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 Report, Whistleblower Comments, and Comments of the Acting Special Counsel

OSC File Nos. DI-07-2657 & DI-08-0595

Summary

An anonymous whistleblower alleged that officials at the U.S. Department of Health and Human Services (HHS), Indian Health Service (IHS), Rockville, Maryland, could not locate nearly $1.9 million of government property, that annual property inventories were not conducted, and that Personal Custody Property Records were not used. These apparent losses were in addition to $1.8 million of government equipment that could not be located and was written off in four 2004 Reports of Survey. The Special Counsel referred the allegations to the Secretary of Health and Human Services on September 20, 2007. Shortly thereafter, OSC received a second disclosure regarding some of the same allegations from Fernand Verrier, Director, Office of Finance and Accounting. Mr. Verrier consented to the release of his name. On January 8, 2008, the Special Counsel referred Mr. Verrier's disclosure to the Secretary, HHS. Due to the commonality of issues in the two referrals, the Special Counsel noted that he would have no objection to the Secretary, HHS, addressing both referrals in a single report.

The Secretary, HHS, tasked the Office of Inspector General (OIG), HHS, to investigate the whistleblowers' allegations. The OIG confirmed weaknesses in IHS's management of property but did not find any evidence of criminal activity. HHS and IHS have begun to establish new policies to address these concerns, but the report does not address any employees who have been held responsible or accountable for the losses.

OSC finds that the agency's report contains all of the information required by statute but cannot conclude that its findings are reasonable.

The Whistleblowers' Disclosures

Mr. Verrier and the anonymous whistleblower alleged that a May 2007 inventory found that over 1,000 pieces of government equipment at the Rockville office were lost and could not be accounted for. This missing equipment, which had a value of nearly $1.9 million, included 367 computers. With 322 employees in the Rockville office, there were more missing computers than employees. The whistleblowers noted that the Rockville office has a history of government property losses. Four June 2004, Reports of Survey found that a total of 878 items with a market value of $1,859,409 could not be located.[1] The reports concluded that the missing items "were likely surplussed without proper documentation." The Board of Survey, which reviewed the reports, recommended that no one individual or group of individuals be held responsible for

[1] The items determined to be missing in the 2004 Reports of Survey were in addition to those found missing in the May 2007 inventory.

losses and administrative measures should be established "to ensure that proper documentation, utilization, inventory control, accountability, and disposition of Government property . . . is [sic] accomplished." The whistleblowers contended that these measures were never implemented.

The anonymous whistleblower alleged that annual property inventories were not conducted in 2005 and 2006 pursuant to HHS Logistics Management Manual [LMM] section 103-27.5802. This section requires that "[a]ccountable 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 once every three years." The whistleblower alleged that this section was violated because no sampling or inventories were performed. In addition, the whistleblower alleged that management refused to allow another Report of Survey to be conducted upon learning about the extent of the missing equipment.

The anonymous whistleblower also alleged that proper documentation was not maintained with regards to government property. HHS LMM section 103-27.5210-2 requires that "[t]he employee to whom the [personal custody] property is issued shall acknowledge receipt of the property by signing a Personal Custody Property Record." When property was received, its make, model, value, and serial number were entered into a database, but the recipients were not required to acknowledge receipt.

Report of the United States Department of Health and Human Services

The report initially discussed other investigations into these disclosures. An anonymous whistleblower made a disclosure regarding the same allegations to the HHS TIPS hotline on August 27, 2007. As a result of this disclosure, the OIG, Office of Investigations (OI) opened an investigation on September 9, 2007. The Bethesda Field Office received OSC's referral regarding the whistleblower's allegations on October 3, 2007. An anonymous whistleblower also submitted a disclosure to the Government Accountability Office (GAO). GAO received authorization from the House Committee on Oversight and Government Reform and the House Committee on Natural Resources to investigate the allegations of fraud, waste, and abuse within the IHS. On January 25, 2008, the Bethesda Field Office received OSC's referral of Mr. Verrier's disclosure.

The report discussed its factual findings from OI's investigation in a section entitled, "Evidence obtained in the investigation." This section has 19 short subsections, each of which has its own title. This section first discussed a March 16, 2003, audit of IHS's financial statements by Ernst & Young. The report recommended that IHS perform annual inventories of personal property. Next, the report referenced the 2004 Reports of Survey and their recommendation that appropriate documentation, inventory control, and accountability of government property be established and enforced. Such recommendations are to be addressed within 6 months after receipt. However, as of December 31, 2005, 94% of the audits were past due for resolution. Of the 2,840 recommendations resolved between calendar years 2003 to 2005, 2,727 were past due at the time of resolution.

Indian Health Manual 5-12.8G(1)(c) requires that the U.S. Department of Justice and local law enforcement are to be informed if theft of IHS property is known or suspected. No such notification took place with respect to the missing IHS equipment, purportedly because IHS personnel did not believe any theft occurred. The equipment shortages were attributed by unidentified parties to poor record keeping and surpluses not entered into the property management system.

When Mr. Verrier assumed a position of management, he was asked by a member of the IHS Headquarters-East (HQE) Property and Supply Management Branch (PSMB) to sign for the equipment located within his department. Mr. Verrier refused and stated he would only assume such responsibility after an inventory is completed to ensure the property is accounted for.

The report acknowledged that no physical inventories were performed in 2004, 2005, or 2006. IHS senior management explained that the inventories were not conducted because migration of property data into the Property Management Information System (PMIS) called "Sunflower" was given priority. Sunflower, which is to be the only property management tool of HHS, went live on October 18, 2007. Nonetheless, IHS continues to use an asset monitoring system called FoxPro. Only sensitive capitalized and non-capitalized items were to be input into Sunflower due to costs associated with using the system. However, ambiguity exists as to what items HHS considers sensitive. Confusion stemming from this ambiguity is cited as one reason for the delayed migration of asset data into the Sunflower system.

