY

> Items that are sensitive to appropriation for private use, or are used in situations beyond normal supervisory notice, and good management practice dictates that such property should be accounted for by the person to whom use and trust of the items are assigned.

The Personal Custody Property Record is also known as a "Hand Receipt" or "HHS-439."

We found during our investigation that the use of the Personal Custody Property Record is uncommon at IHS HQE. When the form is used, the misconception is that it is only to be used when property is taken from the IHS HQE building.

LMM 103-27.5802 FREQUENCY:

> Accountable personal property shall be inventoried annually except that accountable areas, which have determined through annual statistical sampling of their inventories that their property records contain an error rate of 2% or less, are required to accomplish wall-to-wall inventories only once every three years…

IHM 5-12.2 D(7): ANNUAL REPORTS

> c. Inventory of Accountable Personal Property. Frequency: Annual. Due in PMB/HQ: PMB/HQ will prepare report.

A physical inventory completed in 2003 revealed the loss of over $1.8 million worth of IHS property. No further inventories were conducted until Spring 2007.

5. A description of any corrective actions taken or planned by HHS

Based upon the findings of our investigations, we recommend referral to the Department for corrective action they deem appropriate.