An April 2007, physical inventory showed that IHS HQE was missing 1,181 items with a value of $1,891,805. IHS claimed to have found 1,924 previously missing items in this inventory. GAO was unable to locate 253 of these previously missing items. The items missing from the April 2007 inventory were predominantly desktop and laptop computers. In October and November 2007, GAO performed its own inventory of IHS HQE. GAO identified 900 of the 1,181 items as still missing. The 900 missing items identified by GAO have a value of $1.5 million. GAO noted during its inventory that many employees at IHS HQE were assigned a minimum of two computer monitors, a printer, a scanner, a Blackberry, multiple laptops and a desktop. Employees generally did not use all the equipment and most employees could not remember the passwords to their laptops.

The Federal Managers' Financial Integrity Act of 1982 requires IHS to provide reasonable assurances against waste, loss, unauthorized use, and misappropriation. IHS conducted yearly self-assessments of its Property and Supply Management Program. The self-assessment questionnaire asked, "[a]re procedures in place for the performance of annual physical inventories of accountable property which includes the reconciliation for all overages, shortages and adjustments? The questionnaire answers for the years between 1998 and 2003 could not be located. Between 2004 and 2007, the answer to this question was reported to be "yes" each year. The report did not identify the individual or individuals who answered the yearly questionnaires.

The report stated that there is no single person who is assigned to receive property in IHS HQE. The job is performed at times by an Office Automation Clerk and other times by an Inventory Management Specialist, because no Property Custodial Officers (PCOs) have been formally designated within the IHS HQE. The PCO's job would be to sign a hand receipt

accepting property received by IHS and then have the employee who will ultimately be responsible for the property sign a Personal Custody Property Record, or HHS-439. The HHS-439 was not commonly used. There was a misconception that the form was to be used only when property was removed from the IHS HQE building. One unnamed employee of PSMB said that using HHS-439s would be too difficult as it would take one full time employee to manage the receipts. The report contradicted this unnamed employee's statement and stated if PCOs were assigned to IHS HQE, such would not be the case. The report did not provide a basis for this opinion.

The report dismissed the notion that the missing property was stolen and cited several reasons why government property was missing. The reasons included poor record keeping, unclear policies, and the implementation of Sunflower. The lack of individuals assigned to receive property and PCOs made it unlikely that any one individual could be held responsible. Nonetheless, the report noted that personnel within the PSMB received $42,952 in monetary awards from 2003 to 2007.

The report confirmed the anonymous whistleblower's allegations of violations of law, rule, or regulation, as it found violations or apparent violations of LMM sections 103-27.5802 (annual inventories) and 103-27.5210-2 (personal custody property records). The report also found violations or apparent violations of six other policies, including LMM section 103-27.5207-1 (signature authority), IHM 5-12.10 (receiving), LMM section 103-27.5208 (marking property), IHM 5-12.10 (identification), IHM 5-12.1 (personal custody property), and IHM 5-12.2 (annual reports).

The report's description of corrective actions taken or planned was received under separate cover on October 30, 2008. The bullet point list of actions already taken, those which continue to be taken, and those that will be implemented were submitted by Martin J. Brown, Deputy Assistant Secretary, Acquisition Management, HHS. The corrective actions already taken include implementing a policy at IHS HQE that requires hand receipts for all blackberries and cell phones, a revised receiving process of information technology receipts, and a policy requiring the use of a property pass for items being removed from buildings. IHS will continue to limit access to IHS spaces to those with the proper security clearances and require mandatory information technology training for all employees with access to information technology equipment. In the future, the IHS Director plans to issue a special memorandum informing employees of their personal and supervisory responsibilities to physically secure and protect government property. IHS will establish a receiving and inspection policy, a property disposal policy, an updated Report of Survey process, and a required investigation before moving accountable items from inventory. IHS will also hold employees financially liable for losses, strictly enforce the use of a clearance form before separation of employees, and conduct timely annual inventories.

The Whistleblowers' Comments

The anonymous whistleblower declined to comment on the agency's report. Mr. Verrier submitted a one page letter containing his comments. Mr. Verrier concurred with the GAO report[2] on these allegations and stood by his testimony given at the July 31, 2008, Senate Hearing on this topic. Mr. Verrier further stated that in his 32 years of government service and 6 years of active duty service in the Navy, he has never seen a more blatant abuse of rules, gross mismanagement, and gross waste of funds than he did at IHS.

Acting Special Counsel's Comments

It is unknown how long the problems involving missing equipment at IHS have existed. These problems appear to have been first documented nearly six years ago in the 2003 Ernst & Young audit and the 2004 Reports of Survey. It appears that the problems persist. As in 2004, the agency has neither held anyone responsible for the millions of dollars of misplaced property, nor has it identified a single individual who proffered one of the numerous excuses for the losses. As a result, the next time missing property is uncovered, there will be no record of which employees were aware of the problems in 2008 yet took no actions to fix them. The agency's report is a continuation of a policy that can best be described as a lack of accountability. Each time missing property is discovered, an inventory is conducted and new policies are proposed, but no one is held accountable.

Conclusion

Based on my review of the original disclosures and the HHS report, I have determined that the agency's report contains all of the information required by statute. Notwithstanding that, I cannot conclude that the agency's findings are reasonable, for the reasons discussed above. I urge the agency to implement the proposed corrective actions and carefully monitor the management of property in the future.

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[2] The GAO investigation and report had a broader scope than the OSC referrals and examined missing property at both IHS HQE and 7 IHS field office locations. The report found property losses of $15.8 million between fiscal years 2004 and 2007.